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LIABILITY OF INTERNET SERVICE PROVIDERS FOR THIRD-PARTY ONLINE COPYRIGHT INFRINGEMENT IN NIGERIA

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Abstract: *The rapid evolution of digital technologies has fundamentally transformed the dissemination of creative works, positioning Internet Service Providers (ISPs) as indispensable intermediaries in the online ecosystem. However, this pivotal role has simultaneously exposed ISPs to significant legal scrutiny regarding their responsibility for copyright infringements committed by third parties through their networks. This paper examines the liability of ISPs for third-party online copyright infringement within the Nigerian legal framework, with particular focus on the transformative provisions of the Copyright Act 2022. The paper employs the doctrinal research methodology, analyzing statutory provisions, regulatory instruments, and case law, while adopting a comparative approach with the United States' Digital Millennium Copyright Act and the European Union's E-Commerce Directive and Digital Single Market Directive. The paper evaluates the legal basis for ISP liability under the Copyrights Act 2022, assesses the extent of their responsibility for user-generated infringements, and identifies critical gaps in the new Act. It further explores the challenges posed by anonymity, cross-border platforms, and enforcement difficulties within Nigeria's digital ecosystem. The paper concludes with targeted recommendations for policy reforms, industry-specific measures, and enhanced dispute resolution mechanisms to strike an optimal balance between protecting copyright owners' rights and fostering a vibrant digital economy. The findings underscore the imperative for robust regulatory guidelines, institutional capacity building, and stakeholder education to ensure the effective implementation of Nigeria's nascent ISP liability regime.*

Keywords: *Internet Service Providers, Copyright Infringement, Third-Party Liability, Notice-and-Takedown*

Introduction

The intersection of copyright law and digital technology has engendered one of the most complex and contentious debates in contemporary intellectual property jurisprudence. At the heart of this discourse lies the question of the extent to which Internet Service Providers (ISPs) should bear responsibility for copyright infringement committed by third parties through their networks and platforms (Riordan, 2016: 3). This issue has gained particular attention in Nigeria where the exponential growth of internet penetration, coupled with the proliferation of user-generated content platforms and peer-to-peer file-sharing technologies, has created unprecedented challenges for copyright enforcement (Fasoyin, 2024).

Internet Service Providers function as the indispensable gatekeepers of the digital ecosystem, providing the infrastructure and services that enable users to access, transmit, and share information across the global network (Edwards, 2011). Their functions encompass a spectrum of activities, including providing connectivity, storing content on servers, facilitating efficient data transmission through caching, and enabling content discovery through search engines and indexing services (OECD, 2011). Third-party online copyright infringement refers to the unauthorized use, reproduction, distribution, or communication of copyrighted works by individuals or entities other than the ISP itself, utilizing the ISP's services or infrastructure (Toritseju, 2024). This phenomenon manifests in various forms, including the uploading of pirated films and music to hosting platforms, the sharing of copyrighted software through peer-to-peer networks, the unauthorized streaming of protected content, and the dissemination of infringing materials via social media and messaging applications (Goel, et al, 2010: 6). The scale and frequency of such infringements in the digital environment render traditional enforcement mechanisms, which target individual infringers, largely ineffective and economically impracticable (Strowel, 2009: 45).

The emergence of third-party online copyright infringement as a systemic challenge can be traced to the fundamental characteristics of digital technology. The digitization of creative works enables their reproduction in unlimited quantities without any degradation in quality, while the global reach of the internet facilitates instantaneous dissemination across jurisdictional boundaries (WIPO, 2002: 26). The convergence of these technological capabilities with the rise of Web 2.0 platforms, which encourage user-generated content and social sharing, has exponentially multiplied the opportunities for copyright infringement (Waelde & Edwards, 2005).

In Nigeria, this phenomenon has assumed alarming proportions. The country's internet penetration rate has grown substantially, with over 134 million Nigerians connected to the internet as of 2024, representing a penetration rate of approximately 42.24 percent (Okamgba, 2024). This dramatic expansion of connectivity has been accompanied by a corresponding surge in online piracy, particularly affecting the Nigerian film industry (Nollywood) and the music sector (Iwuh et al., 2023: 26). Industry reports indicate that piracy, including online infringement, costs the Nigerian creative industries billions of naira annually in lost revenues, undermines investment in content production, and threatens the livelihoods of countless creators and rights holders. The availability of Nigerian content on pirate websites, peer-to-peer platforms, and unauthorized streaming services has become so pervasive that some industry observers describe it as an existential threat to the continued viability of the creative sector (Junda, 2021).

ISPs occupy a unique and powerful position within the digital content distribution chain and they possess the technical capacity to monitor, filter, block, or remove infringing content or offenders (Farano, 2012). This gatekeeping function makes them attractive targets for right holders seeking effective enforcement mechanisms, particularly given the practical difficulties of identifying and pursuing individual infringers who often operate anonymously or pseudonymously. The enforcement gaps manifested in multiple dimensions. The anonymity afforded by the internet made it extraordinarily difficult for right holders to identify and locate individual infringers, rendering direct enforcement against primary infringers largely futile. Even when infringers could be identified, the costs of pursuing litigation against numerous individuals were prohibitively high, and the potential recovery often insufficient to justify the expense. The territorial nature of copyright law also created additional complexities, as infringing content hosted on servers outside Nigeria remained accessible to Nigerian users but fell outside the effective jurisdiction of Nigerian courts. These enforcement deficits created a permissive environment for online piracy, with significant adverse consequences for the Nigerian creative industries.

The enforcement gaps identified above underscored the imperative for legislative intervention to establish a clear and balanced framework for ISP liability. Without such a framework, copyright holders were left without effective remedies against online infringement, while ISPs operated in a state of legal uncertainty regarding their potential exposure to liability for the activities of their users (Jemilohun, 2019: 352). This paper is motivated by three principal objectives. First, it seeks to examine the legal basis for ISP liability in online copyright infringement within the Nigerian legal framework, with particular focus on the provisions of the Copyright Act 2022. Second, it aims to assess the extent of responsibility that ISPs bear for third-party infringements, analyzing the conditions under which liability attaches and the limitations on such liability provided by the statutory safe harbours. Third, the paper identifies critical gaps in the current framework and proposes targeted recommendations for reform to enhance the effectiveness of enforcement while maintaining an appropriate balance among the competing interests of right holders, ISPs, and internet users.

The paper employs the doctrinal methodology, which involves the analysis of primary and secondary legal materials to elucidate the current state of the law and identify areas requiring reform. It also incorporates a comparative dimension, examining the ISP liability regimes of the United States and the European Union.

1. Legal and Regulatory Framework for ISP Liability in Nigeria

The legal and regulatory framework for ISP liability in Nigeria has evolved significantly to address the challenges of third-party online copyright infringement in the digital environment. Prior to 2022, Nigeria lacked specific statutory provisions for intermediary liability, relying on general copyright principles that exposed ISPs to potential secondary liability without clear protections (Jemilohun, 2019). The Copyright Act 2022 introduced Part VII, which establishes a structured regime for online content.

Before the enactment of the Copyright Act 2022, Nigeria's legal framework for addressing ISP liability was fragmentary and largely inadequate for the complexities of the digital environment. The principal legislative instrument, the Copyright Act, 2004, was enacted at a time when internet penetration in Nigeria was nascent and the phenomenon of online copyright infringement was not yet a pressing concern for policymakers (Toritseju, 2024). Consequently, the 2004 Act contained no provisions specifically addressing the role or responsibility of ISPs for copyright infringements committed by third parties through their networks. The enforcement provisions of the 2004 Act were predicated on a paradigm of direct infringement, targeting individuals who physically engaged in acts of reproduction, distribution, or communication of copyrighted works without authorization. Section 14 of the 2004 Act defined copyright infringement by reference to acts done "without the license or authorization of the owner of the copyright", but provided no elaboration on how this standard might apply to intermediaries whose involvement in infringing activities was indirect and facilitative rather than direct. This legislative silence created significant uncertainty regarding the potential liability of ISPs for the activities of their subscribers.

In the absence of specific statutory provisions, rights holders seeking to assert claims against ISPs were compelled to rely on general principles of tort law, including the doctrines of vicarious liability and contributory infringement (Vinciūnas & Magnus, 2012: 57). However, these common law doctrines, developed in the context of physical world interactions, proved ill-suited to the distinctive characteristics of digital networks (Riordan, 2016). The requirement under vicarious liability that the defendant have the right and ability to control the primary infringer's activities was difficult to satisfy in the context of ISPs, given the automated nature of network operations and the vast volume of data transmitted through their systems. Similarly, the knowledge requirement for contributory liability posed substantial evidentiary challenges for rights holders seeking to establish that ISPs had actual or constructive awareness of specific infringing activities occurring through their networks.

Although the Nigerian Communications Commission (NCC), established under the

Nigerian Communications Act, 2003 as the primary regulator of the telecommunications sector, issued the Consumer Code of Practice Regulation 2007, which imposed obligations on licensees to address consumer complaints and maintain quality of service standards, these provisions were directed primarily at consumer protection rather than copyright enforcement. Even the Cybercrime (Prohibition, Prevention, etc.) Act, 2015, which attempted to impose duties on ISPs regarding data retention and law enforcement cooperation (s.38), did not provide a clear civil liability framework for digital copyright enforcement. The Copyright Act 2022 however, represents a transformative moment in Nigeria's copyright jurisprudence, introducing for the first time a comprehensive statutory framework governing the liability of ISPs and other online intermediaries for third-party copyright infringements.

Part VII of the Act, comprising sections 54 to 62, establishes the framework for Service Provider Liability. This Part represents the first codified expression in Nigerian law of the principles governing intermediary liability for copyright infringement, drawing inspiration from international models while adapting them to the Nigerian context. Section 108 of the Act defines "service provider" broadly to encompass the range of entities that may function as intermediaries in the digital environment. It defines a service provider as:

> A provider of online services or network access, including operators of such facilities and any entity offering the transmission, routing or providing of connections for digital online communications, between or amongst points specified by a user, of material of the user's choosing without modification to the content of the material as sent or received.

This expansive definition reflects an understanding that intermediary functions in the digital environment are diverse and evolving, and that the liability framework must be capable of applying to new forms of intermediation as they emerge (Jemilohun, 2023). The definition specifically includes any entity offering transmission, routing, or connections for digital online communications where the material is transmitted at the user's choosing without modification of content. The Act, however, limits the application of its online content provisions to the neutral, automatic, and passive activities of service providers. This is reinforced by the requirement that service providers seeking the benefits of liability protection must not take an active role, intervene, or participate in the making available of content (s.62).

Section 54 of the Act establishes a notice-and-takedown procedure, which provides rights holders with an administrative mechanism for securing the removal of infringing content from service providers' platforms without immediate recourse to judicial proceedings. Copyright owners who have suffered infringement may issue notice to the relevant service provider requesting the takedown or disabling of access to infringing content or links hosted on its system or network. The provision prescribes formal requirements for a valid notice, which must be in writing and may be transmitted electronically. The notice must include a physical or electronic signature of an authorized person, identification of each work allegedly infringed, and sufficient information to enable the service provider to locate the infringing material. Additionally, the notice must provide contact information for the complaining party, a declaration on oath that the complainant believes the use is not authorized, and a statement confirming the accuracy of the information and the complainant's authority to act. Upon receiving a compliant notice, the service provider is required to promptly notify the subscriber responsible for the content and expeditiously take down or disable access to the infringing content or links (s.55). The service provider must thereafter notify the copyright owner of the action taken.

Notwithstanding the above, section 55(2) of the Act establishes a counter-notification procedure, which enables subscribers whose content has been removed to challenge the removal. A service provider may restore removed content if it receives a written counter-notice from the subscriber, forwards it to the copyright owner, and does not receive a response from the owner within seven days indicating that no authorization was granted. Service providers are subject to an ongoing obligation to take effective steps, in accordance with high industry standards, to prevent content taken down from being reloaded onto their systems or networks. Where removed content is reloaded despite such steps, the service provider must promptly remove or disable access to it without further notice to the subscriber.

Section 55(4) of the Act provides that persons dissatisfied with the determination or action by the service provider or copyright owner under the notice-and-takedown procedure, may refer the matter to the Nigerian Copyright Commission for determination. Service providers acting in good faith in taking down content are granted immunity from liability to any person for such actions. However, service providers who fail to comply with the notice-and-takedown requirements are liable for breach of statutory duty and for infringement of the content to the same extent as the person responsible for placing the content on the system or network (s. 55(6)).

Section 56 of the Act imposes an affirmative obligation on service providers to address repeat infringers through a graduated response mechanism. Upon receiving repeated notifications of infringements for a particular account, the service provider must promptly send a warning to the identified subscriber, informing him that another notification will lead to suspension of the account and requiring confirmation of receipt of the warning. After a second notification relating to the same account, where no challenge is pending, the service provider must suspend the account for a period of not less than one month. Subscribers may challenge warning notices on grounds of mistake or misidentification. Within ten days of receiving a warning, a subscriber may send a signed counter-notice to the service provider furnishing full contact details and the factual basis for believing the account was misidentified or that the use was not infringing. Where the basis for challenge cannot be resolved within ten days of receipt of the counter-notice, the matter must be referred to the Commission to determine the validity of the challenge. Service providers acting in good faith in suspending accounts based on information contained in infringement notifications are granted immunity from any claim based on the suspension.

The Act establishes penalties for knowing misrepresentations in connection with the notice-and-takedown process (s. 57). Any person who knowingly misrepresents that material or activity is infringing, or that material or activity was removed or disabled by mistake or misidentification, is liable for damages incurred by any person injured by such misrepresentation as a result of the service provider's reliance upon it.

The Act in section 58 establishes safe harbour protections that limit the liability of service providers for copyright infringement arising from the storage of material at the direction of users. To qualify for these protections, service providers must satisfy several cumulative conditions. First, the service provider must lack actual knowledge that the material or an activity using it is infringing. In the absence of actual knowledge, the provider must not be aware of facts or circumstances from which infringing activity is apparent. Where such knowledge or awareness is obtained, the provider must act expeditiously to remove or disable access to the material. Second, the service provider must not receive financial benefit directly or indirectly attributable to the infringing activity where it has the right and ability to control such activity. Third, the service provider must, upon notification of infringement, respond expeditiously to remove or disable access to the material claimed to be infringing. Fourth, the service provider must comply with the procedure for suspension of accounts of repeat infringers as provided in the Act.

Section 59 extends similar safe harbour protection to service providers offering information location tools, including directories, indices, references, pointers, or hypertext links. The conditions for this protection mirror those for storage providers, requiring absence of actual knowledge or awareness of apparent infringement, expeditious removal upon obtaining such knowledge, and no receipt of financial benefit attributable to the infringing activity where the provider has the right and ability to control such activity.

Under section 60, the Act empowers copyright owners or their agents to apply to the court for an order requiring a service provider to identify an alleged infringer. The application must be accompanied by a copy of the infringement notification and a sworn declaration that the purpose of the order is to obtain the identity of an alleged infringer and that such information will only be used for protecting rights under the Act. Upon receipt of such application, the court may order the service provider to expeditiously disclose to the copyright owner information sufficient to identify the alleged infringer, to the extent that such information is available to the service provider.

The Act also grants the Nigerian Copyright Commission independent enforcement authority, enabling it to directly block or disable access to any content, link, or website hosted on a system or network that it reasonably believes to infringe copyright (s. 61). This power may be exercised notwithstanding any other law and may be implemented directly by the Commission or with the assistance of any other person. The Act preserves the availability of injunctive relief, providing that its online content provisions are without prejudice to the powers of the court or any administrative authority to require or direct the service provider to terminate or prevent an infringement (s. 62). This savings clause ensures that the liability limitations established in the Act do not affect the possibility of obtaining injunctions against service providers.

2. Impact of the Copyright Act 2022 on ISP Liability for Third-Party Infringement

The impact of the transformative legislative intervention of the Copyright Act 2022 on ISP liability reverberates beyond corporate sanctions, and directly affects the behaviour of stakeholders within the entire copyright protection ecosystem in Nigeria (Jemilohun, 2019). First, the conditional safe harbour provisions of the Copyright Act 2022 create powerful incentives for ISPs to cooperate with rights holders while protecting themselves from potentially ruinous liability. Prior to the 2022 Act, ISPs faced substantial legal uncertainty regarding their exposure to liability for user-generated content, as the pre-2022 framework contained no provisions specifically addressing ISP responsibility for third-party infringements.

Section 58 provides that a service provider shall not be liable for monetary relief for copyright infringement arising from the storage of material at the direction of users, provided that the service provider meets four cumulative conditions: lack of actual knowledge of infringement; expeditious intervention upon obtaining such knowledge; not received financial benefit attributable to infringing activity; and compliance with the procedure for suspension of accounts of repeat infringers. The conditional nature of the safe harbour provision creates a strong incentive for ISPs to establish efficient procedures for receiving, processing, and responding to infringement notices (Farano, 2012). An ISP that receives a compliant notice and fails to act expeditiously risks losing safe harbour protection and becoming subject to monetary liability under section 55(6) of the Act.

Second, the notice-and-takedown procedure under sections 54–55, combined with the NCC's site-blocking and disablement powers under section 61, significantly strengthens the position of right holders, particularly in the music and film industries. Right owners can now issue formal notices requiring expeditious removal or disablement of infringing material, with counter-notice safeguards to prevent abuse. These mechanisms have enabled faster takedown of pirated Nollywood films and Afrobeats tracks on local and accessible platforms, reducing unauthorized distribution and supporting legitimate revenue streams (Chibueze, 2025). Post-2022 enforcement actions demonstrate the practical utility of these tools. In July 2025, the NCC secured the suspension of MovieBox.ng, a website notorious for streaming pirated movies, music, and live sports (The Guardian Editorial, 2025). In November 2025, the NCC suspended seven additional .ng domains following a request from the International Federation of the Phonographic Industry (Olufemi, 2025). These swift actions demonstrate growing enforcement capacity and the effectiveness of collaboration between the NCC and rights holders.

Third, the Act significantly enhances the powers and responsibilities of the Nigerian Copyright Commission, positioning it to play a more effective role in overseeing the digital copyright ecosystem. Section 78 vests the Commission with comprehensive powers of supervision, control, and enforcement, including authority to issue regulations and guidelines for implementation of the ISP liability framework. Section 55(4) empowers the Commission to determine matters referred by persons dissatisfied with actions taken under the notice-and-takedown provisions. Section 61 grants the Commission independent authority to block or disable access to infringing content. The creation of the Special Taskforce against Online Piracy (STOP) demonstrates the Commission's strategic approach to enforcement (Igbintade, 2025). The Taskforce's ability to investigate, collaborate with international partners, and coordinate with domestic infrastructure managers reflects sophisticated understanding of multi-stakeholder enforcement (Olufemi, 2025; Chibueze, 2025).

3. Concerns Regarding ISP Liability and Third-Party Infringement in Nigeria

Despite the advancements in the Copyright Act, 2022, significant concerns persist regarding ISP liability for third-party online copyright infringement in Nigeria. These concerns are driven by the inherent nature of digital risks, practical enforcement challenges, and the socio-economic context of widespread piracy that continues to plague Nigeria's creative industries (Toritseju, 2024). The tension between protecting the rights of copyright owner, particularly in Nollywood and the Afrobeats music sector and avoiding the imposition of undue burdens on ISPs that could hinder internet access, stifle innovation, and infringe on free expression remains a central policy challenge (Jemilohun, 2019).

3.1 Nature of infringement risks involving ISPs

By the nature of their functions, ISPs often become unwitting facilitators of copyright infringement through the services they provide (Waelde & Edwards, 2005). The unauthorized hosting of infringing content occurs when users upload copyrighted materials such as Nollywood films, Afrobeats music, and other audiovisual works to platforms that store such content on ISP servers (Oluwaseunfunmi, 2022: 25). This is prevalent on file-sharing networks, streaming websites, and social media platforms where users can upload and share content without adequate oversight (Asadi, 2023: 39).

Linking activities pose another significant risk, as websites may provide hyperlinks to infringing content hosted elsewhere, effectively directing users to pirated materials while the linking site itself does not store the infringing copies (Riordan, 2016). This practice complicates enforcement because the linking site may argue that it is merely providing references to content rather than engaging in direct infringement (Jemilohun, 2019). The transmission of pirated content across ISP networks occurs whenever users download or stream unauthorized materials (Waelde & Edwards, 2005). Each instance of streaming or downloading a pirated film or song involves the reproduction and communication of the work to the public, acts that are exclusively reserved to copyright owners under section 36 of the Copyright Act 2022. The cumulative effect of these activities is staggering economic losses for rights holders. Industry estimates indicate that piracy accounts for between 50% and 70% of potential film revenue in Nigeria's creative sector (Aderinola, 2025). The Nigerian Copyright Commission has publicly stated that the country loses billions of naira annually to piracy, underscoring the economic magnitude of the problem and the urgent need for effective enforcement mechanisms (Spectrum Television, 2025).

3.2 Challenges from anonymity, scale, and cross-border platforms

The digital environment presents structural challenges that fundamentally complicate the enforcement of copyright against online infringers (Ibe & Udeoji, 2019: 110). The scale of user-generated content traversing Nigerian networks is immense, with millions of uploads, shares, and downloads occurring daily across countless platforms (Atoyebi, 2026). No ISP or regulatory authority possesses the resources to manually review this volume of content for potential infringement. User anonymity compounds this challenge. Infringers can register for services using pseudonyms, employ anonymizing technologies such as VPNs, or access the internet through shared connections in cybercafés or public Wi-Fi hotspots (Fenjan, 2023:199). Even where IP addresses are logged, they may identify only the account holder, who may not be the individual responsible for the infringing activity.

The cross-border nature of the internet creates jurisdictional complexities that further frustrate enforcement. Infringing content may be hosted on servers located outside Nigeria while remaining fully accessible to Nigerian users through local ISPs (Jemilohun, 2019). Nigerian audiences frequently access international platforms such as Facebook, YouTube, Instagram, and TikTok, all of which are hosted outside Nigeria (Agboola, 2022: 33). While these platforms may have local offices or representatives, their operations are governed primarily by the laws of their home jurisdictions, and their compliance with Nigerian legal requirements may be inconsistent (Wanjiru, 2023).

Decentralized technologies such as BitTorrent and anonymizing tools like VPNs obscure the origins of infringing activities, making it extraordinarily difficult for rights holders to identify and pursue legal action against primary infringers (Zakir, et al 2024). In such cases, the involvement of ISPs becomes crucial, as they may be the only identifiable parties with some connection to the infringing activity.

3.3 Low awareness among users and ISPs and enforcement difficulties

A significant barrier to effective copyright enforcement in Nigeria is the low level of awareness among both internet users and ISPs regarding copyright obligations (Nwakaego, 2020: 25). Many Nigerian internet users operate under the misconception that content freely accessible on the internet is not protected by copyright and may be freely downloaded, shared, or otherwise exploited (Ibe & Udeoji, 2019: 115). This misunderstanding extends to social media, where sharing content is often viewed as fundamentally different from, and less legally consequential than, more traditional forms of distribution.

Surveys conducted by the Nigerian Copyright Commission have documented widespread ignorance of copyright norms among internet users, with a substantial majority not considering the copyright implications of downloading movies, music, or software from unauthorized sources (Ogundele, 2025). Even among users who are generally aware of copyright, there is often a perception that enforcement actions are unlikely to be taken against individual users, reducing the deterrent effect of legal prohibitions (Miocevic, 2022: 1). Within the ISP community, awareness and understanding of copyright liability requirements vary significantly. Major telecommunications operators such as MTN Nigeria, Airtel Nigeria, and Globacom, generally have dedicated legal and compliance teams that are knowledgeable about regulatory requirements. However, numerous smaller ISPs, hosting providers, and platform operators lack the resources and expertise to develop sophisticated copyright compliance programs. Many may be unaware of their obligations under the Copyright Act 2022 or may lack the capacity to implement effective notice-and-takedown procedures.

The Nigerian Copyright Commission itself faces structural and resource limitations that impede effective enforcement (Okeke, 2025: 1). While vested with significant powers under the 2022 Act, the Commission operates with constrained staffing, budget, and technical capabilities relative to the vast scale of its mandate (Oyinwola, 2022). The volume of online infringement far exceeds the Commission's capacity for direct enforcement, necessitating reliance on private enforcement mechanisms such as notice-and-takedown and collaboration with international partners.

Judicial capacity also presents challenges. The technical complexity of ISP liability cases may further extend proceedings, as courts grapple with unfamiliar concepts and evidentiary issues (Aniche & Obi, 2020: 12). The absence of specialized intellectual property courts or fast-track procedures for copyright cases compounds these challenges.

4. Case Studies of Infringement and ISP Involvement in Nigeria

The Nigerian digital ecosystem has witnessed numerous instances of online copyright infringement involving local platforms and international services accessed by Nigerian users (Nwachukwu & Ikechukwu, 2022). Piracy remains rampant on local platforms, social media channels, and file-sharing sites that distribute unauthorized copies of Nollywood films, Afrobeats tracks, and live sports streams (Akanni, 2025).

Social media platforms have emerged as significant vectors for copyright infringement (Kumar, 2025). Facebook, Instagram, Twitter (X), and TikTok are widely used to share copyrighted content without authorization (Ferris, 2025). Users may upload full-length films, television episodes, or music tracks directly to these platforms, or may share links to infringing content hosted elsewhere (Adebayo, 2021). A particularly concerning trend involves the use of WhatsApp groups and Telegram channels to distribute infringing content (Devi & Mishra, 2023). These platforms enable the rapid dissemination of copyrighted materials to large, targeted audiences. Nollywood films and Nigerian music are frequently shared through such channels, often accompanied by minimal commentary or attribution (Lawal-Arowolo, 2015). The private nature of group communications makes detection and enforcement particularly challenging, as infringing materials may be shared among trusted networks without being publicly accessible.

Dedicated file-sharing platforms and cyber-locker services have long been recognized as significant sources of infringing content. In Nigeria, platforms such as Naijaloaded and various torrent sites have been identified as major distributors of pirated music and films (Itanyi, 2022). These platforms often operate on advertising-supported business models, generating revenue from traffic attracted by popular copyrighted content. One of the most prominent enforcement actions under the Copyright Act 2022 involved the website MovieBox.ng, which had become notorious for streaming pirated movies, music, and live sports (Ikuomola, 2025). In July 2025, the Nigerian Copyright Commission, in collaboration with the Nigeria Internet Registration Association (NiRA), secured the suspension of the MovieBox.ng domain. The activities of the website involved a coordinated attempt to sustain piracy using clone and fallback domains where the operators used multiple mirror domains to access and promote pirated content, with domain histories linked to known piracy operations. In November 2025, the NCC also suspended seven additional .ng domains in Nigeria following a request from the International Federation of the Phonographic Industry (IFPI) (Chibueze, 2025). These sites were involved in illegal sharing of unlicensed music and audiovisual works belonging to both Nigerian and foreign rights holders.

5. Comparative Analysis of ISP Liability for Third Party Infringement in the United States and European Union

The legal regimes governing the liability of Internet Service Providers (ISPs) for third-party copyright infringement in the United States and the European Union represent two of the most influential intermediary liability models in contemporary copyright law. Both systems seek to balance the protection of intellectual property rights with the need to foster technological innovation and maintain the open architecture of the internet. However, while they share certain foundational principles, their regulatory approaches reveal notable doctrinal and policy differences that could benefit regulation in Nigeria.

In the United States, the liability of internet intermediaries is principally regulated by the Digital Millennium Copyright Act (DMCA) of 1998. Title II of the Act introduced a comprehensive safe harbour regime designed to shield service providers from monetary liability for copyright infringements committed by users of their services, provided that the service providers comply with specific statutory conditions. The provisions governing intermediary liability are codified in section 512 of the Act and apply to a broad category of entities defined as “service providers”. The section establishes four distinct safe harbour categories that correspond to the various technical functions performed by internet intermediaries. These include transitory digital network communications; system caching; storage of information at the direction of users; and information location tools. Each category imposes different conditions which service providers must satisfy in order to benefit from the statutory immunity. In particular, service providers hosting user-generated content must demonstrate that they lack actual knowledge of infringing activity and are not aware of facts or circumstances from which infringing activity is apparent. Where such knowledge is obtained, the service provider must act expeditiously to remove or disable access to the infringing material in order to retain safe harbour protection.

A central feature of the U.S. model is the notice-and-takedown procedure, which enables copyright owners to notify service providers of allegedly infringing content. Upon receiving a valid notification containing the information required under the statute, the service provider must remove or disable access to the identified material. The DMCA also incorporates a counter-notification mechanism that allows users to contest the removal of their content where they believe the takedown was erroneous or based on misidentification. In such cases, the service provider may restore the removed material unless the copyright owner initiates legal proceedings within the statutory period. Safe harbour eligibility is further conditioned upon the adoption and reasonable implementation of a policy providing for the termination of repeat infringers in appropriate circumstances. The interpretation of these statutory provisions has been significantly shaped by United States jurisprudence, particularly decisions clarifying the meaning of “actual knowledge”, “red flag awareness” and the requirement that a service provider must not receive a direct financial benefit from infringing activity where it has the right and ability to control such activity.

For instance, in *Viacom International Inc v YouTube Inc* (2012) the United States Court of Appeals for the Second Circuit held that general awareness of infringing activity on a platform is insufficient to establish knowledge under the DMCA; rather, the statute requires knowledge of specific infringing material. Similarly, in *Perfect 10 Inc v Amazon.com Inc* (2007) the Ninth Circuit clarified the scope of liability for search engines and other intermediaries providing information location tools, emphasising that the DMCA safe harbour may apply where the intermediary performs a neutral technical function. In another influential decision, *Capitol Records LLC v Vimeo LLC* (2016) the court addressed the application of the safe harbour provisions to online video-sharing platforms, reaffirming that the statutory immunity may extend to a wide range of digital intermediaries where the conditions of section 512 are satisfied.

In contrast, the European Union has developed a broader and more integrated regulatory framework governing intermediary liability. The foundational regime was established under the Directive 2000/31/EC, which created liability exemptions for intermediary service providers performing mere conduit, caching, and hosting functions. Unlike the United States model, which focuses primarily on copyright infringement, the European framework adopts a horizontal approach applicable to various forms of unlawful online content, including copyright violations, defamation, and other forms of illegal material.

Under this regime, hosting providers are exempt from liability where they do not have actual knowledge of illegal activity or information and act expeditiously to remove or disable access once such knowledge is obtained (Art. 14). In addition, Article 15 of the Directive prohibits Member States from imposing general monitoring obligations on intermediaries, thereby preventing governments from requiring service providers to actively monitor user communications for potential infringements. This prohibition reflects a deliberate effort to protect fundamental rights such as freedom of expression and the free flow of information within the digital single market. The Court of Justice of the European Union has played a significant role in interpreting the scope of these liability exemptions. In *Google France SARL v Louis Vuitton Malletier SA* (2010) the Court held that an intermediary may rely on the hosting exemption only where it plays a neutral and passive role in relation to the stored data. Similarly, in *L'Oréal SA v eBay International AG* (2011) the Court ruled that online marketplace operators cannot rely on the hosting safe harbour where they play an active role that gives them knowledge or control over the stored information.

The Court has also emphasised the limits of intermediary monitoring obligations. In *SABAM v Netlog NV* (2012) the Court rejected an injunction requiring a social networking platform to implement a general filtering system to prevent copyright infringement, holding that such an obligation would violate the prohibition on general monitoring and interfere with fundamental rights. Likewise, in *UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH* (2014) the Court confirmed that national courts may issue blocking injunctions against internet access providers, provided that the measures are proportionate and do not unnecessarily restrict lawful access to information.

More recently, the European intermediary liability regime has undergone further development through the adoption of the Digital Services Act 2022. The Regulation modernises the regulatory framework by restating the traditional intermediary liability exemptions while introducing additional obligations relating to transparency, risk assessment, and content moderation for digital platforms. Article 7 of the Regulation further clarifies that voluntary own-initiative investigations or proactive content moderation measures undertaken by service providers do not automatically deprive them of the benefit of the liability exemptions provided under the Regulation.

Another important development within the European copyright framework is Article 17 of the Directive (EU) 2019/790, which establishes a specialised liability regime for online content-sharing service providers. Under this provision, such platforms are deemed to perform an act of communication to the public when they give the public access to copyright-protected works uploaded by users. As a result, these platforms may incur direct copyright liability unless they demonstrate that they have made best efforts to obtain authorisation from rights holders and to prevent the availability of identified infringing works. This framework effectively introduces a more proactive enforcement model often described as a notice-and-stay-down approach.

A comparative evaluation of these regimes reveals that although both jurisdictions recognise the importance of limiting intermediary liability in order to encourage innovation, they adopt different regulatory philosophies. The United States framework is largely reactive and relies heavily on the notice-and-takedown mechanism, which places the primary burden of detecting infringement on copyright owners. By contrast, the European Union has increasingly moved toward a system that imposes greater responsibilities on digital platforms to prevent the dissemination of infringing material, particularly in the context of large-scale user-generated content platforms. Both regimes, however, strictly prohibit "general monitoring obligations", ensuring that ISPs are not required to investigate every packet of data on their networks. This global tension is reflected in the Nigerian Copyright Act 2022, which modernizes the Nigerian framework by introducing domestic safe harbour provisions. While Nigeria draws on the

DMCA's notice-and-takedown mechanics, its framework also mirrors the EU's broader "blocking injunction" capabilities, allowing the Nigerian Copyright Commission (NCC) or courts to order ISPs to disable access to infringing sites.

Drawing from both the US and EU approaches, several key considerations emerge for the Nigerian digital ecosystem:

1. Nigeria could adopt a functional approach that provides different rules for different types of ISPs e.g., a telco vs. a social media site.
2. It could provide clear definitions of "actual knowledge" and standardized "Notice-and-Takedown" forms to reduce legal uncertainty and prevent enforcement gaps.
3. To prevent censorship, Nigeria needs a robust, accessible counter-notification and redress mechanism so users can challenge wrongful content removals.
4. The Nigerian legislative framework should explicitly protect against general monitoring and ensure that any injunctions like site blocking are proportionate and effective without being overly broad.
5. The framework must be future-proof, acknowledging that as technology evolves, the judiciary will play a critical role in interpreting these laws for new business models.

Conclusion

The Copyright Act 2022 represents a significant achievement in Nigerian copyright jurisprudence, providing a comprehensive framework that balances the interests of rights holders, ISPs, and internet users. The post-2022 enforcement actions demonstrate that the NCC is capable of wielding its enhanced powers effectively when supported by international partners and domestic stakeholders. However, the implementation and enforcement framework under the Act remains a work in progress, as inter-agency cooperation that is essential for effective enforcement is still being formalized and the ADR mechanism that promise faster dispute resolution is yet to be fully implemented. The future of ISP liability in Nigeria will be shaped by how effectively stakeholders address these implementation challenges over the next several years. The foundation is sound; what remains is the hard work of building the institutional capacity, operational systems, and collaborative relationships necessary to make the framework work in practice.

With continued commitment from government, industry, and rights holders, Nigeria can build an ISP liability regime that protects creative works, fosters digital innovation, and respects fundamental rights. The economic stakes could not be higher, Nigeria's creative industries are vital contributors to national development, and effective copyright protection is essential for their continued growth and sustainability.

This paper has demonstrated that the Nigerian framework draws considerable inspiration from international best practices, particularly the intermediary liability regimes developed in the United States and the European Union. The comparative analysis of the safe harbour provisions under the Digital Millennium Copyright Act and the intermediary liability framework established under the Directive 2000/31/EC reveals that effective regulation of ISP liability depends on carefully balancing copyright enforcement with the preservation of technological innovation and fundamental rights. The path forward requires sustained effort, but the destination is worth pursuing: a digital ecosystem where creators are rewarded for their work, ISPs can operate with legal certainty, and users can access creative content through legitimate channels. This goal is achievable if all stakeholders embrace their responsibilities and work collaboratively toward its realization.

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NICN JURISDICTION OVER LABOUR-RELATED FUNDAMENTAL HUMAN RIGHTS DISPUTES: *ONYIRUKA V. A.G. OF ENUGU STATE* EXAMINED

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Abstract: *Section 254c (1) (d) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 has vested the National Industrial Court of Nigeria (NICN) exclusive original civil jurisdiction over matters relating or connected with any disputes over Chapter IV of the Constitution while section 46(1) thereof, empowers any citizen whose right contained in the said Chapter IV that is threatens or has been breached to apply to a High Court within the state for redress. This raises the issue as to whether the NICN has exclusive original civil jurisdiction over disputes pertaining to Chapter IV of the constitution? The Court of Appeal in Mrs. Gloria Lewechi Onyiriuka v. A.G., Enugu has held that the NICN neither has nor exercises exclusive original civil jurisdiction over labour-related fundamental human rights disputes but has concurrent jurisdiction with the State and Federal High Court. Does this decision represent the right position of the law? What is its implication (s) on the exclusive jurisdiction of the NICN? What is its impact on the growth and development of Nigeria's labour jurisprudence?*

Keywords: Fundamental human rights, Jurisdiction, Employer, Employee, NICN

1. Introduction

The National Industrial Court of Nigeria (NICN) is a specialised court established for the sole purpose of settling labour and employment disputes (Bimbo, 2012). Thus, where an employment relationship is created, it creates rights and obligations between the parties with contending interests (Emiola, 2008). From time-to-time, there is bound to be clash of interest resulting to conflict which the NICN adjudicates over. Section 254C (1) (d) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 has vested exclusive original civil jurisdiction in the NICN over matters relating to or connected with any dispute over the interpretation of Chapter IV of the Constitution as it relates to any employment, labour, industrial relations or ancillary matters (Constitution of the Federal Republic of Nigeria, 1999).

It is apposite to note that in Nigeria, the doctrine of judicial precedent is practice. Judicial precedent is a doctrine of law that prescribe that decision of a superior court is binding on inferior courts. In Nigeria, the hierarchy of the Court as prescribed under section 6(6) of the Constitution, from the highest is the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, State High Court, National Industrial Court of Nigeria (are courts of coordinate jurisdiction), the Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the State, the Customary Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of the State, Magistrate/Area Courts (Constitution of the Federal Republic of Nigeria, 1999). The implication of the foregoing is that the decision of the Supreme Court of Nigeria is binding on all the other courts beneath it including the Court of Appeal. In the same vein, the decision of the Court of Appeal is binding on the court beneath it. However, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, State High Court, National Industrial Court of Nigeria are courts of coordinate jurisdiction meaning that they stand on the same judicial pedestal. The decision of one is not binding on the other. The same thing is applicable to the Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the State, the Customary Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of the State. These courts are specialised courts meant to adjudicate over matters statutorily bequeathed to them. The Supreme Court and the Court of Appeal, by virtue of their obvious appellate and supervisory jurisdiction, by function, are policy making courts. In Nigeria, there is only one Supreme Court which is located at the Federal Capital Territory, Abuja while there is also only one Court of Appeal but there are several judicial divisions spread across Nigeria for administrative and adjudicatory convenience (Olushola & Anor. v. Andrew (2021). Also, the Federal High Court and National Industrial Court of Nigeria being federal Courts is one but has several judicial divisions all over Nigeria for administrative convenience as opined by Eyongndi and Ilesanmi (2022). However, the State courts (i.e. State High Court and Magistrate/Area Court), their territorial jurisdiction is limited to the State where they operate.

Section 46(1) of the Constitution provides that where the right of a citizen is threatened or breached, the victim is entitled to approach a High Court (HC), in the State where the threat or breach has occurred to seek redress (Constitution of the Federal Republic of Nigeria, 1999). The issue arising from the foregoing is whether or not the NICN in the light of sections 254C (1) (d) vis-à-vis 46(1) has and exercises exclusive original civil jurisdiction over labour and employment related fundamental human rights disputes?

Interestingly, this issue came up in Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State (2020) wherein the Court of Appeal (CA) held that the jurisdiction of the NICN on labour and employment related fundamental human rights disputes pursuant to section 46(1), is not exclusive but concurrent with that of the State and Federal High Courts. What is the propriety of this decision against the provisions of section 254C (d) (1), 251, 272 and 46(1) of the 1999 Constitution? What is the impact of this decision on the jurisdiction of the NICN? Is this decision in accord with the principle of law that a subsequent provision of a law is superior to an earlier one? Does this decision represent the correction position of the law? These questions, form the crux of this paper. This paper fits into scholarship by evaluating the propriety of the Court of Appeal decision in the case under review against extant provisions of the Constitution of the Federal Republic of Nigeria, 1999 and case law explicating the effect of the jurisdiction on labour and employment adjudication in Nigeria. This paper adopts doctrinal method relying on primary and secondary data including the Constitution of the Federal Republic of Nigeria, 1999, the National Industrial Court Act, 2006, case law, articles in learned journals, standard textbooks on labour and employment law, commentaries, and online materials. This data were subjected to content and jurisprudential analysis with findings and conclusion was drawn.

The paper is divided into four parts. Part one contains the introduction. Part two is a synopsis of the history and jurisdiction of the NICN. Part three is an explication of the decision in *Onyiruika Case* and maters arising therefrom. Part four contains the conclusion and recommendations.

2. Historical Development and Jurisdiction of the NICN

Prior to the advent of colonialism, labour relations in pre-colonial Nigeria, was arranged along age grade, family and communal labour wherein the chiefs had the villagers worked in their farms and a man's household, formed his labour force (Roper, 1958). However, Oji and Amucheazi (2015) have opined that the advent of colonialism in Nigeria in the 19th century led to rapid industrialisation of the economy leading to the establishment of British owned businesses and this led to the recognition of the need to establish a framework for dealing with impending workers agitations. This led to the colonial government to put in place a legal framework for the settlement of labour and employment dispute by the promulgation of the 1941 Trade Dispute (Arbitration and Inquiry) Ordinance meant to settle disputes within Lagos and its environs. The application of this Ordinance was limited to Lagos and it had no permanent structure for the settlement of trade/employment disputes that were bound to occur from the introduced wage labour system but it had set up *ad hoc* tribunals for their settlement. One beautiful feature of the Ordinance was that it was patterned after the British non-interventionist model i.e. the government would ordinarily not apprehend a trade/employment dispute unless and until the parties invite it. This feature of the Ordinance has been telegraphically captured by Amucheazi and Abba (2013) as follows:

At this point, industrial relations law and practice in Nigeria were modelled on the non-interventionist and voluntary model of the British system, which was predicated on the consent of the parties to resolve trade disputes through means acceptable to them, with limited intervention by the appropriate minister. The ordinance only empowered the Minister of Labour to intervene by means of conciliation, formal inquiry and arbitration where a negotiation has broken down. In effect, the minister could not compel the parties to accept his/her intervention, but could only appoint a conciliator upon the application of the parties and could only set up an arbitral tribunal by the consent of both parties.

It became imperative to cure the identified inherent shortcomings of the 1941 Ordinance thus, in 1957, the colonial government promulgated another Ordinance known as Trade Disputes (Arbitration and Inquiry) Federal Application Ordinance was promulgated. At this point, the pangs of independence were strong in Nigeria and on 1st day of October, 1960, Nigeria gained political independence from Britain wherein the supervisory power of the British Crown seised and the 1963 Republican Constitution was made. Nigeria was soon submerged in a bloody civil war and after it, there was a great need to reassess the trade/employment disputes resolution framework hence, two decrees were promulgated; the Trade Disputes (Emergency Provisions) Decree (1968), and the Trade Disputes (Emergency Provisions) Amendment Decree, (1969). The Trade Disputes (Emergency Provisions) Amendment Decree prohibited strikes and lock-out and set up a permanent structure for settlement of trade dispute known as the Industrial Arbitration Panel (IAP). Several policies were pursued by the Federal Military Government after post-civil war with various outcomes necessitating further legislative intervention. Thus, promulgated the Trade Disputes Decree No. 7 of 1976 (Akintayo and Eyongndi, 2018). This Decree (which later became the Trade Disputes Act, (TDA), established the National Industrial Court. Section 20 of the TDA provided as follows:

There shall be a National Industrial Court for Nigeria (in this part of this Act referred to as 'the court') which shall have such jurisdiction and powers as are conferred on it by this or any other Act with respect to settlement of trade disputes, the interpretation of collective agreements and matter connected there with.

The jurisdiction of the NICN under the Trade Dispute Act as provided under the relevant section gave it exclusive original jurisdiction over trade disputes (Agomo, 2011). Section 20(3) of the TDA provided that no appeal shall lie to anybody or person from the determination of the NICN. Section 20(4) provided that notwithstanding the provisions of subsection (1) or (3), nothing in the section shall prejudice any jurisdiction conferred on the Supreme Court of Nigeria (SCN) in respect of appeals from the decision of the Court of Appeal (CA) on fundamental rights matters pursuant to section 259 or 213 (2) (c) of the 1979 Constitution or any jurisdiction of the High Court under section 42 (now section 46) of the same Constitution. Thus, under the TDA, the NICN had original exclusive and final jurisdiction over labour matters subject to the appellate jurisdictions of the Court of Appeal and Supreme Court jurisdiction on fundamental rights matters as well as that of the High Court pursuant to section 42 of the 1979 Constitution (Agomo, 2011).

When the 1979 Constitution was enacted, pursuant to section 274 thereof, the Trade Dispute Decree which was regarded as an existing law, became Trade Dispute Act (TDA). However, under the 1979 Constitution, the NIC was omitted from the list of Superior Court of Record (SCR). This led to contention on the constitutional status and jurisdiction of the NIC (Akintayo and Eyongndi, 2018). To salvage this, the TDA was amended by the Trade Dispute (Amendment) Decree No. 47 of 1992 which ostensibly elevated the NICN to a Superior Court of Record. Pursuant to its purported elevation to the status of a superior court of record with exclusive jurisdiction in labour matters; the Decree held-sway because under the military, Decrees supersedes the unsuspended part of the Constitution (Agbaje, 2007). This respite did not last long. When the 1999 Constitution was enacted, the omission of the NIC in the list of SCR was repeated as contained in section 6(5) (a)-(k) thereof. Thus, it became acrimonious whether the purported exclusive original jurisdiction of the NIC under the 1992 Decree does not run afoul of the provision of section 251, 275 and 272 of the 1999 Constitution vesting jurisdiction on the Federal High Court, High Court of the Federal Capital Territory, Abuja and State High Court pursuant to Section 1(3) of the Constitution. To address this quagmire, the legislature enacted the National Industrial Court Act, 2006 which elevated the NICN to the status of a SCR with exclusive original civil jurisdiction over labour and employment matters by virtue of sections 11 and 7 thereof. One would have expected that this legislative intervention, would solve the issue permanently but the issue persisted as it was argued and rightly so that, only an Act of constitutional dimension can amend the provision of the Constitution and not a mere Act of the National Assembly as was held in *Kalango & Ors. v Dokubo & Ors.* (2004) Thus, cases purportedly reserved for the NIC, were still being litigated in other courts. In *National Union of Electricity Enterprises v. Bureau of Public Enterprises* (2010) the Supreme Court dispelled the claim that the Trade Disputes (Amendment) Decree 47 of 1992 and by extension, the National Industrial Court Act 2006 has elevated the NICN to the status of a superior court of record (equal in status to the High Courts) without any amendment of section 6(5) of the 1999 Constitution. The Court per Chukwuma-Eneh JSC held that:

It means therefore, that by Decree 47 of 1992 arrogating to the National Industrial Court a Superior Court of record as has been contended by the appellants does not by that token make the said National Industrial Court a Court of Superior record without due regard to amendment of the provisions of Sections 6(3) and (5) of the 1999 Constitution which has listed the only Superior Courts of record recognized and known to the 1999 Constitution and the list does not include the National Industrial Court; until the Constitution is amended, it remains a subordinate court to the High Court.

The provision of section 11 of the National Industrial Court Act, 2006 which sought to achieve the same result intended under section 20(2) of the Trade Disputes (Amendment) Decree 1992 were also discarded in *Oloruntoba-Oju & Ors v Dopamu & Anor* (2008). It became apparent that only constitutional amendment will enduringly solve the issue. Thus, in 2010, the National Assembly enacted the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. Section 1 of the Act altered section 6(5) of the 1999 Constitution by including the National Industrial Court of Nigeria in the list of SCR in Nigeria and placed it on the same pedestal with the FHC and SHCs. Section 254C (1) expanded the provisions of section 7 of the NIC Act, 2006 and vest exclusive original civil jurisdiction on the NICN over labour and employment disputes. Thus, the Court of Appeal in *Coca-Cola Nigeria Ltd v Akinsaya* (2013) affirmed that the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 has now made the NICN a SCR with exclusive original civil jurisdiction but with concurrent criminal jurisdictions with other high courts. Thus, civil appeals from the NICN lapse with the determination of the Court of Appeal as was held by the Supreme Court in *Skye Bank Plc. v Victor Anaemem Iwu* (2017). By this legislative intervention couple with judicial affirmation, the jurisdiction quandary which the NICN was enmeshed in, has now been permanently resolved.

It should be noted that the issue of jurisdiction of a court is germane because it is intrinsic to adjudication (Okolo v Union Bank of Nigeria Ltd, 2004). It is so important that it can be raised at any stage of the proceedings even on appeal at the Supreme Court for the first time (Ibori v Ogboru, 2005). Once it is raised, the court must pause from further adjudication and settle it one way or the other (*Ogunmokun v Military Administrator, Osun State,* 1999). The reason is that any adjudicatory exercise, carried out in want of jurisdiction is an exercise in futility (*Mustapha v. Governor of Lagos State,* 1987). Thus, wastage of judicial time and resources is inimical to access to justice and justice administration and must therefore be guarded against. A court has various types of jurisdiction ranges from subject matter, territorial, substantive and procedural jurisdictions (*Nigerian Deposit Insurance Corporation v Central Bank of Nigeria,* 2002). As far as jurisdiction is concerned, it is conferred on a court by the statute that create the court (*Felix Onuora v Kaduna Refining and Petrochemical Co. Ltd.,* 2005). This means that neither the court nor the parties can confer jurisdiction on it that has not been conferred by its enabling statute. The jurisdiction that is not expressly given to a court, is deemed to have been taken away from the court and therefore, cannot be inferred.

3. *Onyiruika v. A.G. Enugu State* Explicated

This section of the paper contains a brief fact of the case, outlining the arguments of the parties and the decision of the court as well as matters arising from the decision. Before further adumbration, it is apposite to note that the CA, with regards to appeals from the civil decisions of the NICN, is final hence, the CA is a policy court requiring that its decisions must be caution, judicial and judicious. The brief facts of this case are that the appellant instituted an action against the respondent at the Federal High Court (FHC), Enugu Judicial Division for the enforcement of her fundamental human rights. She was an employee of the Enugu State Government however, her employment was terminated on the ground that she is not from Enugu State. She urged the court to declare that the purported termination of her employment on the basis that she is not from Enugu State was unlawful since as a Nigerian citizen, she is entitled to work in any part of Nigeria. She sought for damages against the respondent for the violation of her right. The response entered appearance and filed a notice of preliminary objection in which they impugn the jurisdiction of the court to adjudicate over the matter as the crux of the appellant's complaint was does not relate to fundamental human rights enforcement but deals principally with employment which is reserved to the exclusive civil jurisdiction of the NICN hence, the trial FHC lacks the jurisdictional competence to entertain the suit as constituted. After hearing the argument of the parties on the preliminary objection and conclusion of the trial, the trial court in its judgment, held that the appellant ought to have filed her case at the NICN since the principal and ancillary reliefs' falls within the NICN's exclusive original civil jurisdiction hence, the case was struck out. Being with the decision of the trial court, the appellant appealed to the Court of Appeal.

3.1 Parties Argument at the Court of Appeal

The appellant contended that she is a Nigerian citizen hence, entitled to work in any part of the country without discrimination or fear of same thus, her termination was in violation of section 42 of the 1999 Constitution which guarantees her freedom from discrimination. She contended that what determines the jurisdiction of the court is the claim before the court based on *Tukur v. Governor of Gongola State* (1989). Her claim before the court was a declaration that her purported termination was unlawful same being in violation of section 42 of the 1999 Constitution, she never claimed for the conversion of her termination to retirement or payment of any benefit. Thus, her principal relief at the trial court was enforcement of her fundamental rights which the trial court pursuant to section 46(1) of the 1999 Constitution, is competent to adjudicate relying on *UNILORIN v. Oluwadare* (2006).

The Respondent argued that the trial court was right to have declined jurisdiction since the claim of the appellant arose from labour and employment matters which by virtue of section 12(1)(a) and (d) of the National Industrial Court Act 2006 and Section 254C (1) (d) of the 1999 Constitution (Third Alteration) Act, 2010 has reserved matters relating to or connected with any dispute over the interpretation or application of Chapter IV of the Constitution as it relates to any employment and labour. The respondent further argued that the issue of her purported violation of her fundamental right contingent on the termination of her employment from the Enugu State civil service as a Chief Nursing Officer was ancillary to her main claim and as such, could not be litigated through fundamental right enforcement procedure that is initiated via originating motion supported by affidavit evidence save by writ of summons placing reliance on *Borno Radio Television Corporation v. Basil Egbuonu* (1991) also, by virtue of section 254C(1)(d) of the Constitution, the FHC lacks the jurisdiction to entertain the suit. The court was urged to dismiss the appeal for lacking in merit.

3.2 Court's Resolution of the Issue

The court noted that crux and crucible of the appellant's claim before the trial court is anchored on section 42(1) of the 1999 Constitution which is the enforcement of her fundamental right to freedom from discrimination on the ground of her place of birth or ethnicity and none of her reliefs pertains to claim for her salary, pension and gratuity (*Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State*, 2020). The only remote mention of monetary relief is compensation for breach of her right which she sought from the court against the respondent. The court therefore found and held that from the reliefs claimed by the appellant and the facts deposed to in the affidavit in support of the application, I am of the considered and firm opinion that the appellant's main claim is the alleged breach of her fundamental and constitutional right to freedom from discrimination on the basis of birth and ethnicity. Thus, the appellant's claims are squarely and fitly anchored on section 42(1) and (2) of the 1999 Constitution hence, by section 46(1), she is entitled to approach the trial court for redress as she as was held in *Olutola v. University of Ilorin* (2004) and *Jack v. University of Agriculture, Makurdi* (2004). The court therefore held that "I have found that the main claim of the appellant at the court below was for the enforcement of her fundamental rights against discrimination on account of her ethnicity, place of birth. Therefore, the court below possesses the jurisdiction to entertain and determine her application. (*Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State*, 2020)"

By the above position taken by the Court of Appeal, what is means is that labour related fundamental rights disputes can be resolved in any of the high courts, the NICN does not have nor exercises exclusive original civil jurisdiction over them. This decision in our firm view, is *per incuriam* as a community reading of sections 254C (1) (d), of the 1999 Constitution, section 87 of the National Industrial Court Act, 2006, section 251, 272 of the 1999 Constitution. It should be noted that, prior to 2010, the State High Court (SHC), Federal High Court (FHC) and High Court of the Federal Capital Territory, Abuja had and exercised concurrent jurisdiction over section 46 of the 1999 Constitution with regards to enforcement of fundamental human rights unlike under the 1979 Constitution where under the SHC had unlimited jurisdiction. Section 272 like 251 bequeaths jurisdiction on the SHC and the FHC subject to the provisions of the constitution meaning that their jurisdictions are circumscribed. In *Tukur v. Governor of Gongola State* (1989) the Supreme Court noted that the FHC jurisdiction over fundamental human rights enforcement pursuant to 42(1) of the 1979 (now 46(1) of the 1999 CFRN), is limited to matters expressly mentioned in its exclusive jurisdiction while that of the SHC is expansive with a larger latitude and aptitude yet, their jurisdictional status with regards to the subject is concurrent. This concurrent jurisdiction status noted by the Supreme Court unsettled the issue rather that settling it as litigants were thrust into the confusion of determining the appropriate court to litigate (Falana, 2010). Respite came with the Fundamental Enforcement Rules, 2009 defining court to mean both FHC and SHC but the attitude of the court has been to have matters under the exclusive jurisdiction of the FHC litigated there except not doing so is necessary and expedient (*Gaul Ihenacho & Ors. v. Nigeria Police Force & Ors.*, 2017).

In *Habu v. NUT* (2005) where the check-off dues were deducted from the Appellants' salaries who had stopped being members of the Respondent. Their action at the Taraba State High Court for breach of their fundamental right of freedom of association (which includes disassociation) was struck out based on sections the provisions of 47 of the Trade Disputes Act, 2004 and 5(3) of the Labour Act, 2004. Their appeal to the Court of Appeal was allowed on the basis that section 46 of the 1999 Constitution bestows concurrent jurisdiction on the SHC and FHC to determine fundamental right enforcement case. the position of the Court of Appeal here represents the law as at the time the case was determine which is prior to the enactment of the 1999 Constitution (Third Alteration) Act, 2010 which by then, the NICN had no exclusive original civil jurisdiction, in fact, as at then, the constitutionality of the NIC was challenged (*National Union of Road Transport Workers v. Ogbodo,*1998). However, this is no longer the position (Akeredolu and Eyongndi, 2019). Section 234 of the Third Alteration Act, 2010 has elevated the NICN to the status of the FHC and SHC bestowing on it the status of a Superior Court of Record with exclusive original civil jurisdiction under section 254C (Eyongndi and Onu, 2019).

In fact, section 254C (d) (1) is explicit enough. Due to its germane nature, we take the liberty to reproduce it *verbatim ad literatim* thus, the NICN shall have jurisdiction on matters relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the court has jurisdiction to hear and determine. Regarding the jurisdiction of the FHC and SHC, both sections 251(1) and 272(1) provides that their jurisdiction is "subject to the provisions of this Constitution." However, Section 254C (1) of the Third Alteration Act, 2010 which provides for the exclusive jurisdiction of the NICN is phrased thus "notwithstanding the provisions of sections 251, 257, 272 and anything in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any court in civil causes and matters." The implication of this is that, the jurisdiction of the Federal High Court, High

Court of the Federal Capital Territory, Abuja and State High Court are circumscribed by the exclusive original civil jurisdiction of the NICN judging by the opening phraseology of section 254C (1). In fact, the exclusivity of the jurisdiction of the FHC under section 251(1) is subject to the provision of the constitution which includes section 254C (1). Aside this, where there are two contradictory provisions in a statute, the position of the law is that the subsequent provision, is by implication, a repeal of the earlier. Thus, section 254C (1) which is later in time because it was made with sections 46(1), 251(1), 275(1) and 272(1) in mind, is superior. Thus, the decision of the court in the case under review that labour related fundamental human rights disputes is not within the exclusive original civil jurisdiction of the NICN pursuant to section 46(1), with due respect, is untenable as it was reached *per incuriam*. Judging from the phraseology of section 254C(1), it can safely and rightly be argued that the draftsmen had intended that any cause of action, irrespective of the nature of the claim, once it arises from, is pertaining to or is related to labour and employment disputes or ancillary matters, the NICN should and has exclusive original civil jurisdiction. Thus, section 46(1) cannot be validly relied upon to impugn or sequestrate the exclusive jurisdiction of the NICN by donating concurrent jurisdiction over such matters reserved for the NICN to the FHC or SHC.

In fact, the challenge inherent in the position taken by the Court of Appeal is that, such labour related human rights disputes litigated in courts other than the NICN cannot terminate at the Court of Appeal but further appeal would lie to the Supreme Court contrary to the decision of the Supreme Court in *Skye Bank Plc. v. Victor Anaemem Iwu* (2017) wherein the court held that pursuant to section 243 of the Third Alteration Act, civil appeals from the NICN to the Court of Appeal terminate with the determination of the Court of Appeal. Thus, this decision has created in somewhat split category of labour appeals to wit: appeals that terminate at the Court of Appeal and Appeals that goes up to the Supreme Court. This decision is not *in tandem* with the established cannon of statutory interpretation that clear and unambiguous provisions of a statute, should be given their ordinary grammatical meaning except if doing so would promote or support absurdity (*Olofu v. Itodo*, 2010). The provision of the Constitution that provides the exclusive jurisdiction of the NICN, is clear and unambiguous and in incapable of leading to absurdity hence, the court ought to have given them their ordinary grammatical meaning. Even if the court had adopted the mischief rule of statutory interpretation in interpreting section 254C(1) vis-à-vis sections 46(1) and 251(1) of the 1999 Constitution, the irresistible and logical conclusion would be that, the draftsmen had intended that labour related fundamental human rights matters hitherto legislated at the FHC and SHC, be now litigated at the NICN. The hallowed and noble duty of a judge is to declare the law on a subject and not to make the law which is reserved for the legislature. What the Court of Appeal did in the decision under review, is to judicially rewrite or legislate which in this instant, is beyond the ambit of its legislate powers and functions.

Consequent on this, one would have expected that the learned trial court, pursuant to section 22 of the FHC Act, which empowers it to transfer matters wrongly instituted in it, ought to have transferred the matter to the NICN instead of striking it out when it rightly found and held that it lacked jurisdiction over it. However, having opt for the option of appeal, in view of the clear provisions of section 254C (1) of the Constitution, the CA should have upheld the exclusivity of the NICN jurisdiction over the dispute as rightly recognised by the FHC and assumed jurisdiction over the dispute like a court of first instance pursuant to section 15 of the Court of Appeal Act. It is admitted that the court must be poised to do substantial justice however, this should not be done in a way and manner that undermines the legitimate of the judiciary and usurpation of the duty and powers of the legislature particularly in view of constitutional entrenched separation of powers in Nigeria (Constitution of the Federal Republic of Nigeria, 1999).

In this instant case, the Court of Appeal seems to be oblivious of the persistent brazen discrimination and deprivation that women are exposed to in Nigeria. Females are discriminated simply on the basis of their sex in many respects. In most parts of Eastern Nigeria, females are disentitled from inheriting immovable properties as noted by Eyongndi, Opara, Oladele, Agbu and Ajayi (2024). In terms of political participation, females are manoeuvred out of political offices and their participation in comparison to their male counterparts, is insignificant. Females faces worse forms of employment discrimination and exploitation (Ejike Maduka v. Microsoft Nigeria Ltd. & 3 Ors., 2014). There is even in existence customary and statutory discrimination against females in Nigeria. Thus, it is important that any court adjudicating over a case of discrimination against a woman, takes cognisance of the checked discrimination that females have and are exposed to in Nigeria and protect them.

4. Conclusion and Recommendations

Extrapolating from the analysis above, it is trite that the NICN has evolved through a boisterous sojourn amidst gargantuan jurisdictional debacle to attain the enviable status of a superior court of record under the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act, 2010. This experience is linked to the court's conspicuous omission in both the 1979 and 1999 Constitution which led to debates on its constitutionality with both the Court of Appeal and Supreme Court affirming its unconstitutionality until the CFRN, 1999 was amended wherein the NICN is now listed amongst the courts mentioned in section 6(5) of the CFRN, 1999 (Third Alteration) Act, 2010. The paper found that the NICN has and exercises exclusive original civil jurisdiction over labour and employment matters to the exclusion of the FHC and SHC by virtue of section 254C of the CFRN, 1999 (Third Alteration) Act, 2010. Despite the foregoing, the Court of Appeal in *Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State* (2020) held that the NICN does not have exclusive original civil jurisdiction over labour-related fundamental human rights disputes but concurrent with the SHC and FHC pursuant section 46(1) thereof notwithstanding that the dispute arose from labour and employment relationship. Going by the clear provisions of section 254C (1) (d) of the CFRN, 1999 (Third Alteration Act) Act, 2010, with respect, the decision of the Court of Appeal was reached *per incuriam* as it is not in consonance with the clear and unambiguous provision of the Constitution. The effect of this decision on the jurisdiction of the NICN and labour and employment adjudication in Nigeria generally is worrisome particularly when the historical development and challenges which have trailed the court are considered. The decision is capable of unsettling the mandate of the NICN as it unjustifiably restrict the jurisdiction of the NICN and makes nugatory the legislative effort at fortifying the jurisdiction of the NICN. The rationale for creating a specialised court for the adjudication of labour and employment matters is to ensure speedy resolution of these categories of disputes bearing in mind their potential to snowball into cataclysmic dimension in the event that they are not speedily resolve which is not achievable through the regular courts because they are already overladen by other cause of actions constitutionally assigned to them. The Court of Appeal's failure to understand and affirm this rationale risk having labour and employment disputes lingered in the regular courts with the potential of conflagration attendant of such delay. Thus, labour is one of the factors of production and unarguably, the most important as without it, there cannot be production. It forms the substratum of the economy upon which other factors rest. Disputes arising from labour and employment, needs expeditious settlement which is now being threatened by the decision of the Court of Appeal that fundamental labour-related human rights disputes are not within the exclusive original civil jurisdiction of the NICN. Hence, it is clear that the decision of the Court of Appeal in this case is a sequestration of the exclusive jurisdiction of the NICN which rather, should be jealously guarded against. This is imperative when it is considered that the duty of the court is to declare the law as it is laid down by the legislature especially when doing so will not lead to absurdity.

Based on the foregoing, it is recommended that while the judgment subsists, where the Court of Appeal has the opportunity, it should reverse itself as the decision aside having been reached *per incuriam,* is not a good law. Also, trial courts (FHC, SHC and NICN) although bound by the decisions of the Court of Appeal, should not engage in slavish word worship but should engage in distinguishing and not follow the decision because of the apparent inherent flaw in the decision.

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THE ARBITRATION AND MEDIATION ACT, 2023: NEW WINGS FOR MEDIATION IN NIGERIA?

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Abstract: *In Nigeria, arbitration as well as mediation were regulated by the Arbitration and Conciliation Act, 1988 (ACA, 1988) however, over the years, owing to developments in the field of arbitration, the ACA, 1988 could no longer match-up hence, they were legitimate calls for a review. In 2023, the Arbitration and Mediation Act, (AMA, 2023) was enacted. Thus, the AMA, 2023 is the first legislative effort at making express and specific regulatory provision on mediation. This article undertakes a clinical examination of the salient provisions of the AMA, 2023 with regards to mediation hinged on transformative mediation theory while explicating the historical development of mediation in Nigeria. It found that the AMA, 2023 contains novel and far-reaching mediation provisions which supports the growth of mediation. It recommends enlightenment and creative use of the AMA, 2023 for maximal benefits by stakeholders.*

Keywords: *Arbitration and Mediation Act, 2023, Mediation, Transformative mediation theory, Justice, Nigeria.*

1. Introduction

In recent years, the call for more efficient, accessible, and culturally resonant methods of dispute resolution in Nigeria has grown louder. Traditional litigation, while foundational, often falls short in addressing the real needs of disputing parties -especially in a society as diverse and dynamic as Nigeria's. The Arbitration and Mediation Act, enacted in 2023, is a game-changing legal development that signals a new era for Alternative Dispute Resolution (ADR) in the country. This Act is not just a routine legal update; it represents a paradigm shift in how conflicts (both commercial and civil) are approached and resolved. By consolidating existing frameworks and introducing more structured mediation practices, the 2023 Act gives new wings to mediation, empowering it as a legitimate, enforceable, and respected mechanism of resolution. More importantly, it aligns Nigeria's legal system with global standards while maintaining room for local adaptations. It was once said, "Litigation is the basic legal right that guarantees every corporation its decade in court. While witty, these words reflect the need for swifter, more amicable alternatives like mediation especially in regions where the justice system is overburdened and under-resourced. The reality is that litigation often incurs significant costs for both the company and the individuals involved.

This paper explores the possible potential of the Arbitration and Mediation Act, 2023, particularly focusing on the mediation aspect. It evaluates the legal innovations introduced, in line with the Transformative Mediation Theory, and how it reshapes Nigeria's dispute resolution landscape. With the rising demand for less adversarial and more restorative approaches to justice, this legislation could be the turning point mediation in Nigeria has long needed.

2. Historical Development of Mediation in Nigeria

The roots of mediation in Nigeria can be traced to traditional methods of dispute resolution that have been in practice for centuries. Long before the establishment of formal courts, communities across Nigeria used various informal mechanisms to settle disputes, often involving elders or respected members of the community as mediators. These systems were not bound by rigid legal codes, but rather by communal values, cultural practices, and the need for consensus-based resolutions.

In the 1990s, the Nigerian government, recognizing the need for alternative forms of dispute resolution, began to explore ADR as a formal part of the legal system. This exploration gained more traction with the passage of the Arbitration and Conciliation Act, 1988, which laid the groundwork for recognizing mediation as a legitimate and formal process (Umenweke and Nwachukwu, 2024). However, it was not until the early 2000s that the Nigerian judiciary and legal practitioners began to embrace mediation more seriously, with a stronger focus on structured, legally recognized processes. This led to the eventual formalization of mediation practices in Nigeria, particularly with the establishment of the National Industrial Court (NIC), which provided a platform for mediation in industrial disputes, and later with the Mediation Rules 2008 and the Arbitration and Mediation Act, 2023.

Despite the growth of ADR methods like mediation, Nigeria's legal system continues to face significant challenges that hinder the efficient resolution of disputes. One of the most significant challenges in Nigeria's legal system is the prolonged duration of litigation. Court cases can take years to be resolved due to procedural delays, inadequate infrastructure, and an overworked judiciary. This often leads to a backlog of cases, leaving litigants frustrated and disillusioned with the system (*Ogbuyinya v. Okudo*, 1990). Also, the Nigeria's court system is overburdened with a high volume of cases. In many regions, there is a significant shortage of judges, and those available often handle multiple cases simultaneously. The judicial system, although making efforts to handle the caseload, is often unable to process cases efficiently, leading to delays and backlogs. Also, compare to mediation, the costs associated with traditional litigation in Nigeria, including legal fees, court fees, and other associated costs, can be prohibitively expensive for many citizens, particularly those in lower income brackets. As a result, many individuals and businesses choose to forgo legal action altogether, further deepening access to justice issues.

Numerous studies have been conducted to assess the role and effectiveness of mediation in Nigeria, with some offering praise for its potential while others critique the challenges to its successful implementation (Obi-Farinde, 2021). Several scholars have emphasized the potential of mediation to reduce the backlog of cases in Nigerian courts. Mediation offers a faster, more cost-effective way of resolving disputes, which is particularly valuable in a country where the judicial system is overburdened. The preference for court-based solutions often undermines the promotion of mediation, which is perceived as less formal and less binding in the eyes of many litigants and legal practitioners. Nigerian courts are notorious for delays and backlog of cases. This backlog has often made litigation a lengthy, expensive, and frustrating process for litigants. The Nigerian judiciary is also often overburdened, with a high number of cases relative to the number of judges and court facilities. This overload exacerbates delays and hinders the ability of the legal system to efficiently resolve disputes. Mediation has been recognized as a way to reduce pressure on the courts, but its implementation has been slow due to lack of infrastructure, training, and awareness.

Mediation offers a potential solution by providing a quicker, more cost-effective alternative, yet this is often not fully embraced due to systemic inertia and lack of education about the benefits of mediation (Fagbemi, 2020). Mediation has many benefits that offers Nigerians significant social and economic advantages through its speed, by resolving disputes much faster than traditional court processes, sparing parties from prolonged delays (Oraegbunam and Maduakolam, 2024). Research points to the fact that mediation can offer more flexible solutions to parties, allowing them to maintain relationships rather than fostering the adversarial outcomes often associated with litigation. Also, mediation is a more affordable alternative to litigation. It eliminates high court fees and lengthy legal procedures, easing the financial strain on individuals, particularly in a society where financial constraints often limit access to justice.

Notwithstanding the benefits, mediation still have some challenges. While mediation has been legally formalized, there is a gap between the theoretical framework and actual implementation. Factors such as insufficient training for mediators, lack of public awareness, and lingering distrust of the process remain obstacles. Additionally, the judiciary’s reluctance to actively promote mediation, often due to a preference for traditional litigation, inhibits the growth of mediation as a legitimate dispute resolution method. Other studies, also argue that Nigeria’s ADR laws and practices need more robust reforms to truly realize the potential of mediation. This includes improving public education on ADR processes, better integration of mediation into the formal legal system, and more active judicial encouragement of mediation at the outset of legal proceedings.

There are still significant institutional barriers to the widespread adoption of mediation in Nigeria. These include a lack of trained mediators, limited funding for ADR programs, and insufficient legal support for enforcement of mediated agreements.

2.1 An Overview of the Arbitration and Mediation Act, 2023

The Arbitration and Mediation Act, 2023 represents a significant milestone in Nigeria's legal landscape, marking a bold step towards modernizing and strengthening the country's dispute resolution framework. The Act consolidates and reforms existing laws on arbitration and mediation, creating a more comprehensive, transparent, and accessible system for resolving disputes outside the courtroom. The Act also focuses on enhancing the enforceability of mediation agreements and formalizing the mediation process within Nigeria’s legal structure. It provides clear procedures for mediation, including the qualification of mediators, the role of the judiciary in supporting mediation, and mechanisms for the enforcement of mediated agreements. By doing so, it aligns Nigeria with international best practices, particularly those seen in more advanced legal jurisdictions, such as the United Kingdom and Singapore, where mediation is widely used and accepted as a legitimate alternative to litigation.

The development of arbitration and mediation in Nigeria reflects a transition from traditional, community-based dispute resolution practices to a modern framework influenced by international legal norms. In pre-colonial Nigeria, customary law provided the basis for conflict resolution, with elders and traditional authorities employing informal mediation and arbitration rooted in equity and social values (Obidimma and Okpalangwu, 2021). The introduction of English law during the colonial period initiated a shift, culminating in the formal adoption of ADR mechanisms. The introduction of Western legal systems, including courts, displaced much of the traditional dispute resolution processes. However, elements of mediation and reconciliation were still used informally in communities across Nigeria (Ayua, 2008). The first statute to be enacted on arbitration law in Nigeria was the Arbitration Ordinance 1914, which was later re-enacted as the Arbitration Ordinance 1958. This Ordinance was in force until 1988 when Nigeria adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, thereby enacting the Arbitration and Conciliation Decree 1988. The Arbitration and Conciliation Act, 1988 (ACA), which provided a legal framework for both domestic and international arbitration, introduced conciliation as a formal ADR mechanism, and established procedural rules for arbitral proceedings and the enforcement of awards. In the decades following the ACA, arbitration and mediation began gaining recognition as efficient alternatives to litigation, particularly in commercial disputes (Jinadu, 2024). This legislation facilitated the growth of ADR as a viable alternative to litigation, particularly in commercial contexts, leading to the establishment of institutional ADR centers like the Lagos Multi-Door

Courthouse (LMDC) in 2002. The expansion of the ADR sector was further supported by private organizations such as the Negotiation and Conflict Management Group (NCMG) and the professional development initiatives of the Chartered Institute of Arbitrators (CIArb), Nigeria branch.

The Arbitration and Mediation Act, 2023 (AMA) replaced the ACA and introduced significant reforms to align Nigeria's ADR framework with international standards. Current trends include increased adoption in family and commercial disputes, strengthened commitment to international treaties, and ongoing efforts to promote ADR awareness, train practitioners, and establish more centers across the country.

The enactment of the Arbitration and Mediation Act, 2023 (AMA), which superseded the ACA, represents a further effort to align Nigeria's ADR legal regime with international best practices. Current trends indicate increasing reliance on ADR in both family and commercial disputes, a stronger commitment to international agreements, and ongoing initiatives to enhance ADR awareness and accessibility across the nation (Umenweke and Nwachukwu, 2024).

The AMA's framework is heavily influenced by the UNCITRAL Model Law on International Commercial Mediation, 2018. It clearly defines the types of disputes eligible for mediation under the Act, sets out the procedure for initiating mediation, specifies the number of mediators required, and outlines the processes to be followed during mediation. The Act also addresses important issues such as mediator immunity and mediator fees. Furthermore, the AMA incorporates the Singapore Convention on Mediation, 2018, recognizing its applicability for enforcing international settlement agreements made outside of Nigeria, provided the State has acceded to the Singapore Convention (Aderoju, 2023).

2.2 Overview and Key Provisions of the AMA

The Act represents a major shift in the Nigerian legal system by ensuring that mediation becomes more standardized and enforceable. This move could significantly reduce delays in the court system, which often leads to years of litigation before cases are resolved. By offering a faster, more flexible alternative, mediation could improve access to justice for individuals and businesses. Section 67 (1) of the Act provides for class of cases that can be mediated under the AMA, this includes: international commercial mediation; domestic commercial mediation; domestic civil mediation; domestic and international settlement agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute; and where parties agree in writing that Part II of the AMA should apply to the dispute.

The Act also set rules and guidelines for international and local business mediation, including resulting agreements. It outlines the procedure for initiating mediation, specifies the number of mediators required, defines mediation procedures, addresses issues concerning mediator immunity and fees, and much more. A settlement agreement reached through mediation is legally enforceable and can be enforced by a court. For practitioners and parties engaged in disputes, the Act offers a clearer pathway to resolution, with defined rules and regulations. The emphasis on mediator qualification, confidentiality, and enforcement mechanisms gives confidence to users of the system, ensuring that mediation is not just a voluntary process but a legitimate one with legal backing.

The Act gives legal force to mediation agreements once both parties have signed them, making it easier to enforce agreements without through the court system. Furthermore, the AMA recognizes that the Singapore Convention on Mediation, 2018, can be used to enforce international settlement agreements signed outside of Nigeria, subject to the State's admission to the Singapore Convention.

A significant impact of mediation is its potential to reduce the backlog of cases in Nigerian courts. By offering an alternative that is often quicker, cheaper, and less formal than litigation, mediation alleviates pressure on the judicial system, allowing courts to focus on more complex cases.

Furthermore, the AMA highlights the potential for mediation to promote social harmony, particularly in a multi-ethnic and multi-religious society like Nigeria. Mediation provides a platform for cultural dialogue and understanding, as it encourages parties to listen to one another, understand diverse perspectives, and work together to find a solution. This ability to repair relationships and foster understanding makes mediation a powerful tool for conflict resolution, not only in legal disputes but also in wider societal contexts.

Mediation also empowers parties to control the resolution of their disputes rather than leaving the decision in the hands of a judge. This empowerment is a key aspect of Transformative Mediation Theory, which emphasizes personal growth and relational understanding as outcomes of the mediation process. The process allows disputing parties to engage in a structured dialogue, facilitated by a neutral third party, in an effort to reach a mutually satisfactory agreement. The role of mediation extends beyond simply resolving the immediate conflict; it is designed to foster a longer-term change in how individuals and organizations approach conflict.

2.3. Explicating the Transformative Mediation Theory (TMT)

This study is anchored in the Transformative Mediation Theory, a model that reimagines mediation not just as a problem-solving tool, but as a process that empowers parties and nurtures mutual understanding. Transformative Mediation Theory, developed by Joseph Folger and Robert Bush in the 1990s, focuses on empowering parties to take control of their own disputes and fostering recognition between disputants (Bush and Folger, 1994). This theory focuses on three core principles: empowerment, recognition, and relationship transformation. Empowerment helps individuals regain their strength, decision-making capability, and autonomy in dealing with conflict, especially in intimate relationships like marriage. This is enabled in a mediation process, unlike in the traditional courts, where the parties are not empowered to deal and resolve their disputes, as they have to speak through their lawyers. Whereas, in mediation, the mediator's role is to provide a supportive environment where parties feel confident in voicing their concerns, making decisions, and taking responsibility for the outcomes of the dispute. Empowerment helps individuals regain confidence and a sense of agency, giving them the tools to resolve future conflicts independently. In practice, the mediator(s) create space where parties can speak freely, process emotions, and reflect on their own needs and values without being rushed or pressured.

The second principle of TMT deals with recognition. Recognition helps each party acknowledge and understand the other person's feelings, needs, and perspective, which can lead to greater understanding, reduced hostility, and genuine resolution (Bush and Folger, 2014). In transformative mediation, the mediator helps each party understand the other's perspective, feelings, and needs. By promoting recognition, the theory aims to improve relationships and create more meaningful dialogue between the parties. Even in tough disputes, this principle encourages empathy and acknowledgment, helping parties shift from "me vs. you" to "us navigating this." This aspect in important in creating an harmonious society, where true peace and justice reign.

The end goal of TMT is relationship transformation. The mediator is trained to help parties come to a new place in their relationship where both parties recognized their needs, resolve the dispute and come to a term of agreement (a win-win situation), unlike in litigation, where one party wins it all (win-lose situation). Transformative mediation shifts from problem-solving to relationship transformation, focusing on transforming the relationship between disputants. Unlike traditional mediation models that focus solely on outcomes, transformative mediation emphasizes the relational shift a change in how parties see themselves, each other, and the conflict.

A major strength of transformative mediation and by extension, this Act is its potential to heal and rebuild relationships. In families, workplaces, communities, and even commercial partnerships, conflict is not always a one-off event. Sometimes, people need to continue working or living together after the disagreement, whether at the workplace, business or family. This is not just about settling scores. It is about building new bridges or repairing old ones so people can move forward in a better way.

These concepts work together to create a space where conflict is seen as an opportunity for personal growth, relational healing, and a deeper understanding of one another, which is important for a healthy society.

The TMT, with its focus on empowerment, recognition and relationship transformation, offers a powerful framework that aligns well with modern ADR systems. By fostering mutual respect, improving communication, and empowering individuals, transformative mediation not only resolves disputes but also strengthens relationships and promotes long-term change.

In the context of Nigeria's dispute resolution landscape, the AMA, 2023 presents a fertile ground for applying this theory. By formally embedding mediation into the legal framework and elevating its enforceability, the Act creates space for a more relational and human-centered approach to justice. Existing literature on ADR in Nigeria has often critiqued the rigid nature of litigation and the lack of culturally adaptable dispute resolution tools. Transformative mediation addresses this gap by prioritizing party autonomy, dialogical engagement, and long-term relationship repair—values that resonate deeply within many Nigerian communities where consensus and reconciliation are culturally significant.

The Act's provisions—such as structured mediation procedures, recognition of mediated agreements, and the training/accreditation of mediators—further reinforce the principles of empowerment and recognition. It not only legalizes the process but also legitimizes the deeper relational work that transformative mediation advocates.

Transformative mediation has demonstrated its utility across diverse sectors, offering a framework that extends beyond mere dispute resolution to foster positive relational shifts. This approach aims to move parties from adversarial stances towards collaborative engagement, thereby enhancing future interactions and communication. Firstly, within family law, particularly in sensitive matters such as divorce and child custody arrangements, transformative mediation plays a crucial role in facilitating a transition from conflict to collaboration. This focus on improving future communication and cooperation is exemplified by the Lagos Multi Door Court (LMDC), which handles a significant volume of family cases referred by the courts. The LDMC's involvement aims to promote amicable settlements, even in complex situations ranging from divorce proceedings to general family misunderstandings.

Secondly, in organizational contexts, transformative mediation offers a pathway to repair strained relationships between employees and employers, contributing to a more positive and productive work environment. Its emphasis extends beyond resolving the immediate conflict to rebuilding trust and enhancing communication, thereby serving as a preventative measure against future disputes. Thirdly, the principles of transformative mediation have also been effectively applied in addressing community conflicts and social justice issues. In these contexts, it serves as a tool to tackle social inequalities and historical injustices by facilitating the development of empathy and mutual understanding among parties, which is fundamental for achieving meaningful reconciliation.

This theory has influenced ADR systems globally, particularly in countries like the United States, Canada, and the United Kingdom, where the transformative approach is seen as a way to promote more meaningful and lasting resolutions. While it requires highly skilled mediators and may not always be suitable for all cases, transformative mediation is increasingly valued for its potential to bring about real change, rather than just resolving a dispute.

As more countries adopt mediation as a primary tool for dispute resolution, the global movement toward transformative mediation is likely to continue to shape how conflicts are handled worldwide. Understanding the principles and application of transformative mediation will be key to navigating the future of ADR and creating more just and equitable societies.

3. Comparative Insights: How Other Jurisdictions have Developed Mediation Laws

Several jurisdictions have already made mediation an integral part of their legal systems, and their experiences offer valuable insights. By looking at other jurisdictions like Singapore, the United States, and the United Kingdom, Nigeria can draw valuable lessons for further improving its mediation laws. If implemented effectively, the Act could not only alleviate pressure on the court system but also make mediation a mainstream method of dispute resolution in Nigeria.

Singapore is often held up as one of the best examples of successful mediation in the world. The Singapore Mediation Act (2017) provides a clear legal framework for the mediation process, offering a similar model to Nigeria's Act. The same Mediation Act has been updated three times between 2017 and 2024. This shows the intentionality of the Singapore government to ensure that this process of mediation works effectively in the country. In Singapore, mediation is encouraged as the first step in resolving disputes, especially in commercial matters, and mediated agreements are given the same legal weight as court judgments. In advance of the current legal provisions, Singapore established the Community Mediation Centre (CMC) in 1997, a mechanism designed to resolve a specific scope of disputes, namely those arising within families, between neighbors, and among small business owners and their landlords. The CMC utilizes trained traditional institutions and community leaders to mediate these issues under the supervision of the Ministry of Law. Its mandate is primarily to address minor community disputes to foster social cohesion, leading to the referral of standard commercial disputes, family violence, and criminal matters to the Ministry, although cases amenable to settlement may be directed to professional mediation (Oraegbunam and Maduakolam, 2024). Also, Singapore also has a well-established network of mediators who are highly trained and recognized for their expertise.

In the United States, mediation is also widely used in both civil and commercial cases. Many states have passed legislation encouraging or even mandating mediation before certain types of cases go to trial. For example, the Alternative Dispute Resolution Act of 1998 at the federal level mandates that federal courts offer mediation as an option for certain cases, the law encouraged the development of mediation programs and made funds available to support ADR initiatives.

The U.S. also has a broad range of professional bodies that certify mediators, which helps maintain high standards in the profession. There is high-level commercial mediation with institutions like the American Arbitration Association (AAA) that offer specialized mediation services for commercial disputes, providing a structured framework for parties to reach settlements without going to trial.

The United Kingdom has also embraced mediation as a tool for resolving disputes. In UK, mediation has been employed in a variety of settings, including family law, economic disputes, workplace problems, community matters, and more. The Civil Procedure Rules 1998 introduced the concept of "compulsory mediation" in some civil cases, which requires parties to consider mediation before pursuing litigation. This has helped reduce the number of cases going to trial, ultimately saving time and resources for both parties and the court system.

In England and Wales, individuals contemplating certain applications to the family court are typically mandated to undertake a Mandatory Mediation Information and Assessment

Meeting (MIAM) as an initial procedural step. The primary objective of this requirement is to ensure that prospective litigants are comprehensively informed about alternative dispute resolution methods, with a particular focus on mediation, and to evaluate the suitability of their specific circumstances for such processes. Such parties must attend a MIAM before they can apply for court proceedings. This process is designed to promote mediation as the first choice before litigation. The Civil Procedure Rules (CPR) encourage the use of mediation in civil cases, and mediators are often appointed by the courts in more complex matters. Also, the UK has robust commercial mediation practices, driven by institutions like the Centre for Effective Dispute Resolution (CEDR).

The key lesson for Nigeria from these countries for mediation to thrive, there must be appropriate legal framework, widespread creation of mediation centres, training and accreditation of mediators, as well as public education about the process. Aside from the legal framework, Nigeria as a male dominate country with patriarchal system, will required appropriate trainings of mediator to push through cultural and gender imbalances to help the parties achieve amicable solutions or agreement.

These international practices can be imbibed by the country. For instance, it is important for Nigeria to create a structured, regulated certification process for mediators to ensure the credibility and effectiveness of the system. Also, encouragement of mediation at an early stage of the legal process could be highly beneficial in reducing delays in resolving disputes, as applicable in the UK Civil Procedure Rules. Though it is worthy to note that there is a similar provision on pre-litigation mediation under the LMDC Practice Direction on Mediation Rules. However, this is not applicable to different states in Nigeria.

4. Implicit Alignment of the Arbitration and Mediation Act 2023 with Transformative Mediation Theory

While the Arbitration and Mediation Act, 2023 of Nigeria does not explicitly employ the term *transformative mediation*, its foundational structure, specific provisions, and overarching ethos exhibit a significant alignment with the core tenets of this theoretical framework, particularly the dual objectives of empowerment and recognition.

The Act's emphasis on the voluntary nature of mediation directly supports the principle of empowerment. By granting parties the autonomy to determine their engagement in dispute resolution, the legislation respects their agency. Even in instances of court-referred mediation, the Act allows parties to withdraw for valid reasons, reinforcing their control over the process. Furthermore, the Act's provision for confidentiality and informality in mediation proceedings creates an environment where parties can articulate their perspectives without the constraints of strict legal formalities, thereby maintaining ownership of their narrative. The stipulated non-directive role of the mediator, who facilitates dialogue rather than imposing solutions, further underscores the empowerment of the disputants to arrive at their own resolutions. The mandatory training requirements for certified mediators, which include crucial soft skills such as active listening and neutrality, are also instrumental in fostering a supportive environment where parties feel genuinely heard and empowered throughout the mediation process.

The Act's procedural emphasis on fostering joint sessions and open dialogue directly embodies the principle of recognition. By providing a structured platform for each party to articulate their perspective and actively listen to the other, the legislation encourages mutual acknowledgement of viewpoints. Moreover, the mediators is allowed to conduct private sessions (caucuses), contributes to recognition by creating safe spaces for individual reflection and honest sharing. These confidential interactions can facilitate a deeper understanding of one's own role in the conflict and potentially lead to a shift in perspective towards the other party.

No doubt, the Arbitration and Mediation Act, 2023 is a significant step towards modernizing dispute resolution in Nigeria. With provisions aimed at enhancing the legitimacy, accessibility, and enforceability of mediation, the Act has the potential to transform how Nigerians resolve disputes. However, its success will depend on ensuring the proper training of mediators, increasing public awareness, and fostering a culture of mediation in the legal community.

Transformative mediation is distinct from other forms of mediation because it goes beyond simply reaching an agreement between the parties. It aims to shift the dynamics of the relationship, promoting long-term change. While many ADR systems focus on facilitating a settlement, transformative mediation seeks to change the underlying power dynamics and communication patterns between the parties.

5. Conclusion and Recommendations

The Arbitration and Mediation Act, 2023 aligns beautifully with the goals of Transformative Mediation. Its structure empowers parties to make their own decisions and provides space for deep recognition of one another’s humanity. Through these mechanisms, the Act does more than just resolve disputes—it supports the kind of transformation that leads to lasting peace, stronger relationships, and healthier communities. As Nigeria continues to build a modern ADR culture, anchoring mediation in theories like the transformative model will ensure it is not only legally sound—but deeply human too.

A bird without a wing is no bird; mediation without an appropriate legal framework is like a bird with broken wings, unable to soar above the storms. The AMA, 2023 is the new set of wings, empowering mediation to soar in Nigeria's legal system. As unknown author once said, "Your wings already exist. All you have to do is fly." So, the AMA is the wings to soar with, all we need to do is to fly with it. AMA, the new wings of mediation to fly.

In view of the above discussion, this paper recommends the followings:

- **Public Awareness Campaigns**

Increasing public awareness about mediation as an alternative to litigation is crucial. This can be achieved through outreach programs, media campaigns, and educational initiatives that emphasize the benefits of mediation in everyday conflicts. This awareness should also seek to educate the public, the judiciary, the legal profession, inclusive. Education of this ADR method should start early from primary schools.

- **Political Will and Government Support:**

For the mediation system to work in Nigeria, there needs to be strong political will and government support. Lessons can be learned from Singapore, where the government has actively promoted mediation as part of its economic diplomacy and domestic legal reform.

- **Adoption of Global Practices on Mediation**

Adapting global mediation models to Nigeria is an exciting opportunity, but it must be done thoughtfully. The best practices from Singapore, the UK, and the US offer valuable lessons, particularly in court-annexed mediation, mandatory mediation information, and mediator accreditation. However, for these practices to truly take root, Nigeria will need to adapt them to its cultural, legal, and economic contexts. With careful implementation, global best practices can be transformed into homegrown solutions that drive the future of mediation in Nigeria—leading to more accessible, efficient, and just conflict resolution for all.

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THE DEVELOPMENT OF CLIMATE LAW IN JUDICIAL PRACTICE: THE EXPERIENCE OF NORWAY AND THE UNITED KINGDOM

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Abstract: *The article analyzes the role of courts in the development of climate law from a legal perspective, drawing on the experience of Norway and the United Kingdom. The author examines the application of environmental provisions of the Constitution in Norway in the context of the case "People vs. Arctic Oil". The article states that while the Supreme Court acknowledges that climate change is a real and serious threat, it refrains from overturning the government's new oil licenses, recognizes a wide "margin of appreciation" and places climate claims more within the realm of political decision-making. In contrast, the UK section analyses decisions in the Finch case and projects in the North Sea such as Jackdaw and Rosebank, where courts interpret environmental impact assessment as a key legal tool for implementing climate commitments, rather than as a narrow technical procedure. In particular, it requires consideration of "downstream" emissions – emissions resulting from the subsequent burning of extracted oil and gas – and this approach significantly limits government discretion. The author concludes that, although both countries are bound by the same international climate regime, Norway is more cautious, while the United Kingdom is developing a more proactive model of judicial review that links human rights and climate obligations.*
Keywords: *climate law; climate claims; environment; human rights; strategic litigation.*

1. Introduction: Relevance of the issue and purpose of the study

As the consequences of climate change deepen, whether governments are meeting their climate commitments has become a major issue for the courts to examine. In recent years, through strategic climate litigation, civil society has been legally challenging governments' and companies' decisions on fossil fuel projects. In recent years, a series of court decisions, particularly in the UK and Norway, have given impetus to the development of climate law. Despite warnings from global energy organizations, the aforementioned countries have continued to implement new oil and gas production projects. As a result, non-governmental organizations and opposition groups aiming to prevent climate change have brought this contradiction to the agenda through legal means and have begun to play a role in monitoring the implementation of climate commitments within the framework of national courts. This article analyzes the main court decisions on fossil fuel projects in Norway and the United Kingdom during 2020–2025, examines the significance of these decisions in the context of national and international law, and discusses the principle of taking "climate damage" into account in environmental impact assessment procedures. It also highlights examples of climate litigation, the role of civil society and strategic claims in this process. Finally, the approaches of Norwegian and UK courts are compared and future trends in climate law are discussed.

2.Climate lawsuit in the Norwegian Supreme Court: "People vs. Arctic Oil" case

The first major climate lawsuit in Norwegian courts was the case of Greenpeace Nordic Assn against the Norwegian Ministry of Petroleum and Energy, known as "People vs.

Arctic Oil". In this case, young environmental activists and non-governmental organizations (led by Greenpeace and Nature and Youth) sued Norwegian government over its decision to grant five new licenses for oil and gas exploration in 20 blocks in the southeastern Barents Sea (Greenpeace Nordic v Ministry of Petroleum and Energy, 2018, Petition, p. 9). The essence of the claim made by the plaintiffs was this: the development of new fossil fuel reserves that will be discovered as a result of these licenses granted in 2016 is contrary to the Paris Agreement's goal of limiting global temperature increase to 1.5–2°C and will pose serious risks to the Arctic ecosystem (Greenpeace Nordic v Ministry of Petroleum and Energy, 2018, Petition, p. 3). At the same time, the lawsuit stated that this decision violated the "right to a healthy environment" guaranteed by Article 112 of the Norwegian Constitution (Greenpeace Nordic v Ministry of Petroleum and Energy, 2018, Petition, p. 39). Article 112 of the Constitution establishes the right of everyone in Norway to a healthy and productive natural environment and instructs the government to take measures to protect this right (Constitution of Norway, art. 112). The plaintiffs also argued that the government acted contrary to the precautionary principle and the principle of non-harm recognized in international law, as well as that it failed to take into account the harm caused by climate change to people living outside the borders of the Kingdom of Norway and that transboundary harm existed (Greenpeace Nordic v Ministry of Petroleum and Energy, 2018, Petition, p. 44). The fact that the petition alleges a violation of the objectives of the Paris Climate Agreement and the right to life and respect for private and family life, as reflected in Articles 2 and 8 of the European Convention on Human Rights, demonstrates the presence of a human rights element in this climate claim and strengthens the argument (Greenpeace Nordic v Ministry of Petroleum and Energy, 2018, Petition, p. 38).

In its first instance decision on 4 January 2018, the Oslo District Court concluded that the government's actions did not violate Article 112 of the Constitution and ordered the claimants to pay the Norwegian government 580,000 kroner (Greenpeace Nordic v Ministry of Petroleum and Energy, 2018, Oslo District Court, p. 50). The court stated that the government had followed the required procedures prior to the licensing decision and noted that Parliament (Storting) had discussed the project and assessed it in light of the objectives of the Paris Agreement (Greenpeace Nordic v Ministry of Petroleum and Energy, 2018, Oslo District Court, p. 30-31**)**. The district court also concluded that CO2 (carbon dioxide) emissions resulting from the flaring of oil and gas exported from Norway abroad were "irrelevant" in the context of a violation of Article 112 (Greenpeace Nordic v Ministry of Petroleum and Energy, 2018, Oslo District Court, p. 25). The plaintiffs appealed this decision, and in January 2020, the Borgarting Court of Appeal upheld the original decision (Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Borgarting Court of Appeal, p. 46). Although the appeal court changed some important legal positions, it ultimately upheld the rejection of the request for the cancellation of the licenses (Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Borgarting Court of Appeal, p. 46). In particular, the appeal court noted that Article 112 of the Constitution applies to climate issues and that even external emissions resulting from the burning of fuel exported by Norway cannot be ignored (Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Borgarting Court of Appeal, p. 33). However, the court stressed that there is a very high threshold for establishing a violation of Article 112; government actions will only violate constitutional law if there is a clear negligence on the part of the state in its duty to take climate action **(**Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Borgarting Court of Appeal, p. 33). According to the Court of Appeal, the disputed licenses have not yet been implemented and it is uncertain how much additional greenhouse gas emissions they will cause in the future – therefore, the government has not been proven to have "grossly violated" its obligations under Article 112

(Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Borgarting Court of Appeal, p. 33). This means that the cancellation of licenses issued in an area as important for the state economy as the oil and gas sector without any real violation, especially when this cancellation is justified by a violation of a constitutional provision, is unacceptable.

Unable to achieve the desired result, climate activists took the dispute to the Supreme Court of Norway, and the Supreme Court announced its final decision on December 22, 2020. Sitting in plenary session, 11 of the 15 judges of the Supreme Court ruled to dismiss the plaintiffs' appeal and to maintain the oil and gas licenses in the Barents Sea (Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Supreme Court of Norway ,page 50). The Norwegian Supreme Court concluded that Article 112 of the Constitution is a subjective right and can be invoked in court; however, a decision that parliament has authorized by law (the 2013 Act on the Granting of Petroleum and Gas Licenses) can only be declared invalid by the court if the parliament has "grossly" violated its constitutional duty to protect the environment (Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Supreme Court of Norway, p. 25). The court emphasized that the executive and legislative branches have wide discretion in shaping climate policy and that courts can only intervene in extreme cases (Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Supreme Court of Norway,p. 25). The facts presented by the claimants indicated that there was no such excess. The Supreme Court considered that the Kingdom of Norway was implementing various measures to prevent climate change (carbon tax, renewable energy investments, support for carbon capture and storage technologies, etc.) and that, given that these sufficient measures were taken, the decision of the Parliament to issue new licenses could not be considered a gross violation of the obligations under Article 112 (Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Supreme Court of Norway, p. 27).

One of the most notable legal positions of the Supreme Court was that Norway is not liable for emissions resulting from the combustion of fuel exported abroad. The court cited international law as stating that climate change obligations are based on "the apportionment of responsibility among States for emissions within their territories" and that "each State is responsible only for emissions resulting from combustion within its territory" (Universal Rights Group, 2021). This means that if oil and gas produced in Norway are burned in other countries, the legal responsibility for those carbon emissions cannot be placed on the Kingdom of Norway – in an intergovernmental climate regime, these emissions fall on the consumer countries. This position has been criticized by a number of international experts.For example, the UN Special Rapporteur on human rights and the environment and the Special Rapporteur on hazardous substances submitted an amicus curiae brief to the Supreme Court stating that the principle of "common but differentiated responsibilities" (i.e., developed countries bear greater responsibility for climate change) enshrined in the UN Framework Convention on Climate Change and the Paris Agreement would be violated if each state continued to consider only its own emissions and ignored the global impacts of the fuels it exported (Universal Rights Group, 2021). However, the Supreme Court did not accept this argument and emphasized in its decision that the scope of Norway's legal obligations was limited to such a limited framework.

It should be noted that 4 judges issued separate opinions against this decision, which was adopted by a vote of 11-4 in the Supreme Court, suggesting a more cautious approach (Greenpeace Nordic v Ministry of Petroleum and Energy, 2020, Supreme Court of Norway). The dissenting judges considered the government's decision to be procedurally premature and considered it appropriate to suspend the implementation of the licenses until a new climate impact assessment had been conducted. They noted that the environmental impact assessment process conducted before the licenses were issued had not taken into account future climate impacts, including emissions from the combustion of exported oil. This is scientifically unfounded, as it is known that the final consumption of the extracted oil and gas will inevitably lead to greenhouse gas emissions. According to the dissenting judges, it was wrong to maintain these licenses in force without taking into account the results of a new climate assessment (Universal Rights Group, 2021). However, as noted, the majority of the Supreme Court considered the government's actions legal, referring the issue to the political sphere.

As a result, the Norwegian Supreme Court's decision in the case of People vs. Arctic Oil set a significant precedent in climate law. Although the court considered a climate claim under Article 112 for the first time, it showed that it was not prepared to consider state inaction as a violation of constitutional law. This decision also highlighted a contradiction in Norway's climate policy: on the one hand, the country is leading global climate initiatives (such as the Nansen Initiative to protect the rights of climate refugees), while on the other hand, relying on the economic power it gains from the oil and gas industry and continuing to develop new fields without compromising its own revenues. Although the relevant UN special rapporteur stated that wealthy and oil and gas exporting countries like Norway must take greater responsibility in the global climate fight, the Supreme Court's decision did not reflect these preferments. After losing domestically, the claimants submitted the case to the European Court of Human Rights as a last resort – on 15 June 2021, an application was filed alleging that the Kingdom of Norway had violated its obligations under the European Convention on Human Rights. The European Court of Human Rights, in its judgment of 28 October 2025, concluded that there had been no violation of Articles 2 and 8 of the Convention and dismissed the claim (Greenpeace Nordic v Norway, 2025, European Court of Human Rights).

3.UK Court Decisions on Fossil Fuel Projects (2020–2024)

3.1. Heathrow Case and the Paris Agreement: The Courts' Initial Approach

One of the first high-profile climate-related lawsuits in the UK was the case over the expansion of Heathrow Airport (construction of a third runway) (Friends of the Earth v Heathrow Airport, 2020, UK Supreme Court). In February 2020, the UK Court of Appeal suspended the government's Heathrow expansion plan following an appeal by environmental groups (Friends of the Earth v Heathrow Airport, 2020, UK Supreme Court). The Court of Appeal ruled that the government's infrastructure planning had failed to take into account its obligations under the Paris Agreement and that the government's decision was unlawful (Friends of the Earth v Heathrow Airport, 2020, UK Supreme Court). However, in late 2020, the UK High Court overturned this decision and gave the green light to the expansion (Friends of the Earth v Heathrow Airport, 2020, UK Supreme Court). The High Court stressed that the Paris Agreement was not explicitly included in the government's official policy documents at the time; therefore, the court did not have the authority to directly apply the Paris targets and legally invalidate the construction plan. This case showed that while UK courts respect international climate agreements, they are reluctant to directly apply them unless they are transposed into domestic law. As a result, the legal challenge to climate issues in the Heathrow case was not fully won. However, in parallel with this decision, UK legislation was strengthened in 2019, with an amendment to the Climate Change Act setting the country a statutory target of achieving net zero emissions by 2050 (Friends of the Earth v Heathrow Airport, 2020, UK Supreme Court). The UK government has also adopted national carbon budgets that envisage significant emissions reductions by 2030. Thus, in the following years, litigation has been re-framed in light of these national commitments to the Paris Agreement targets.

3.2. The Finch case: Environmental Impact Assessment and Scope 3 emissions

One of the most important court precedents in the field of climate law in the UK between 2020–2024 was the case of R (Finch) v. Surrey County Council (Finch v Surrey County Council, 2020, High Court). At the heart of this case was a dispute over a 25-year plan to increase production and drill four new wells at the Horse Hill oil field in Surrey, England (Finch v Surrey County Council, 2020, High Court,para. 2). Since the project expected oil production from the well to exceed the significant threshold of 500 tons per day, an environmental impact assessment procedure was required by law (Finch v Surrey County Council, 2020, High Court,para.11). The project sponsors and the local authority (Surrey Council) considered that the environmental impact assessment of this oil project regarding its climate impact should be limited to direct, local emissions only – that is, emissions from the operation of the well (e.g. gases leaking from the well equipment, transport emissions, etc.) (Finch v Surrey County Council, 2020, High Court, para. 72). However, the amount of carbon emissions that would be generated when the oil extracted from the well is burned as the final product was not calculated and taken into account in the environmental impact assessment report (Finch v Surrey County Council, 2020, High Court, para.17). The council accepted this approach and in 2018 granted permission for the project based on this kind of incomplete environmental impact assessment.

But local resident Sarah Finch challenged the decision in court. The claimant argued that the legislation (the 2017 EIA Regulations and the EU EIA Directive on which those regulations are based) requires a project to have its "direct and indirect significant impacts" fully assessed; and that in terms of climate impact, the project's direct emissions, as well as its indirect end-of-pipe emissions, are also included in the category of "significant impacts" (Finch v Surrey County Council, 2020, High Court, para. 22). That is, if the crude oil to be extracted from Horse Hill is inevitably combusted as fuel after processing, and the extent of this combustion can be calculated and predicted, it should be considered an integral part of the project's climate impact. Surrey Council's decision to not take these emissions into account, according to the plaintiff, is unlawful.

The High Court of Justice Queen's Bench Division Planning Court dismissed the claim (Finch v Surrey County Council, 2020, High Court, para. 148), and the Court of Appeal, by a majority of 2-1, essentially upheld the High Court's position (Finch v Surrey County Council, 2022, Court of Appeal, para.150). These instances considered that the Environmental Impact Assessment Directive and national regulations did not require an assessment of long-range consequences; even if it was clear where and by whom the extracted oil would be burned, this could be legally regarded as a "subjective assessment of the assessment authority" of the local planning authority. That is, according to the courts, a local authority may not take into account those emissions, saying that it does not see sufficient reason to consider the final burning of oil as a result of the project, and this is within the scope of the evaluator's decision-making power. However, the plaintiff did not agree with this position and took the case to the Supreme Court.

On June 20, 2024, the UK Supreme Court announced its final decision, allowing Sarah Finch's appeal by a vote of 3 judges in favour and 2 judges against (Finch v Surrey County Council, 2024, UK Supreme Court, para.331). The High Court has ruled that Surrey Council's permission for the Horse Hill project was unlawful because the project's Environmental Impact Assessment process failed to assess the "indirect" climate impacts that would result from burning oil (Finch v Surrey County Council, 2024, UK Supreme Court, para.329). The Supreme Court majority position made it clear that the legal issue here is the correct interpretation of causation: it is a known and undisputed fact that, if this project were to proceed, all of the oil extracted would be processed and burned as fuel, resulting in the release of large amounts of greenhouse gases into the atmosphere (Finch v Surrey County

Council, 2024, UK Supreme Court, para.332). The amount of these final combustion emissions is scientifically measurable and indeed the Council itself provided such a calculation for the reserve at the time of the case. However, the court emphasised that "the burning of that oil as a result of the oil extraction project is an unavoidable and immediately foreseeable impact" – and therefore these emissions should have been assessed under the 2017 Environmental Impact Assessment Regulations (UK Supreme Court, 2024). According to the legislation, there is only a distinction between direct and indirect impacts and no geographical restrictions are envisaged; the impact of greenhouse gases on the climate is also global, regardless of where they are emitted (UK Supreme Court, 2024). The Supreme Court judgment criticised the Court of Appeal's approach that "the issue could be resolved in different ways depending on the subjective assessment of the planning authority", stating that it would be legally illogical for different authorities to make conflicting decisions on such a fundamental cause-and-effect relationship. Thus, for the first time, the UK Supreme Court confirmed that it was legally binding to take into account end-use emissions, known as "Scope 3", in a decision on a fossil fuel project. This was a major turning point in climate law and can be seen as the emergence of the "climate damage" principle in UK planning law.

The Supreme Court's landmark decision in Finch immediately had practical consequences. Following the ruling, the British government announced that it would review the rules governing the approval of fossil fuel projects, in particular by preparing new guidelines that would ensure that emissions from combustion (i.e. the indirect impact of the project on the global climate) would be taken into account in the environmental impact assessment process. In fact, in August 2024, the government announced that it would withdraw its previous position in the ongoing legal proceedings concerning controversial oil and gas projects in the North Sea (for example, in the Jackdaw and Rosebank cases) and cease to defend these cases. In other words, in the face of the new legal line of the Supreme Court, the government itself joined the claims of Greenpeace UK and other claimant groups, since it was already known that previous approval decisions had been made in violation of the Finch precedent. This was followed by the issue of permits for the Jackdaw gas field and the Rosebank oil field in the North Sea in 2023–2025, and the British courts wrote a new page in the development of climate law.

3.3. Jackdaw and Rosebank: Litigation over North Sea oil and gas projects

Jackdaw and Rosebank are major oil and gas projects in the British North Sea that have recently been the focus of legal battles by climate activists (Climate in the Courts, 2025). Jackdaw is a gas condensate field located in the eastern North Sea, 150 miles off the coast of Aberdeen, and was planned to be developed by Shell. The British government gave permission for the Jackdaw project in 2022. Rosebank is a giant oil field in the North Atlantic, 80 miles west of the Shetland Islands – considered the country's largest untapped oil reserve. It is operated by Norway's state-owned company Equinor and its partner Ithaca Energy; Government approval for Rosebank was granted in September 2023. While both projects were justified on national energy security grounds, civil society groups took the decisions to court, arguing that the damage the projects would cause to the global climate was ignored. Greenpeace UK and Uplift, a climate group, have brought an action before the Inner House, Scotland's highest civil court, to have the government's final consent decisions for these projects overturned. The claims are that, as in the Finch case, the environmental impact assessment documents failed to take into account the "total climate impact" of the projects – that is, the emissions that would result from burning the fuel to be extracted. In the UK, prior to 2022, permits for such projects only considered direct operational emissions, but there were cases where carbon released during fuel combustion was excluded as "user country emissions". Since the Jackdaw and Rosebank permits were granted using the same approach, Greenpeace and other claimants argued that these decisions should now be considered unlawful.

These claims were heard in the Scottish Court of Session in late 2024 and early 2025. After the Supreme Court upheld the position of climate activists in the Finch case, even the British government itself accepted that the plaintiffs were right in the court and played a role in formalizing the process (Climate in the Courts, 2025). Finally, on 30 January 2025, the Scottish High Court delivered its historic judgment on the Jackdaw and Rosebank projects. The court ruled that the previous government approvals for both projects were unlawful and annulled them. The decision means that the permits currently granted for these projects are no longer valid and the government must make a new decision, in line with the updated environmental requirements, if it wants to proceed with the projects (Chestney, 2025).

In addition to the annulment decision, the court also took a balanced position on the current status of the projects: Shell and Equinor can continue preparatory work on Jackdaw and Rosebank (such as the construction of offshore platforms), but oil and gas cannot be extracted and exploited from these fields until a new government decision is made (Chestney, 2025). This approach was designed to prioritize the public interest without completely destroying the financial interests of the companies. The court clearly emphasized in its decision that "the public interest in government agencies acting in accordance with the law and the public's interest in climate change outweigh the private commercial interests of the project owners". In other words, the court did not allow illegally issued permits to remain merely "on paper" but untouched in practice - in light of serious public concern about climate change, the court deemed it necessary to fully ensure the rule of law.

The decision was hailed as a historic victory by climate campaigners. Philip Evans, a representative of Greenpeace UK, welcomed the decision, saying: "The era when governments can approve new extraction projects while ignoring the climate impacts is over". Uplift executive director Tessa Khan also called the ruling a great success, stressing that the Rosebank project could not go ahead without taking into account the "enormous climate damage". Robert Clark, a lawyer at the law firm Client Earth, noted that this is the third major ruling by British courts in the past year on the consideration of "downstream" emissions (Climate in the Courts, 2025). He cited as an example the High Court's decision in September 2023 to overturn the government's approval of a new coal mine, Whitehaven, based on the government's failure to assess emissions from coal combustion (Climate in the Courts, 2025). Indeed, in 2022 the British government gave its approval to the Whitehaven project, the first deep coal mine in a long time; but this decision was overturned by the Supreme Court's Finch precedent. Thus, in 2024–2025, one coal, one gas and one oil project in Britain were stopped by the courts for failing to take climate impacts into account. Legal experts say such decisions not only affect individual projects, but also force governments to reconsider policies that conflict with climate goals. Even politicians who will come to power in Britain in 2024 have made statements in advance, stating that in the light of such court decisions, the country should not issue any new oil and gas licenses and should invest in the clean energy sector **(**Chestney, 2025).

4.Analysis of Decisions in the Context of National and International Law

The above-mentioned court cases should be assessed not only in the context of domestic violations, but also in the light of the national and international obligations of states regarding climate change. Both Norway and the UK are active participants in the global climate regime: both countries are parties to the 1992 UN Framework Convention on Climate Change (United Nations Framework Convention on Climate Change, 1992, Annex 2) and support the goals of the 2015 Paris Agreement (limiting global warming to 1.5°C as far as possible and achieving net-zero global emissions by mid-century) (Paris Agreement, 2015, art. 2.1(a)). Although the Paris Agreement legally obliges each party to regularly submit and strengthen its national contributions, there is no international sanction mechanism that enforces the implementation of this document (Paris Agreement, 2015, art. 4.2, 4.3, 15). Achieving the Paris targets therefore depends entirely on steps taken under national law. In court cases in Norway and the UK, plaintiffs have argued that governments have acted in breach of the Paris Agreement, but the courts have taken different approaches to addressing these obligations. In the case of People vs. Arctic Oil, the claimants sought to apply the objectives and principles of the Paris Agreement (in particular the principle of "common but differentiated responsibilities") to the interpretation of national decisions.

However, the Norwegian Supreme Court did not directly base the legal basis on the conflict with the Paris Agreement – instead, it considered it sufficient that the parliament had decided to take into account the climate commitments and refused to revoke the licenses for violating the Paris Agreement. The court's references to international law tended to favor the model of limited liability of states within their territory (although this position was met with warnings from UN special rapporteurs that it was contrary to the spirit of the Paris Agreement). In contrast, in the UK, in the Heathrow case, the Court of Appeal found it unlawful to refer directly to the Paris Agreement and not to include it in national planning documents, but the Supreme Court overturned this approach on technical grounds. That is, British courts apply the Paris targets more if they are transformed into domestic legal sources. For example, since the UK's Net Zero (2050) target is now national law under the Climate Change Act 2008 and its 2019 amendment, government decisions must be interpreted in a manner consistent with that target. While there was no direct infringement of Net Zero law in the Jackdaw and Rosebank cases, the Finch precedent essentially showed that the Paris and Net Zero targets permeate national law. The Supreme Court emphasised in its Finch decision that the purpose of the environmental impact assessment rules is to take full account of climate impacts in planning decisions. This is therefore a mechanism to ensure that decisions are made in line with the UK's climate targets.

Another aspect of international law is the human rights dimension. Since climate change negatively impacts human rights (the right to life, a healthy environment, health, housing, etc.), this topic has begun to be integrated into international human rights law in the last decade. The UN General Assembly Council adopted resolution 76/300 in 2022, recognizing the "right of everyone to a safe, clean, healthy and sustainable environment" (UN General Assembly,2022). Within the framework of the European Convention on Human Rights, Article 2 (right to life) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights apply to climate issues (European Convention on Human Rights, 1950). The 4-year-long Urgenda case in the Netherlands was a turning point in this direction: Dutch courts (the Court of Appeal in 2018 and the Supreme Court in 2019) ruled that the government's insufficient climate inaction violated citizens' rights under the European Convention on Human Rights (the right to life and family) (Urgenda Foundation v Netherlands, 2019, Supreme Court). In a landmark ruling of December 20, 2019, the Dutch Supreme Court upheld a decision that required the government to reduce emissions by at least 25% below 1990 levels by the end of 2020, based on the state's positive obligation under Articles 2 and 8 of the European Convention on Human Rights (Urgenda Foundation v Netherlands, 2019, Supreme Court). It was the first time in the world that a court of cassation had forced a state to comply with a specific climate target based solely on human rights obligations.

In the People vs Arctic Oil case, the plaintiffs also cited Articles 2 and 8 of the European Convention on Human Rights, but the Norwegian courts blocked the development of this argument. The Supreme Court did not turn to the international human rights framework in its decision, relying mainly on the constitutional article. At the same time, in late 2023 - early 2024, the European Court of Human Rights heard several cases related to climate change for the first time in its history (including a multi-state case by the group "KlimaSeniorinnen" from Switzerland and young applicants from Portugal) (Verein KlimaSeniorinnen v Switzerland, 2024, EctHR). The European Court of Human Rights' decision of 9 April 2024 in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, recognizing the state's insufficient action in the field of climate change as a violation of Article 8 of the ECHR, set a very important precedent at the intersection of climate change and human rights. However, this decision did not rule in favor of the state in the Greenpeace vs Norway case dated October 28, 2025 (Greenpeace Nordic v Norway, 2025, EctHR). The difference that emerges when comparing them is very simple. The Klimaseniorinnen case was about the long-standing inadequacies of Switzerland's overall climate policy, while the Greenpeace case was about the Norwegian government's process for granting exploration licenses for oil and gas projects.

In the context of national law, countries also have different approaches. Article 112 of the Norwegian Constitution directly recognizes the "right to a livable environment" and includes the principle of intergenerational justice (Constitution of Norway, art.112). This is in line with the environmental rights guarantees in the constitutions of many other countries (e.g. France, Portugal, etc.). Even Germany, in 1994, added Article 20a to its Basic Law, recognizing the state's responsibility to protect the environment for future generations (Basic Law of Germany, art. 20a). However, the presence of such a provision in a written constitution does not always mean that the courts will strictly apply it. As we have seen, the Norwegian Supreme Court has practically left the implementation of Article 112 to the discretion of parliament, stating that it will intervene only in the most extreme cases. In contrast, the German Federal Constitutional Court, in its decision of April 29, 2021, recognized the state's failure to adequately fulfill its climate commitments as a violation of fundamental rights (Neubauer v Germany, 2021, Federal Constitutional Court). In particular, the court emphasized in its decision that Article 20a of the Basic Law directs the state to achieve climate neutrality and requires "a fair sharing of the environmental burden between generations". The Court stated that "fundamental rights, as an intergenerational guarantee, ensure that current generations do not exhaust their carbon budget excessively and impose a climate burden that will deprive future generations of their freedom". The German court clearly stated in its decision that the excuse that no state can solve the global climate problem alone does not exempt it from its constitutional climate protection duty. This principle contradicts the approach of the Norwegian Supreme Court that "a state cannot solve the world's climate problem alone" and reflects a different legal assessment at the national level. Because the United Kingdom does not have a written constitution, such a fundamental rights debate was not held at the national level. That is, the absence of a constitutional right violation made it impossible to substantiate the claim more strongly. However, the binding nature of climate targets in UK law (for example, the aforementioned Climate Change Act) has created a strong, if not constitutional, legislative framework, which serves as a basis for reference to climate obligations in the hands of UK courts.

Finally, while international law lacks strong enforcement mechanisms, international courts and institutions have recently begun to express their views on the climate debt of states. For example, in 2023–2024, at the request of the UN General Assembly, the International Court of Justice (ICJ) prepared an advisory opinion on climate justice, and with this opinion, the ICC confirmed that combating climate change is now a legal obligation for states and that the principle of not causing harm to the environment also applies in the climate context (International Court of Justice, 23 July 2025, Advisory Opinion, para. 132-135). The

Inter-American Court of Human Rights also issued a historic advisory opinion in 2025, declaring that a healthy climate is a value protected under human rights and that states have an international legal obligation to act urgently to address the climate crisis (Inter-American Court of Human Rights, 29 May 2025, Advisory Opinion, para. 272-275, para. 183). Such international developments may lead to a future reassessment of the cautious stance taken by the Norwegian Supreme Court in 2020. While states have individual responsibilities in the international climate regime, preventing global warming is becoming a common legal obligation. National courts also update their legal analysis over time within this larger framework.

5. Climate Claims in Courts: Civil Society and Strategic Litigation

The driving force behind the court cases described above in both Norway and Britain has been civil society activism. The term strategic litigation refers to legal actions that aim to bring about broader societal change, in addition to directly winning a specific legal dispute. In a global and complex problem like climate change, non-governmental organizations, youth activist groups, and even local communities are actively using strategic litigation.

In Norway, the plaintiffs in the People vs. Arctic Oil case were NGOs such as Greenpeace Nordic and Young Friends (Nature and Youth), who supported the case with a large public campaign. In Britain, the Finch case was filed under the name of an individual named Sara Finch, but was actually supported by organizations such as Weald Action Group and Friends of the Earth. The Jackdaw and Rosebank lawsuits were brought directly by Greenpeace UK and Uplift. All of these entities are part of the climate movement and are using the courts as a platform to influence government policy.

Examples of strategic climate litigation are also on the rise globally. The Dutch Urgenda case was a catalyst – a non-governmental organization on behalf of 900 citizens filed a lawsuit against the government, which resulted in courts ruling in 2015–2019 that the government’s emissions reduction target was insufficient and requiring it to increase it (Urgenda Foundation v Netherlands, 2019, Supreme Court). These success models were replicated in other European countries. In Germany, the Neubauer case was a strategic move by young activists and was a huge success – the German government tightened legislation after the decision and raised the 2030 target from 55% to 65% (Neubauer v Germany, 2021, Federal Constitutional Court).

Many of these cases, learning from each other, benefiting from each other in a positive way, each time going a little further, filling gaps in climate law and making a significant visible contribution to the development of climate law. For example, the Urgenda case was mainly about the state's obligation to reduce emissions; in subsequent cases, for example, corporate responsibility was targeted. In 2021, the Hague Court of Justice of the Netherlands ruled in the case Milieudefensie (FOE) v. Shell, ruling that the oil company Shell also has a responsibility to address climate change and must reduce its global emissions by 45% by 2030, in line with the Paris Agreement targets (Milieudefensie v Shell, 2021, District Court of The Hague). This was the first time a global company had been forced by a court to comply with global climate targets. Although the appeals court overturned the decision, it was still a fruitful process in terms of strategic litigation. In the US, dozens of state and city governments have filed “climate damage” lawsuits against major oil companies, claiming that they are liable for damage to local infrastructure and public health caused by the effects of climate change (changing weather patterns, rising sea levels, etc.). These lawsuits are ongoing in many jurisdictions.

Civil society organizations support these claims not only in courtrooms but also in the public arena. During legal proceedings, expert opinions, scientific reports (such as reports from the Intergovernmental Panel on Climate Change), and international legal declarations are presented to the court and published in the press. Thus, legal proceedings also become a means of political pressure on governments. For example, in Britain, while the Jackdaw and Rosebank cases were pending in court, opposition political parties issued statements in 2024 promising a moratorium on new fossil fuel projects – an example of the impact of litigation on political discourse.

While strategic litigation has brought real change to the climate movement in some countries, it is not an easy path. Courts do not always rule in favor of claimants, and the decision sometimes depends not on the court but on the political line of the country (the Norwegian decision is an example of this). Sometimes years of processes, rejections, and appeals convince civil society of the difficulty of fighting through legal means. However, when looking at the overall statistics, climate litigation cases are rapidly increasing. Research shows that by mid-2023, more than 2,000 climate lawsuits had been filed in more than 65 countries around the world, with at least 230 new climate cases filed in 2023 alone (Setzer & Higham, 2024). The vast majority of these cases are aligned claims that require governments or companies to meet climate commitments. While some entities have recently filed lawsuits against climate action (for example, some states are seeking to block climate regulations in court on economic grounds), the main driving force behind the wave of climate litigation is still strategic litigants seeking to increase climate action.

The role of civil society is not limited to acting as direct litigants. They also contribute to legal processes by submitting amicus curiae. The opinion of the UN special rapporteurs in the Norway case is an example – although they are not litigants, they have provided the court with a valuable framework of international law. In other cases, scientific organizations, human rights organizations provide the court with information on climate science, risks and global obligations. All this helps the judges to see the issue from a broader perspective.

As a result, the development of climate law in many cases occurs not at the initiative of the executive and legislative authorities, but precisely thanks to the intervention of the judiciary at the request of civil society. This illustrates the dynamics of law: litigation becomes an important tool for bringing changing values and scientific realities of society to the legal level. When strategic litigation is successful, it creates a change not only in a specific case, but also in the legal practice of the country as a whole, and sometimes even in the international legal discourse.

6. Future trends

Recent court decisions show that climate law is currently in a dynamic development phase. Looking ahead, several key directions are becoming clearer.

6.1. Increase in the number of lawsuits and geographical expansion

Climate litigation is no longer limited to Europe and North America; new cases are emerging from Latin America to Asia and Africa. By the mid-2020s, the total number of climate-related lawsuits worldwide was estimated to be approaching 3,000 (Setzer & Higham, 2024) and this number continues to rise. Especially in regions that are severely affected by climate change (e.g. island countries, arid regions of Africa), local groups are increasingly taking their governments to international tribunals. This process is a form of spreading the concept of climate justice: the legal voice of those who have contributed the least and suffered the most is being heard more. In the coming years, it is expected that more legal complaints will be filed on climate issues from developing countries, both nationally and internationally.

6.2. The increasing role of international courts

Between 2023 and 2025, a number of international courts and tribunals are already actively dealing with climate issues. The decisions of the European Court of Human Rights mentioned earlier in this article, the advisory opinion of the International Court of Justice (International Court of Justice, 23 July 2025, Advisory Opinion), as well as the opinion No. 31 of the UN Tribunal for the Law of the Sea of 21 May 2024 on the impact of greenhouse gas emissions on the oceans – all will further clarify the limits of the climate responsibility of states under international law (International Tribunal for the Law of the Sea, 21 May 2024, Advisory Opinion). While these decisions are not always formally binding, they will serve as a powerful “soft law” guide for national courts. For example, if the European Court of Human Rights were to find climate inaction a violation of Articles 2 and 8 of the European Convention on Human Rights, European governments would be forced to reassess their policies in light of the legal risks, and national courts would not be able to ignore this precedent. The International Court of Justice's opinion is expected to emphasize the general obligations of states to address climate change. This will provide additional guidance for national judges: courts like the Norwegian Supreme Court will no longer be able to say “international law does not require us to do this” in similar cases.

6.3. Claims against companies and increased liability

Climate litigation is not limited to states. “Greenwashing” and “individual liability” claims are increasingly targeting companies. In a number of cases, auto and fossil fuel companies have been held liable for misleading marketing or hiding climate risks from shareholders. Since 2021, the number of “greenwashing” cases filed on this topic has exceeded 40, and in a significant number of them, the plaintiffs have achieved some degree of success (Setzer & Higham, 2024). In the future, legal pressure for climate contributions is expected to increase beyond the energy sector – for example, in the food industry and aviation sectors. It is also possible that claims against financial institutions, including banks and pension funds, for “failing to take into account climate risks” will increase; some funds have already started to change their policies to take these risks into account. This means that not only states, but also various players in the global economy are being brought into the sphere of climate liability through the judicial system.

7. Conclusion and recommendations

The recent experience of climate litigation in Norway and the UK shows that the development of climate law does not depend solely on the will of the legislature; courts, civil society and international bodies together draw the contours of this field, and without them, practical implementation is impossible. Although the Norwegian Supreme Court confirmed the subjective legal nature of Article 112 of the Constitution in the case of “People vs. Arctic Oil”, by recognizing a broad interpretation of the parliament’s climate policy, it effectively limited the application of that article to the threshold of “gross negligence” and emphasized that it was not liable for emissions resulting from the combustion of exported oil. The UK Supreme Court, in contrast, in the Finch case, established the legal obligation to take Scope 3 emissions into account in Environmental Impact Assessments, and the subsequent cancellation of permits for the Jackdaw, Rosebank and Whitehaven projects demonstrated that climate risks were being brought to the centre of planning law.

This comparison shows that, despite being parties to the same international framework – the UN Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement – states “translate” and implement their climate commitments into national law in different ways. In some jurisdictions, climate law is still subject to political discretion, while in others it is being put into a more rigorous legal framework through environmental impact assessment, planning and human rights mechanisms. Against this backdrop, the following recommendations are particularly relevant:

- *Non-governmental organizations and environmental organizations should systematically strengthen strategic litigation.*

The examples of the UK, the Netherlands and Germany show that the vast majority of precedent-setting cases are brought to court by NGOs, youth activists and local communities. The aim of strategic litigation is not only to revoke a specific permit, but also to expand the legal space for future claims. Therefore, civil society organizations should build long-term litigation plans that combine legal expertise, scientific evidence base, and communication strategy. Every new precedent – successful or not – creates a reference point for the future interpretation of climate law. This is how new precedents can be formed and new initiatives in the field of climate law can be stimulated.

- *The right to a healthy environment should be recognized at the constitutional level and given real substance in line with the UN call.*

The UN General Assembly, in its resolution 76/300 adopted in 2022, recognized the right to live in a healthy environment as a universal human right (UN General Assembly,2022). The countries of the world must respond to the call of this resolution and this right must now be reflected in the highest legal act of the states. This right has existed in the Constitution of the Republic of Azerbaijan, of which I am a citizen, since 1995, that is, since its adoption (Constitution of Azerbaijan , art. 39). But the Norwegian example has shown us another reality: the presence of a right to a healthy environment in the constitution is not enough if the courts are reluctant to apply it. It should therefore become a practical task for all states to ensure that the courts interpret the right to a healthy environment in a climate context.

- *Environmental impact assessment procedures should be carried out thoroughly, and the climate component – especially Scope 3 emissions – should be systematically taken into account*

The Finch, Jackdaw, Rosebank and Whitehaven decisions clearly show that it is no longer a legally defensible position to calculate only the local, operational emissions of large fossil fuel projects and to dismiss emissions from the end-use combustion of the extracted fuel as a “problem for other countries”. If the project will inevitably result in significant greenhouse gas emissions and these emissions can be predicted using scientific methods, they should be taken into account in the environmental impact assessment documents and openly discussed by the decision-making authority. This approach is becoming a mandatory requirement for all fossil fuel exporting countries – including Azerbaijan – in terms of managing legal risks, not just for the UK. Otherwise, what may seem “formal” today could return tomorrow in the form of unsuccessful court cases and investment disputes in national and international instances.

If these recommendations are implemented, climate law will cease to be a “soft” field of political statements and will become a hard legal reality that both states and large corporations must take into account in advance.

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PRACTICE AND PROCEDURE OF THE CUSTOMARY COURT OF APPEAL IN SOUTH-WEST NIGERIA UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

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Abstract: *The Customary Court of Appeal occupies a singular place in the judicial architecture of the six South-West states of Nigeria — Lagos, Ogun, Oyo, Osun, Ondo, and Ekiti. It stands as the apex court for matters involving the customary law of predominantly Yoruba-speaking communities, exercising appellate and supervisory jurisdiction derived from sections 280 to 284 of the Constitution of the Federal Republic of Nigeria 1999 and supplemented by a body of state enabling legislation. Despite the constitutional entrenchment of the court, its practice and procedure remain, in significant respects, unevenly developed across the six states, with some states (notably Ogun) completing the formal constitution of their court only as recently as January 2020. This article offers a systematic examination of the practice and procedure of the Customary Court of Appeal in South-West Nigeria. It traces the constitutional and legislative framework of the court, analyses the scope of its appellate and supervisory jurisdiction, examines the procedural mechanisms governing the initiation and conduct of appeals, and identifies the evidentiary rules applicable in a jurisdiction from which the Evidence Act has been formally excluded. It further considers the pathway of appeals from the Customary Court of Appeal to the Court of Appeal and the Supreme Court. The article concludes by identifying the principal challenges facing the court in the region — principally, the restrictive judicial interpretation of the phrase 'questions of customary law' and the absence of harmonised procedural rules across the Southwest states — and advances proposals for reform.*

Keywords: *Customary Court of Appeal; South-West Nigeria; customary law jurisdiction; Yoruba customary law; Repugnancy doctrine*

1. INTRODUCTION

Customary law is not the private concern of the communities that practice it, Obilade (1979) asserts that it is a living system of law governing the rights and duties of a very large number of Nigerians," and its administration at the appellate level is a matter of constitutional concern. The Customary Court of Appeal in South-West Nigeria is the institutional expression of that constitutional concern. Established under section 280 of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) and given jurisdiction by section 282, it sits at the summit of the customary law court hierarchy in each of the five south-western states of Ogun, Oyo, Osun, Ondo, and Ekiti. The Court functions as the principal court for reviewing decisions of the lower customary courts on matters of Yoruba customary law (CFRN, 1999).

What makes the court distinctive is not simply its subject matter. It is the combination of constitutional entrenchment, the inapplicability of the Evidence Act in its proceedings, and the enormous social importance of the disputes it resolves. Such disputes relate to land, inheritance, chieftaincy, marriage, and family that touch the daily lives of millions. Yoruba customary law remains vigorously operative in the Southwest, governing matters that the received English law, for all its reach, has never fully displaced. The Customary Court of Appeal is the primary institutional mechanism through which this living body of law is subjected to systematic judicial supervision.

Yet, for a court of this standing, scholarship on its practice and procedure is surprisingly thin. Most academic attention in Nigeria has been directed at the substantive questions of customary law such as the repugnancy doctrine, the tests for establishing a custom, the intersection of customary law and constitutional rights. Little or no attention has been devoted to the mechanics of how the court actually functions. The procedural framework has changed substantially since the colonial period, and the establishment of the Ogun State Customary Court of Appeal as recently as January 2020 serves as a reminder that the institutional architecture of the Southwest's customary appeal structure is still, in some respects, being built.

2. HISTORICAL BACKGROUND: CUSTOMARY COURTS IN THE SOUTH-WEST

The administration of customary law in the Southwest has deep pre-colonial roots. Long before the British arrived, the Yoruba maintained elaborate dispute-resolution institutions centred on the lineage head, the ward chief, and ultimately the Oba, who held judicial functions as an expression of sacred political authority (Eso, 1978). Colonial administration did not so much replace these institutions as overlay them with a parallel court structure. The Native Courts Proclamation of 1906 and the subsequent Native Courts Ordinance formalised the recognition of customary courts, though always within a framework that subjected their decisions to the repugnancy doctrine first authoritatively stated by the Privy Council in *Eshugbayi Eleko v Government of Nigeria* (1932): a native tribunal must not exercise its power in a way that is repugnant to natural justice, equity and good conscience.

The post-independence constitutional settlement of 1960 and 1963 left customary courts largely to state regulation. It was the Constitution of the Federal Republic of Nigeria, 1979 that introduced the critical innovation: the constitutional entrenchment of the Customary Court of Appeal as a superior court. The CFRN, 1999 (as amended) in sections 280 to 284, carried that architecture forward with minor modifications. The effect was to elevate the Customary Court of Appeal from a creature of state statute into a constitutional institution, shielded from abolition by ordinary legislation. For the Southwest, a region whose customary law had already attracted the attention of the Privy Council in decisions such as *Oke Lanipekun Laoye v Amao Oyetunde* (1944) and *Dawodu v Danmole* (1958), this constitutionalisation was particularly significant.

Each of the Southwest states (apart from Lagos) has subsequently enacted enabling legislation to operationalise the court within their respective jurisdictions. The Customary Court Law of Oyo State traces a longer statutory lineage, having inherited significant portions of the old Western State framework. Ogun State, as noted, completed the formal constitution of its Customary Court of Appeal only in January 2020. It is one of the most recently established courts in the southwest, though the enabling legislation, the Ogun State Customary Court of Appeal Law 2011, had been on the books for nearly a decade before the court was actually constituted.

3. X-RAYING THE CONSTITUTIONAL FRAMEWORK AND STATUS OF THE CCA

Section 280(1) of the CFRN, 1999 (as amended) provides thus: there shall be for any State that requires it a Customary Court of Appeal for that State. Several features of this provision deserve notice. First, the establishment of the court is framed as a right of each state rather than an obligation. The phrase 'for any State that requires it' confers a degree of discretion, unlike the mandatory establishment of the Customary Court of Appeal of the FCT and High Court. The practical effect is that states have moved at different paces. Second, section 280(2) prescribes the composition of the court: a President of the Customary Court of Appeal and such number of judges as may be prescribed by the state House of Assembly.

The appointment of the President of the Customary Court of Appeal is made by the Governor of the State on the recommendation of the National Judicial Council, subject to confirmation by the State House of Assembly. This tripartite process that is executive nomination, independent council recommendation, and legislative confirmation mirrors the appointment mechanism for other superior court heads in the country and reflects the broader federal design of ensuring that judicial appointments involve multiple institutional actors rather than residing entirely in one arm of government. Judges of the court are appointed by the Governor on the recommendation of the National Judicial Council. There is no express constitutional requirement of legal qualification for judges of the Customary Court of Appeal, and states have typically specified different qualification thresholds in their enabling laws.

Section 6(5)(f) of the Constitution lists the Customary Court of Appeal of a State among the courts to which section 6 relates, all of which 'shall have all the powers of a superior court of record.' This is a provision of considerable practical consequence. It means that the Customary Court of Appeal has inherent jurisdiction, that its decisions are binding on the lower customary courts in its jurisdiction, and that its records are not subject to challenge on the ground of technical defect that would apply to an inferior court. It also means that disobedience of the decision or orders of the court can constitute contempt of court in the ordinary sense.

Section 283 confers on the Customary Court of Appeal the power to make rules for regulating its own practice and procedure in the exercise of any jurisdiction conferred on it by the Constitution or any law. Section 284 supplements this by providing that, subject to state law, the President of the court may make such rules. These twin provisions are the constitutional basis for the procedural rules of each court. Their practical operation has been uneven: some states have comprehensive and relatively up-to-date rules, while others have been slower to exercise the rule-making power in ways that reflect the modern demands of the docket of the court.

4. EXPLICATING THE JURISDICTION OF THE CCA

The core grant of jurisdiction is in section 282(1): 'a Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.' Three elements of this provision call for careful analysis: the nature of the jurisdiction (appellate and supervisory), the scope of proceedings covered (civil), and the subject-matter trigger (questions of customary law).

The appellate jurisdiction is the primary function of the court in practice. Appeals reach the Customary Court of Appeal from the various grades of customary courts established by state law in each of the southwest states. The supervisory jurisdiction is a less frequently exercised but constitutionally important power, permitting the court to review the practices and procedures of the lower customary courts and to issue directions to ensure that they operate within their constitutional and statutory mandate (Aguda, 1980). The restriction to 'civil proceedings' means that the court does not exercise criminal appellate jurisdiction. Criminal matters from the lower customary courts take a different appellate pathway, typically to the Magistrates' Court or the High Court depending on the state's legislation.

The most contentious aspect of the jurisdiction of Customary Court of Appeal is the scope of 'questions of customary law'. Courts have struggled with whether this phrase covers all appeals from a customary court where any aspect of customary law is in play, or only those appeals where the specific ground of challenge involves a question of customary law (Diala, 2020). The distinction matters greatly in practice. If 'questions of customary law' is read narrowly to cover only grounds of appeal that directly raise a rule of customary law, then appeals which raise procedural or evidential grounds though arise from a cause governed by customary law, may fall outside the jurisdiction of the court.

The controversy was sharpened by developments in the treatment of customary law in the southwest. In *Dawodu v Danmole* (1958), the Privy Council affirmed the Yoruba customary law systems of idi-igi (distribution per stripes by family branches) and ori-ojori (distribution per capita among eligible members) as legally cognisable. Disputes about the application of these systems to specific families and estates are the daily business of the lower customary courts, and they regularly throw up grounds of appeal that involve questions about the content and application of the custom. The author's submission, consistent with the purposive argument advanced in the scholarly literature, is that the Constitution's reference to 'civil proceedings involving questions of customary law' refers to the proceedings as a whole, not merely to individual grounds of appeal, and the jurisdiction of the court should be construed accordingly.

The supervisory jurisdiction of the Customary Court of Appeal is distinct from its appellate function. It operates not through the mechanism of appeals from decided cases but through the power of the court to oversee the general administration of the lower customary courts. This includes, in principle, the power to issue orders and directions for the conduct of proceedings in those courts and to ensure compliance with procedural fairness standards derived from section 36 of the CFRN, 1999. In practice, however, the supervisory jurisdiction has been sparingly used. Most litigants seek recourse through the appeal mechanism rather than through direct supervisory applications, and the supervisory function of the court has remained largely dormant.

Section 282(2) of the Constitution provides that, for the purposes of the section, the Customary Court of Appeal shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established. This is the constitutional mechanism by which state Houses of Assembly can expand the jurisdiction of the court beyond the base grant in section 282(1). Several states in the Southwest have made use of this power, conferring, for example, jurisdiction over matters arising from customary marriage registration and dissolution, inheritance disputes involving a customary law element, and in some states a form of original jurisdiction in matters of customary law practice and usage that do not arise from the lower courts.

The exercise of this power has not been without controversy. Academic opinion is divided on whether the grant of original jurisdiction by a state House of Assembly under section 282(2) is constitutional, given that section 282(1) speaks only of appellate and supervisory jurisdiction. The issue has not been squarely resolved by the Supreme Court in the Southwest context, though in *Tukur v Government of Gongola* (1989) *State* the court affirmed the general principle that the content of the jurisdiction of courts established under the Constitution is to be determined by reference to the constitutional provisions, read together with any applicable state law.

The general structure of appeal to the Customary Court of Appeal distinguishes between appeals as of right and appeals with leave. An appeal as of right lies in any civil cause or matter involving questions of customary law. For all other grounds of appeal from the lower customary courts, grounds not raising a question of customary law, an appeal lies only with the leave of either the lower court or the Customary Court of Appeal. This is the scheme that most of the enabling statutes in the southwest re-state, following the constitutional pattern.

5. COMPOSITION, APPOINTMENT, AND QUALIFICATIONS OF JUDICIAL OFFICERS

The President is the head of the Customary Court of Appeal and the individual upon whom the rule-making power under section 284 primarily rests. In the Southwest states, the

Presidents have typically been lawyers with backgrounds in private practice or the state judiciary rather than specialists in customary law studies as an academic discipline. The practical knowledge of Yoruba customary law that the court requires is supplemented by the composition of the bench as a whole, the inclusion of legal practitioners with community roots, and the power of court to receive expert evidence on customary practice when the question is in genuine dispute.

The enabling legislation of each southwest state specifies qualifications for appointment as a judge of the court. The typical threshold is ten years' post-call experience as a legal practitioner, though some states supplement the legal qualification requirement with a requirement of knowledge or experience of the customary law of the relevant communities. The Ogun State Customary Court of Appeal Law 2011 is in this mould: it requires legal practitioners of standing but also contemplates the role of the court in drawing on expert testimony where particular customary rules are genuinely disputed.

The court typically sits as a panel of three judges (including the President or a judge presiding in the President's absence) for the determination of appeals. A quorum of three is the standard practice in the Southwest courts. Where the court sits for administrative or ancillary purposes for instance to consider applications for extension of time to appeal or applications for leave to appeal a single judge may, under the rules of some states, deal with such matters in chambers.

The practice and procedure of the Customary Court of Appeal in the Southwest is governed by three layers of rules. First, and supreme, are the provisions of the CFRN, 1999 (as amended) itself, particularly sections 280 to 284 and section 36 (the right to a fair hearing). Second are the enabling state statutes: in Ogun State, the Customary Court of Appeal Law 2011 in Oyo State, the Customary Court Law (Cap 39, Laws of Oyo State 2000). Third are the procedural rules made by the President of the court under section 284 of the Constitution.

Crucially, and in contrast to the practice in the High Courts, the Evidence Act does not apply to proceedings before the Customary Court of Appeal or the lower customary courts in civil causes or matters. Section 1 of the Evidence (Amendment) Decree No 61 of 1991 formally excluded the Evidence Act from these proceedings, a position now reflected in section 42 of the Evidence Act 2011. This exclusion is of profound practical importance: it means that the formal rules of admissibility that govern High Court proceedings relating to hearsay, opinion evidence, and documentary evidence among others do not bind the Customary Court of Appeal when it is hearing civil appeals.

The consequence is that the court applies a more flexible, contextualised standard of relevance and probative weight, particularly in relation to evidence of customary practice (Evidence Act, 2011). Proof of customary law in the Southwest has historically been achieved through the evidence of knowledgeable witnesses from the community (elders, chiefs, or persons with demonstrated familiarity with the custom), through judicial notice, and in recent decades through expert testimony. As the Supreme Court observed in *Oyewumi v Ogunsesan* (1990), the court can take judicial notice of a well-known Yoruba customary rule without requiring formal proof, though disputed customs must be established through evidence.

An appeal to the Customary Court of Appeal in the Southwest states is initiated by the filing of a notice of appeal. The notice must identify the decision being appealed, state the grounds of appeal, and specify the relief sought on appeal. Most of the state rules impose a time limit for filing: the typical window is 30 days from the date of the decision complained of, extendable by the court on application showing good cause. Some states, notably Ogun allow a longer period of up to 90 days where the appellant can demonstrate that he was unaware of the decision or was prevented from filing by circumstances beyond his control.

A ground of appeal that does not identify a specific question of customary law as being in issue will not, by itself, deprive the court of jurisdiction if the civil proceedings as a whole involve such questions. However, prudent counsel will ensure that the grounds are so framed as to make the customary law issue explicit, in order to bring the appeal clearly within the jurisdiction of the court and to avoid the risk of a jurisdictional challenge at a preliminary stage.

Once a notice of appeal is filed and accepted, the lower customary court prepares the record of appeal, comprising: the originating process (complaint or claim); all processes filed in the lower court; the notes of oral evidence taken in the proceedings (often recorded in Yoruba or in a mixture of Yoruba and English, depending on the court and the state); any exhibits tendered in evidence; the ruling or decision appealed against; and any interlocutory rulings that are the subject of a ground of appeal. The record is transmitted to the Customary Court of Appeal Registry and copies are served on the parties. The quality and completeness of records transmitted from the lower customary courts has historically been an area of concern, and some states have addressed this through rules requiring the lower courts to maintain standardised records.

Following the compilation and transmission of the record, the parties are required, in most of the Southwest states, to file written briefs of argument. The appellant files first (appellant's brief), setting out the issues for determination and the arguments in support of each ground of appeal. The respondent then files a respondent's brief. In appropriate cases, the appellant may file a reply brief limited to matters raised in the respondent's brief. The practice of filing briefs has become standard in the Southwest CCA courts, mirroring the practice of the Court of Appeal and the Supreme Court, and it serves the important function of focusing the issues before the court and reducing the consumption of court time in oral argument.

The language of briefs and proceedings presents a practical consideration peculiar to the South-West context. Where the evidence from the lower court was taken in Yoruba, the brief must grapple with the translation of testimony and exhibits into the English that the Customary Court of Appeal uses for its formal proceedings. Translation disputes are not uncommon, and the practice of court (consistent with the exclusion of the Evidence Act) is to receive the best available translation, test its accuracy if challenged by the other party, and proceed on that basis.

At the Customary Court of Appeal level, the principal evidentiary question concerns the finding of customary law made by the lower court. The Customary Court of Appeal, sitting as an appellate body, does not ordinarily hear fresh evidence; it reviews the record of the lower court. In reviewing customary law findings, however, the court applies a more flexible standard than the typical appellate deference to findings of fact, because the existence and content of a customary rule is at least in principle a question of law as much as one of fact (Ebo, 2015).

Three methods of proving customary law are recognised in the Southwest's customary court jurisprudence. The first is judicial notice, available for customs that are well-known, widely practised, and not in genuine dispute. The Supreme Court in *Agbai v Okogbue* (1991) confirmed that courts can and should take judicial notice of notorious customary rules without requiring formal proof. The second is the testimony of witnesses knowledgeable in the custom typically elders or community leaders. The third is expert evidence, which has grown in use as the courts have become more sophisticated. Each method has advantages and limitations, and competent counsel before the Customary Court of Appeal will typically combine them when a customary rule is genuinely in issue.

At the hearing, the parties or their legal representatives present oral argument on the briefs. The court may ask questions of counsel and may, in appropriate circumstances, seek clarification on questions of customary practice from assessors knowledgeable in the relevant custom. The use of assessors is more common at the lower customary court level, but the Customary Court of Appeal in the Southwest has historically availed itself of this resource in contested cases involving obscure or disputed customary rules (Owasanoye, 1995).

On the determination of an appeal, the Customary Court of Appeal has the same powers as the court below and may affirm, vary, or set aside the judgment appealed against. It may substitute a different decision, may remit the case to the lower court for re-hearing with appropriate directions, or may make such order as the justice of the case requires. Where the court reverses the lower court's finding on a question of customary law, it may substitute its own finding on the customary rule and apply it to the facts as found by the lower court. The court's judgment must be in writing and is binding on the lower customary courts within its territorial jurisdiction.

Legal practitioners are entitled to appear before the Customary Court of Appeal in the Southwest states. This distinguishes the CCA from some of the lower customary courts, before which parties may be required or expected to appear in person, and where representation by legal practitioners is not always routine (Osun State Customary Court of Appeal (Establishment) Law, 2006). The involvement of trained legal practitioners at the CCA level has been one of the factors driving the professionalisation of the procedural culture of the court, including the adoption of the brief-filing practice and the increasing sophistication of the arguments made on questions of customary law.

Beyond the main appeal process, a range of interlocutory applications may come before the Customary Court of Appeal in the course of proceedings. The most commonly encountered are: applications for extension of time to file a notice of appeal; applications for stay of execution of the judgment of the lower court pending the outcome of the appeal; applications for leave to appeal on grounds other than questions of customary law (where such leave is required); applications to strike out an appeal for want of prosecution; and, occasionally, applications for injunctive relief ancillary to an appeal (Ekiti State Customary Court of Appeal Rules, 2023).

Applications for stay of execution occupy a particular prominence in the Southwest CCA context. Many of the disputes that reach the CCA such as land disputes, inheritance disputes, chieftaincy contests have immediate practical consequences for possession, income, or status. The losing party at the lower court level will frequently seek a stay of execution while pursuing an appeal, particularly in land matters where the prevailing party might otherwise take possession before the appeal is determined. The court applies the established principles: the applicant must demonstrate that the appeal is arguable, that irreparable harm would result if a stay is refused, and that the balance of convenience favours a stay. It does not follow automatically from the mere filing of an appeal (Oyo State Customary Court of Appeal Rules, 2025).

The court also deals with applications to set aside ex parte orders and to regularise procedural irregularities. Given the informality that can attend to the proceedings of the lower customary courts particularly in rural areas where parties may have appeared without legal representation and records may be incomplete, interlocutory applications to correct the record or to supplement it with material that the lower court failed to document are not uncommon. The inherent jurisdiction of the Customary Court of Appeal as a superior court of record gives it broad power to make such orders as are necessary to ensure that the case before it is properly constituted (Ondo State Customary Court of Appeal Rules, 2014). The question of costs in the Customary Court of Appeal follows the general principle that costs are in the discretion of the court. The enabling legislation of the Southwest states typically gives the court power to award costs and to tax such costs. In practice, costs awards in the CCA tend to be modest reflecting the generally lower economic resources of the litigants compared to those appearing before the High Court or the Court of Appeal and the court is alert to the risk that a harsh costs order against an unsuccessful appellant would chill the willingness of customary law litigants to exercise their constitutional right of appeal. Where a party has behaved unreasonably in the conduct of the appeal for example, by raising groundless jurisdictional objections or by failing to file a brief within time without adequate excuse the court will reflect that conduct in its costs order.

The Customary Court of Appeal, as a superior court of record, has the full range of enforcement powers available to such courts. Its orders may be enforced through the sheriff and civil process system applicable in each state. Where a judgment of the court affirms or substitutes a monetary award, enforcement follows the machinery available under the state's civil procedure rules, including attachment of property and garnishment of debts. Where the judgment concerns land as is frequently the case in Southwest customary law disputes, enforcement may involve the execution of a warrant of possession.

Contempt of court is available as an enforcement tool where a party wilfully disobeys an order of the Customary Court of Appeal. The court has committed parties to prison for contempt in appropriate cases, and this power though sparingly used is an essential element of the effectiveness of the court as a final appellate forum within the customary court hierarchy. Its availability distinguishes the Customary Court of Appeal from the lower customary courts, which do not have the full contempt jurisdiction of a superior court of record.

Section 240 of the CFRN, 1999 (as amended) confers on the Court of Appeal exclusive appellate jurisdiction to hear and determine appeals from the decisions of the Customary Court of Appeal of a State. This means that the Court of Appeal, sitting in the appropriate judicial division, is the second tier of appeal from the customary court system in the Southwest. The Court of Appeal then speaks to the Supreme Court under section 233 of the Constitution.

The procedure for appeals from the Customary Court of Appeal to the Court of Appeal follows the (Court of Appeal Rules 2021). A notice of appeal must be filed within 30 days of the date of the decision of the Customary Court of Appeal in civil matters. Parties are required to file and exchange briefs of argument. The Court of Appeal hears the appeal on the briefs and any oral argument. In reviewing decisions of the Customary Court of Appeal, the Court of Appeal treats questions of customary law as questions of law rather than of fact which means that the Court of Appeal will not simply defer to the finding of CCA on what a customary rule provides, but will apply its own independent judgment (Akintunde v Adisa, 2003).

The Supreme Court has articulated this approach in a number of decisions. In *Lokoyi v Olojo* (1983) the court reaffirmed the principle that concurrent findings of lower courts on questions of fact will ordinarily not be disturbed, but that questions of the content and existence of a customary rule are reviewable by the appellate courts on the law. For the Southwest, this principle has significant implications: a contested finding by the Customary Court of Appeal that a particular Yoruba custom does or does not exist, or does or does not apply in a particular context, is open to challenge in both the Court of Appeal and, ultimately, the Supreme Court.

6. CHALLENGES CONFRONTING THE CCA

This section examined statutory and administrative challenges confronting the effectiveness and efficiency of the Customary Court of Appeal which serves as a precursor to proffering solutions.

The most persistent challenge to the effective functioning of the Customary Court of Appeal in the Southwest is the restrictive judicial interpretation of the jurisdiction-triggering phrase in section 282(1). Some courts have read 'questions of customary law' narrowly as confined to grounds of appeal that expressly raise a rule of customary law rather than purposively, as covering all civil proceedings in which customary law questions are in play. The effect of the narrow reading is to divert appeals from the Customary Court of Appeal to the High Court, where the formal rules of evidence apply, and where customary law is typically treated as a question of fact to be proved rather than a body of law to be applied.

This interpretive tension has real consequences for litigants in the Southwest. Land disputes, succession disputes, and chieftaincy disputes all of them central concerns of Yoruba customary law frequently involve mixed grounds of appeal. The ground that directly challenges a customary rule may sit alongside a ground that challenges, for example, the evaluation of the evidence by the lower court or its procedural conduct. Under the narrow reading, the latter ground would fall outside the jurisdiction of the CCA and would need to be appealed separately to the High Court a fragmentation of proceedings that is neither efficient nor consistent with the spirit and purpose of the constitution of providing a single apex court for customary law matters (*Mojekwu v Mojekwu*, 1997).

A second and related challenge is the lack of procedural harmonisation across the six Southwest states. Each state has its own enabling legislation and its own court rules, and there are significant variations in the time limits for filing notices of appeal, the requirements for the record of appeal, the format and length of briefs, the procedure for interlocutory applications, and the grounds on which extension of time will be granted. This variation creates practical difficulties for litigants and practitioners who deal with matters touching multiple states, and it produces different outcomes in formally similar procedural situations.

The absence of uniform rules also complicates academic and professional education on the practice of the CCA in the region. A law student or young practitioner learning customary court procedure in Ibadan (Oyo State) is learning a slightly different system from one learning in Abeokuta (Ogun State) or in Ekiti. While some variation is inevitable in a federal system, the level of fragmentation in the Southwest is greater than the constitutional design requires, and it reflects the absence of a coordinating body such as a Southwest Customary Law Committee or a joint rules committee that might rationalise the differences (Bamgbola, 2022).

A third challenge concerns the intersection of customary law and constitutional rights. The CFRN, 1999 (as amended) anti-discrimination provision in section 42 has been used by the appellate courts to strike down customary rules that discriminate on grounds of sex or ethnic origin. The Supreme Court's decisions in *Mojekwu v Iwuchukwu* (2004) and *Ukeje v Ukeje* (2014) have, in different ways, signalled that discriminatory customary inheritance rules will not survive constitutional scrutiny. The Customary Court of Appeal in the Southwest sits at the point where these constitutional questions first arise in the customary court hierarchy, and it has not always been well-equipped by training, resources, or decisional culture to apply the constitutional dimension of the repugnancy analysis with the rigour that the cases require.

The constitutional critique of customary law is in tension with another value: the preservation of the living law of communities that have practised these customs across generations. The Customary Court of Appeal is uniquely placed to hold this tension in balance more so than the High Court, which approaches customary law as a guest in an English-law house, and more so than the lower customary courts, which sometimes lack the analytical tools to apply constitutional standards. Getting this balance right requires not only the correct reading of the cases but ongoing judicial training and, where necessary, clear legislative guidance (Niki Tobi, 1996).

Finally, there are access-to-justice concerns. The Customary Court of Appeal in several Southwest states sits in a single location typically the state capital which means that litigants from remote areas face substantial costs of travel and time. The lower customary courts, by contrast, are distributed across the local government areas. The procedural requirement of filing a formal written notice of appeal and brief of argument disadvantages litigants who lack legal representation, and legal aid for proceedings before the CCA is limited. These structural barriers are not unique to the CCA, but they bear particularly on the communities the court is designed to serve, which often include those with limited access to formal legal services.

7. CONCLUSION AND RECOMMENDATIONS

First, the southwest states should collaborate, under the auspices of the Council of State or a regional body, to harmonise the procedural rules of their respective Customary Courts of Appeal. A model set of rules broadly patterned on the Court of Appeal Rules but adapted to the specific needs and culture of customary law practice would reduce the fragmentation identified in Part 8.2 and make the court more accessible to practitioners and litigants across the region.

Second, the courts, guided by the principle of purposive constitutional interpretation, should adopt the broad reading of 'questions of customary law' in section 282(1). A civil proceeding before the lower customary court is, by definition, a proceeding involving customary law if its subject matter is one that customary law governs. The Customary Court of Appeal's appellate jurisdiction should track that subject matter, not merely those grounds of appeal that expressly invoke a rule of customary law.

Third, the National Judicial Council, in partnership with the law schools of the Southwest, should develop a continuing judicial education programme specifically focused on the Customary Court of Appeal covering Yoruba customary law, the repugnancy and unconstitutionality doctrines, the constitutional rights dimension of customary law, and the procedural rules of the court. The calibre of decision-making at this level will directly determine whether the court discharges its constitutional mandate.

Fourth, the states that have not yet established their Customary Courts of Appeal should do so without further delay. Section 280 of the Constitution does not impose a fixed timetable, but the constitutional purpose of the provision is clear: there should be a specialist court at the apex of the customary law hierarchy in each state that requires it. Prolonged delay leaves a structural gap that other courts principally the State High Courts fill imperfectly.

The Customary Court of Appeal in South-West Nigeria is a court whose importance far exceeds the attention it has received in legal scholarship. Millions of Yoruba-speaking Nigerians depend on the customary law system for the resolution of their most intimate disputes over land, family, inheritance, and community standing. The Customary Court of Appeal is the institution that gives that system judicial discipline and constitutional grounding. Making it work, in practice as much as in principle, is a task that deserves sustained attention from legislators, judicial officers, and academic lawyers alike.

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RISK-AWARE LEGAL GOVERNANCE FOR AI-DRIVEN CYBERSECURITY SYSTEMS: FRAMEWORKS, COMPLIANCE, AND ACCOUNTABILITY

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Abstract: *As AI becomes increasingly central to cybersecurity, organizations face new legal and ethical challenges. This paper explores risk-aware governance approaches for AI-driven cybersecurity systems, focusing on compliance, accountability, and regulatory alignment. By reviewing current laws and AI-specific regulations, it identifies potential gaps and liabilities that may arise from automated decision-making. A practical framework is proposed to help organizations integrate risk management into their AI cybersecurity strategies, including ongoing monitoring, transparent reporting, and ethical safeguards. The study shows that considering legal and ethical aspects from the start not only reduces regulatory risks but also strengthens trust and system reliability. The insights offered aim to guide policymakers, legal professionals, and technology developers in fostering responsible AI adoption in cybersecurity.*

Keywords: *AI governance, cybersecurity risk management, legal compliance, accountability frameworks, ethical AI*

1 Introduction

In recent years, the rapid advancement of Artificial Intelligence (AI) has significantly transformed the landscape of cybersecurity. AI-driven systems are now widely used to detect threats, automate responses, and enhance the overall efficiency of security operations. These technologies offer substantial benefits, including improved accuracy, real-time threat analysis, and the ability to process large volumes of data beyond human capacity (Buczak & Guven, 2016). However, alongside these advantages, the growing reliance on AI has introduced new categories of risks, particularly those associated with autonomous decision-making and system vulnerabilities.

One of the key challenges lies in the legal and regulatory implications of deploying AI in cybersecurity environments. Traditional legal frameworks were not designed to address the complexities of AI systems, especially those capable of learning and adapting over time. As a result, issues related to liability, accountability, and compliance remain insufficiently defined (Veale & Borgesius, 2021). For instance, when an AI system makes an incorrect or harmful decision, it becomes difficult to determine whether responsibility lies with the developer, the organization, or the system itself.

Moreover, the concept of risk in AI-driven cybersecurity systems extends beyond technical failures to include legal, ethical, and organizational dimensions. Adversarial attacks, data manipulation, and algorithmic bias can undermine system reliability and trustworthiness, posing serious governance challenges (Goodfellow et al., 2015). Recent academic discussions similarly emphasize the dual role of AI in cybersecurity, highlighting both its operational advantages and the legal and ethical concerns associated with its deployment (Hoza, 2025). These challenges demonstrate the urgent need for a structured and risk-aware approach to managing AI-based cybersecurity systems.

This paper aims to explore the principles of risk-aware legal governance for AI-driven cybersecurity systems, with a particular focus on governance frameworks, compliance mechanisms, and accountability structures. By analyzing existing regulatory approaches and identifying current gaps, the study seeks to propose a comprehensive governance framework that supports both technological innovation and legal responsibility. Ultimately, this research contributes to the growing body of literature on responsible AI by offering practical insights for policymakers, legal experts, and cybersecurity professionals.

2 Methodological Framework for Legal and Risk Analysis

The study was carried out between October 2025 and February 2026, during which time pertinent legislative frameworks, scholarly works, and policy papers pertaining to AI-driven cybersecurity governance were methodically examined and evaluated.

This study adopts a qualitative and conceptual research design to examine the legal and risk-related dimensions of AI-driven cybersecurity systems. Given the interdisciplinary nature of the topic, the research integrates perspectives from cybersecurity, legal studies, and risk management in order to develop a comprehensive analytical framework. Rather than relying on empirical data collection, the study is based on an extensive review and critical evaluation of existing academic literature, legal documents, and policy reports.

The methodological approach is primarily grounded in doctrinal legal analysis, which focuses on interpreting and systematizing current legal frameworks relevant to AI and cybersecurity. This includes the examination of international regulations, data protection laws, and emerging AI governance instruments. Through this approach, the study identifies key legal principles, regulatory gaps, and areas of ambiguity that may affect the deployment and governance of AI-based cybersecurity systems.

In addition to legal analysis, the research incorporates a risk-based perspective to better understand the potential vulnerabilities associated with AI technologies. This involves identifying different categories of risk, including technical, legal, and ethical risks, and evaluating how these risks interact within complex cybersecurity environments. By combining legal reasoning with risk assessment principles, the study aims to provide a more holistic understanding of governance challenges.

Furthermore, a conceptual framework is developed as part of the methodology to structure the relationship between risk management, legal compliance, and accountability mechanisms. This framework serves as a guiding model for analyzing how organizations can integrate legal and ethical considerations into the design and operation of AI-driven cybersecurity systems. Overall, the methodological approach supports a systematic and critical exploration of the research problem while ensuring both analytical depth and practical relevance.

2.1 Research Design and Approach

This study employs a qualitative and conceptual research design to investigate the legal and risk-related dimensions of AI-driven cybersecurity systems. Given the interdisciplinary nature of the topic, which spans technological, legal, and governance aspects, a qualitative approach is particularly suitable for capturing complex interactions that cannot be fully represented through quantitative methods (Yin, 2018). The aim is to develop a structured understanding of how AI systems interact with legal requirements and risk management principles in practice.

The research adopts an exploratory approach, enabling the identification of emerging challenges and uncertainties in AI governance. As AI technologies in cybersecurity are rapidly evolving, this approach allows for flexibility and depth in analyzing legal ambiguities, compliance issues, and accountability concerns (Bryman, 2016). By synthesizing insights from multiple disciplines, the study seeks to construct a conceptual framework rather than testing pre-established hypotheses. As illustrated in Figure 1, the proposed conceptual framework integrates legal governance, risk management, and accountability mechanisms within AI-driven cybersecurity systems.

A doctrinal legal analysis forms the core of the methodology, focusing on existing laws, regulations, and policy instruments relevant to AI and cybersecurity. This includes the review of international standards, data protection legislation, and emerging AI-specific legal frameworks (Veale & Borgesius, 2021). The analysis identifies regulatory gaps and ambiguities that may affect the deployment, operation, and governance of AI-driven cybersecurity systems.

Figure 1. *Conceptual framework for risk-aware legal governance*

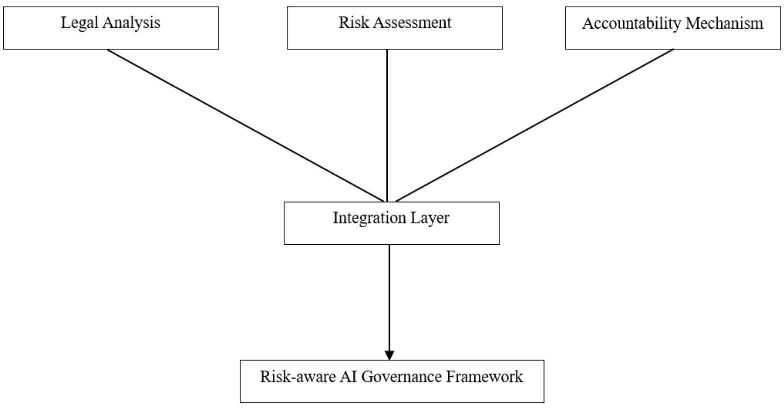
In addition to legal analysis, the research incorporates a risk-based perspective to understand potential vulnerabilities in AI technologies. This involves categorizing different types of risks—technical, legal, and ethical—and evaluating their interaction within complex cybersecurity environments (Goodfellow, Shlens, & Szegedy, 2015). Table 1 presents the classification of risks associated with AI-driven cybersecurity systems and their potential impacts. By combining legal interpretation with risk assessment principles, the study provides a holistic understanding of governance challenges.

Table 1. *Classification of risks in AI-driven cybersecurity systems*

Risk Type	Desciption	Potential Impact
Technical	AI model errors or failures	System failure, inaccurate detection
Legal	Liability and compliance issues	Lawsuits, regulatory fines
Ethical	Bias or unfair outcomes	Loss of trust, reputational damage

Finally, the study develops a conceptual methodological framework that integrates legal analysis, risk assessment, and accountability mechanisms. This framework guides the examination of AI governance processes and serves as a foundation for proposing practical risk-aware strategies. As shown in Figure 2, the methodological framework combines legal, risk, and accountability components to support comprehensive governance analysis. The framework is illustrated visually to facilitate comprehension and to highlight the interaction between AI operations, regulatory compliance, and organizational accountability.

Figure 2. *Conceptual methodological framework integrating legal, risk, and accountability components*



2.2 Data Sources

This study relies on a combination of *primary legal documents* and *secondary academic literature* to ensure a comprehensive understanding of AI-driven cybersecurity governance. Primary sources include statutory texts, international regulations, policy reports, and regulatory guidelines related to data protection, AI systems, and cybersecurity standards (European Commission, 2021). These documents provide the authoritative basis for examining compliance requirements and accountability mechanisms in diverse jurisdictions.

Secondary sources consist of scholarly articles, conference proceedings, and technical reports that discuss AI implementation in cybersecurity, risk management strategies, and the ethical and legal implications of AI deployment (Buczak & Guven, 2016; Goodfellow, Shlens, & Szegedy, 2015). These sources are critical for contextualizing primary data and identifying emerging trends, challenges, and regulatory gaps.

To enhance analytical clarity, the data sources were systematically categorized into three main groups:

1. *Legal and Regulatory Documents* – National and international laws, directives, and AI governance guidelines.
2. *Academic Literature* – Peer-reviewed journals, conference papers, and review articles on AI, cybersecurity, and risk management.
3. *Policy Reports and Technical Standards* – Publications from international organizations, standards bodies, and industry consortia that provide insight into practical implementation and compliance expectations.

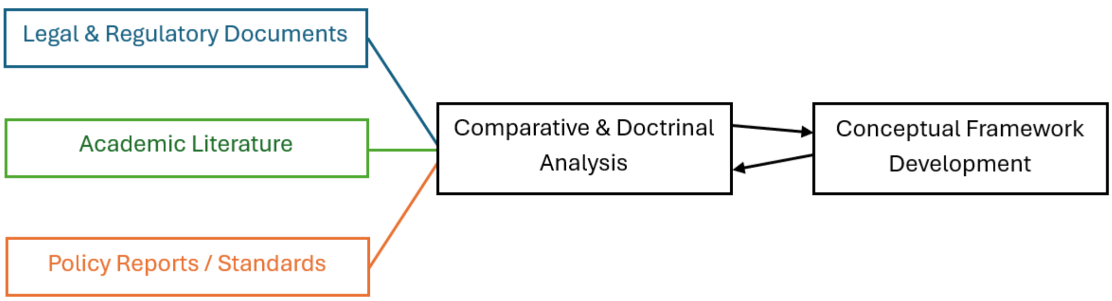
Table 2 categorizes the primary data sources used for analyzing AI-driven cybersecurity governance.

Table 2. *Categorization of data sources for AI-driven cybersecurity governance*

Source Type	Purpose	Example Documents	Jurisdiction
Legal / Regulatory	Analyze statutory obligations and compliance	EU GDPR, AI Act Proposal (EC, 2021)	EU / International
Academic Literature	Contextualize AI in cybersecurity and risk	Buczak & Guven, 2016; Goodfellow et al., 2015	Global
Policy Reports / Standards	Understand practical implementation & standards	NIST AI Risk Management Framework, ISO/IEC 27001	International / Industry

In addition, comparative analysis of data across different jurisdictions was conducted to identify common legal requirements and divergences that influence AI governance practices (Veale & Borgesius, 2021). Figure 3 demonstrates the workflow through which data sources contribute to the development of the methodological framework. This step ensures that the study not only examines the letter of the law but also the practical interpretations and applications of regulatory norms in real-world contexts.

Figure 3. *Workflow of data sources leading to methodological framework*



Finally, the integration of legal documents with academic literature and technical standards allows for a multi-perspective evaluation, balancing theoretical rigor with practical relevance. This approach supports the construction of a *risk-aware methodological framework*, ensuring that the findings are both legally grounded and operationally applicable.

2.3 Analytical Methods

This study employs a combination of *doctrinal legal analysis* and *risk-based analytical methods* to evaluate the governance challenges of AI-driven cybersecurity systems. Doctrinal legal analysis is applied to interpret, systematize, and critically examine statutory frameworks, regulatory instruments, and policy guidelines relevant to AI deployment (Zywicki, 2019). This method allows for the identification of legal obligations, compliance requirements, and areas of ambiguity where current regulations may not fully address emerging AI technologies.

Complementing the legal analysis, a *risk-oriented analytical approach* is utilized to classify, assess, and evaluate potential vulnerabilities associated with AI systems (Goodfellow, Shlens, & Szegedy, 2015). Risk categories include technical risks such as model errors, legal risks including liability and regulatory compliance, and ethical risks like bias and fairness concerns. This dual analytical strategy ensures a holistic understanding of both the legal and operational implications of AI integration in cybersecurity environments.

The data collected from primary and secondary sources (as outlined in Section 2.2) is systematically analyzed through *comparative analysis* across jurisdictions and disciplines. This involves mapping legal requirements against identified risks to understand gaps and overlaps in governance mechanisms (Veale & Borgesius, 2021). As illustrated in Table 3, different risk types correspond to specific legal requirements and mitigation strategies within AI-driven cybersecurity systems. By doing so, the study highlights critical intersections between law, risk, and organizational accountability, which form the foundation of a risk-aware governance framework.

Table 3. *Risk types, corresponding legal requirements, and mitigation strategies in AI-driven cybersecurity systems*

Risk Type	Legal Requirement / Regulation	Mitigation / Strategy
Technical	Accuracy and reliability of AI systems	Regular model validation, robust testing protocols
Legal	Compliance with data protection and AI laws	GDPR compliance, adherence to AI Act guidelines
Ethical	Fairness, bias prevention	Bias audits, inclusive training data, ethical review

Furthermore, *conceptual modeling techniques* are employed to visually represent the interaction between AI systems, risk categories, and legal compliance mechanisms. Conceptual models facilitate the identification of systemic vulnerabilities and help illustrate how risk-aware legal governance can be operationalized in practice (Yin, 2018). Finally, the analytical methods are iterative, allowing for continuous refinement of the conceptual framework as new legal instruments, risk categories, and ethical guidelines emerge. This approach ensures that the study remains adaptable and practically relevant while maintaining academic rigor.

3 Results

3.1 AI in Cybersecurity Systems

Artificial intelligence (AI) technologies have become integral to modern cybersecurity systems, offering advanced capabilities in threat detection, anomaly identification, and predictive analysis (Buczak & Guven, 2016). These systems leverage machine learning algorithms to process large volumes of network data, identify patterns indicative of cyber threats, and enable proactive responses. Building on foundational artificial intelligence

theories, modern cybersecurity applications are largely grounded in established machine learning and reasoning techniques (Russell & Norvig, 2021). The adoption of AI in cybersecurity not only improves efficiency but also reduces reliance on manual monitoring, which is increasingly impractical given the growing complexity and scale of cyber threats.
AI systems in cybersecurity can be broadly categorized based on their functional objectives: intrusion detection, malware analysis, threat prediction, and automated response mechanisms (Sommer & Paxson, 2010). Table 4 illustrates the main functional applications of AI technologies in cybersecurity systems. Intrusion detection systems (IDS) utilize supervised and unsupervised learning algorithms to identify suspicious activities within networks. Malware analysis employs AI to classify and predict malicious behavior patterns. Threat prediction models leverage historical data to anticipate future cyber-attacks, while automated response mechanisms enable real-time countermeasures against detected threats.

Table 4. *Functional applications of AI in cybersecurity systems*

AI Function	**Description**	**Example Tools / Algorithms**
Intrusion Detection	Detects suspicious network activity	Snort IDS, Random Forest, SVM
Malware Analysis	Classifies and predicts malicious software behavior	Cuckoo Sandbox, Deep Learning models
Threat Prediction	Forecasts potential cyber-attacks using historical data	TensorFlow, LSTM neural networks
Automated Response	Executes real-time countermeasures	SOAR platforms, AI-driven firewalls

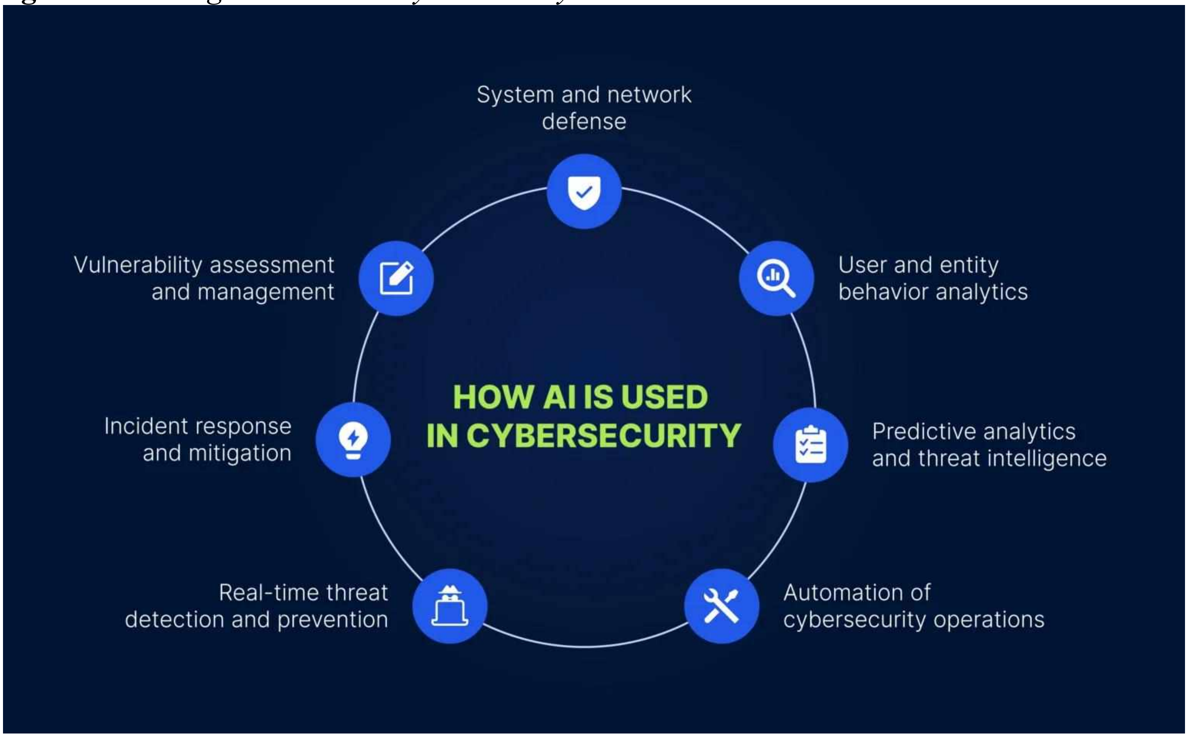
The results of this study indicate that AI-driven cybersecurity systems significantly enhance threat detection accuracy and response speed compared to traditional methods. For example, supervised learning algorithms such as random forests and support vector machines have been shown to detect anomalies with high precision, whereas unsupervised techniques help identify novel attack patterns that may not have been previously observed (Goodfellow, Shlens, & Szegedy, 2015). Moreover, the integration of AI into Security Operations Centers (SOCs) has facilitated real-time monitoring and automated incident response, reducing mean time to detect (MTTD) and mean time to respond (MTTR) metrics substantially (Kotenko et al., 2019). Despite these advantages, challenges remain. AI systems are susceptible to adversarial attacks that manipulate input data to evade detection or trigger incorrect responses. Additionally, ethical and legal considerations, such as data privacy, algorithmic bias, and regulatory compliance, influence the design and deployment of AI cybersecurity solutions (Veale & Borgesius, 2021). Addressing these challenges requires a comprehensive risk-aware governance framework, which integrates technical, legal, and ethical perspectives to ensure both system effectiveness and accountability.

3.1.1 Role of AI in Cybersecurity

Artificial intelligence (AI) has fundamentally transformed the landscape of cybersecurity by automating threat detection, improving incident response, and enhancing predictive capabilities (Buczak & Guven, 2016). Traditional cybersecurity relies heavily on manual monitoring and rule-based systems, which are increasingly insufficient given the exponential growth of cyber threats. AI enables systems to continuously learn from network data, detect anomalies, and identify patterns that human analysts might miss.

AI applications in cybersecurity span multiple domains, including network security, endpoint protection, malware detection, and threat intelligence (Sommer & Paxson, 2010). As shown in Figure 4, AI technologies can be integrated across multiple cybersecurity domains, including network security, malware analysis, and threat intelligence. These systems can analyze vast datasets in real time, prioritizing threats based on severity and potential impact. By integrating AI, organizations can proactively prevent attacks rather than solely reacting to incidents, thereby reducing potential damages and operational downtime.

Figure 4. *AI integration across cybersecurity domains*



Source: EffectiveSoft. (2024). AI in cybersecurity. EffectiveSoft. https://www.effectivesoft.com/blog/ai-in-cybersecurity.html#ai-applications-in-cybersecurity

3.1.2 Opportunities and Benefits

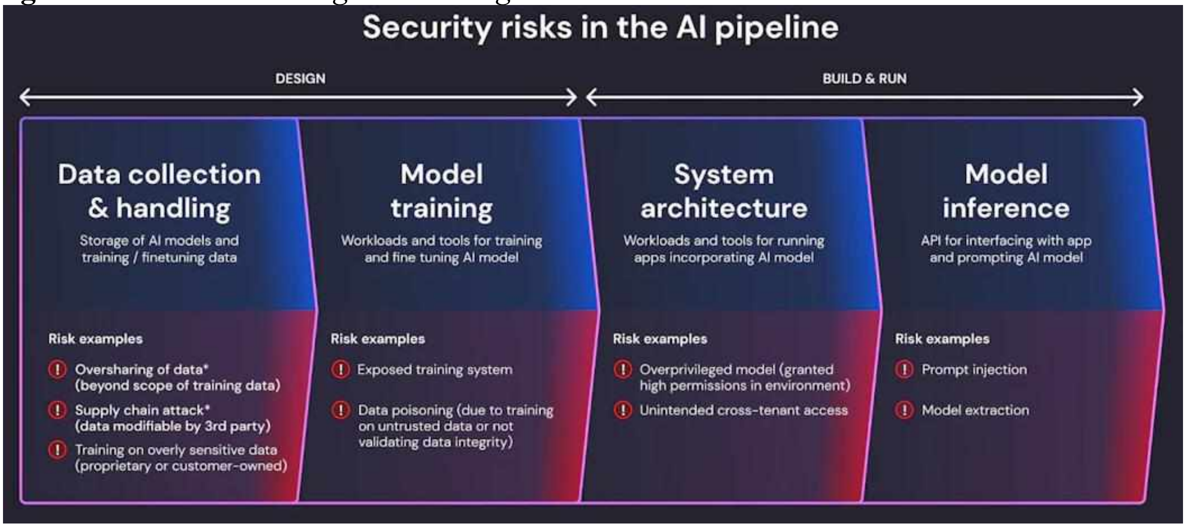
The integration of AI into cybersecurity systems provides several key opportunities and benefits. First, AI improves *accuracy in threat detection,* reducing false positives and enhancing the efficiency of security teams (Kotenko et al., 2019). Second, *predictive analytics* allow organizations to anticipate cyber threats based on historical attack patterns and emerging trends. Third, AI-driven automation *accelerates response times,* enabling real-time countermeasures that can mitigate damage before it escalates (Goodfellow, Shlens, & Szegedy, 2015). Another significant benefit is the ability of AI systems to *adapt and learn continuously.* Machine learning models can update their knowledge base as new types of attacks emerge, ensuring sustained effectiveness over time (Buczak & Guven, 2016). Additionally, AI facilitates *resource optimization* by automating routine monitoring and freeing cybersecurity personnel to focus on strategic tasks. These advantages collectively contribute to a more resilient and proactive security posture.

3.1.3 Risks and Vulnerabilities

Despite its advantages, AI in cybersecurity also introduces several risks and vulnerabilities. *Adversarial attacks* pose a significant challenge, wherein attackers manipulate input data to mislead AI systems or bypass detection (Goodfellow, Shlens, & Szegedy, 2015). Additionally, AI systems may inherit biases present in training data, potentially leading to unfair or ineffective security measures (Veale & Borgesius, 2021).

Other risks include *over-reliance on automation,* where human oversight may be reduced, and *legal or ethical compliance challenges,* particularly regarding data privacy and cross-border regulations (Zywicki, 2019). Figure 5 presents the relationship between AI-related risks and the corresponding mitigation strategies applied in cybersecurity environments. Addressing these risks requires a comprehensive, risk-aware governance framework that integrates technical safeguards, ethical considerations, and regulatory compliance mechanisms.

Figure 5. *AI risks and mitigation strategies*



Source: Wiz. (n.d.). Adversarial AI and machine learning security. Wiz Academy. https://www.wiz.io/academy/ai-security/adversarial-ai-machine-learning

3.2 Legal and Regulatory Landscape

This section examines the current legal and regulatory frameworks governing cybersecurity, with a specific focus on AI-driven systems. The increasing deployment of AI technologies in cybersecurity creates unique regulatory challenges, as existing laws often do not fully address the nuances of automated decision-making, algorithmic accountability, and data protection (Veale & Borgesius, 2021). Understanding these frameworks is essential for identifying compliance requirements, governance gaps, and potential legal risks associated with AI integration.

3.2.1 Existing Cybersecurity Regulations

Traditional cybersecurity regulations provide foundational rules and standards for protecting information systems, critical infrastructure, and personal data. Examples include the *General Data Protection Regulation (GDPR)* in the European Union, the *NIST Cybersecurity Framework* in the United States, and the *ISO/IEC 27001* standards for information security management (Peltier, 2016; European Commission, 2016). As demonstrated in Table 5, several global cybersecurity regulations establish legal obligations applicable to AI-driven systems. These frameworks establish requirements for data confidentiality, integrity, availability, and incident reporting, which serve as baseline compliance obligations for organizations.

However, while effective for conventional cybersecurity, these regulations often lack provisions that specifically address AI systems' predictive and automated decision-making capabilities. This creates challenges in ensuring transparency, accountability, and risk mitigation in AI-enhanced cybersecurity environments.

Table 5. *Key global cybersecurity regulations and their applicability to AI-driven systems*

Regulation / Standard	**Scope / Focus**	**Applicability to AI-driven Cybersecurity**
GDPR (EU)	Data protection, privacy, personal data rights	Ensures AI systems handle personal data lawfully; transparency and accountability requirements (Veale & Borgesius, 2021)
NIST Cybersecurity Framework (US)	Risk management, critical infrastructure protection	Provides guidelines for secure AI deployment; emphasizes risk assessment and continuous monitoring (Peltier, 2016)
ISO/IEC 27001	Information security management systems	Establishes security management standards applicable to AI cybersecurity tools; supports confidentiality, integrity, and availability

Cybersecurity Law (China)	Network security, data protection, critical infrastructure	AI systems must comply with local security and data storage regulations; high-risk AI applications require strict oversight
AI Act (EU)	AI risk classification, transparency, high-risk systems	Directly applies to AI in cybersecurity, imposing compliance requirements for high-risk AI, including documentation, monitoring, and accountability (Veale & Borgesius, 2021)

3.2.2 AI-specific Legal Frameworks

AI-specific legal frameworks are emerging to complement traditional cybersecurity regulations. The *European Union's Artificial Intelligence Act (AI Act)* is a prominent example, categorizing AI applications into risk levels and setting compliance requirements accordingly (Veale & Borgesius, 2021). High-risk AI systems, such as those used in critical infrastructure or cybersecurity operations, are subject to stricter transparency, documentation, and monitoring obligations.

In addition, national initiatives in countries such as the United States, Canada, and Singapore provide guidelines for AI governance, emphasizing ethical AI deployment, accountability mechanisms, and robust data management practices (Calo, 2017). The integration of AI-specific legal requirements into organizational cybersecurity practices ensures that automated systems operate within established ethical and legal boundaries.

3.2.3 Regulatory Gaps and Challenges

Despite existing and emerging regulations, several gaps remain. First, many frameworks do not fully address *adversarial AI risks* or the potential for algorithmic bias, leaving organizations exposed to unforeseen vulnerabilities (Goodfellow, Shlens, & Szegedy, 2015). Second, cross-border operations create *jurisdictional challenges,* as AI systems may operate across multiple regulatory regimes with conflicting requirements. Third, rapid technological advancements outpace legal development, resulting in *regulatory lag* and uncertainty for organizations seeking compliance.

Addressing these gaps requires a *risk-aware governance approach,* integrating technical safeguards, legal compliance, and ethical considerations. Visualization of these gaps can support policymakers and organizations in prioritizing regulatory updates and implementing robust AI governance structures.

3.3 Risk-aware Governance

Risk-aware governance refers to an integrated approach that combines risk management principles with legal and organizational oversight in the deployment of AI-driven cybersecurity systems. As AI technologies introduce both opportunities and uncertainties, governance mechanisms must evolve to address not only technical vulnerabilities but also broader legal and ethical implications (Veale & Borgesius, 2021).

This approach emphasizes the proactive identification, assessment, and mitigation of potential threats throughout the lifecycle of AI systems. In this context, frameworks such as the NIST AI Risk Management Framework extend traditional cybersecurity practices by incorporating AI-specific governance, accountability, and evaluation mechanisms designed to support trustworthy and secure AI deployment (NIST, 2023).

3.3.1 Concept of Risk-aware Governance

The concept of risk-aware governance is grounded in the idea that organizations must anticipate and manage risks associated with AI systems before they materialize. Figure 6 illustrates the core components of the risk-aware governance concept and their interrelationship within AI governance structures. Unlike traditional governance models, which often react to incidents, risk-aware governance adopts a forward-looking perspective that integrates compliance, accountability, and ethical considerations into system design and operation (ISO, 2018).

This approach recognizes that risks in AI-driven cybersecurity are multidimensional, encompassing technical vulnerabilities, regulatory uncertainties, and ethical concerns. By embedding governance mechanisms into the early stages of AI system development, organizations can ensure that security, legality, and transparency are maintained throughout the system lifecycle.

Figure 6. *Risk-aware governance concept diagram*

Source: InfosecTrain. (n.d.). Importance of governance, risk, and compliance. InfosecTrain. https://www.infosectrain.com/blog/importance-of-governance-risk-and-compliance

3.3.2 Risk Identification

Risk identification is the first critical step in implementing risk-aware governance. It involves systematically recognizing potential threats and vulnerabilities that may affect AI-driven cybersecurity systems. Table 6 presents the major types and sources of risks associated with these systems. These risks may originate from various sources, including data quality issues, adversarial attacks, system design flaws, and regulatory non-compliance (Goodfellow, Shlens, & Szegedy, 2015).

A structured approach is required for effective risk identification, which is commonly supported by established frameworks such as ISO 31000 and NIST risk management guidelines. These frameworks provide standardized methodologies for identifying, classifying, and prioritizing risks across organizational contexts (ISO, 2018; Stoneburner et al., 2002). By mapping potential risks at an early stage, organizations can better prepare mitigation strategies and ensure timely and effective response mechanisms.

Table 6. *Types and sources of risks in AI-driven cybersecurity systems*

Risk Type	**Description**	**Source / Origin**	**Potential Impact**
Technical Risk	Errors in AI models, incorrect predictions	Poor training data, model limitations	System failure, inaccurate threat detection
Adversarial Risk	Manipulation of input data to deceive AI systems	Malicious attackers, adversarial techniques	Bypassed security, undetected threats
Legal Risk	Non-compliance with laws and regulations	Lack of regulatory alignment, unclear policies	Legal penalties, lawsuits
Ethical Risk	Bias and unfair decision-making	Biased datasets, flawed algorithms	Loss of trust, reputational damage
Operational Risk	Over-reliance on automation, lack of human oversight	Excessive automation, inadequate supervision	Delayed response, system misuse
Data Risk	Data breaches or misuse of sensitive information	Weak data protection measures	Privacy violations, regulatory sanctions

3.3.3 Risk Assessment and Mitigation

Once risks are identified, the next step is to assess their likelihood and potential impact. Risk assessment involves evaluating the severity of identified risks and prioritizing them based on their consequences for system performance, legal compliance, and organizational reputation (Stoneburner et al., 2002).

Following assessment, appropriate mitigation strategies are developed to reduce or eliminate identified risks. These strategies may include technical approaches such as model validation, robustness testing, and adversarial evaluation, as well as organizational measures including compliance audits and policy development.

The NIST Cybersecurity Framework provides a structured and widely adopted approach for managing cybersecurity risks, emphasizing continuous monitoring, adaptive response mechanisms, and iterative improvement of security controls (NIST, 2018). Furthermore, integrating legal and regulatory considerations into risk mitigation processes ensures that AI systems operate not only effectively but also in compliance with established governance and regulatory requirements (Veale & Borgesius, 2021).

3.3.4 Monitoring and Control Mechanisms

Risk-aware governance does not end with mitigation; it requires continuous monitoring and control to ensure ongoing compliance and effectiveness. AI systems operate in dynamic environments, where new threats and regulatory requirements can emerge rapidly. Therefore, continuous monitoring mechanisms are essential for detecting anomalies, updating models, and ensuring compliance with evolving legal standards (Buczak & Guven, 2016).

Control mechanisms include regular audits, performance evaluations, and accountability frameworks that assign responsibility for AI system outcomes. These mechanisms ensure transparency and provide a basis for corrective action when issues arise. Continuous feedback loops further enhance system resilience by enabling iterative improvements and adaptation to new risks.

3.4 Compliance and Accountability

Compliance and accountability are central pillars of effective governance in AI-driven cybersecurity systems. As organizations increasingly rely on automated decision-making, ensuring that these systems operate within legal boundaries and maintain clear responsibility structures becomes essential. Compliance frameworks provide the legal foundation for system operation, while governance mechanisms enable actions and outcomes to be monitored, evaluated, and traced when necessary (Veale & Borgesius, 2021).

In this context, legal scholarship has increasingly emphasized the challenge of assigning responsibility within automated decision-making environments, particularly in situations involving harmful or unintended outcomes generated by AI systems (Calo, 2017).

3.4.1 Legal Compliance Requirements

Legal compliance in AI-driven cybersecurity involves adhering to a range of regulations related to data protection, cybersecurity standards, and emerging AI-specific laws. Frameworks such as the GDPR and the EU Artificial Intelligence Act establish requirements for lawful data processing, transparency, and risk management (European Commission, 2021). Organizations must ensure that AI systems are designed and deployed in accordance with these legal obligations to avoid penalties and reputational risks.

Compliance also requires continuous alignment with evolving regulatory standards. As AI technologies develop rapidly, organizations must regularly update their policies and practices to remain compliant with new legal requirements. As shown in Table 7, legal compliance requirements can be aligned with specific organizational actions to support effective AI governance. This includes implementing internal compliance audits, documentation processes, and regulatory reporting mechanisms.

Table 7. *Legal compliance requirements and corresponding organizational actions in AI-driven cybersecurity systems*

Legal Requirement	Description	Organizational Actions
Data Protection Compliance	Ensuring lawful processing of personal data	Implement GDPR policies, data minimization, user consent
Transparency Obligations	Providing clear information about AI system operations	Maintain documentation, explainable AI models
Risk Management	Identifying and mitigating AI-related risks	Conduct risk assessments, implement risk management frameworks
Security Standards	Protecting systems from cyber threats	Apply ISO/IEC 27001 controls, regular security audits
Regulatory Reporting	Reporting incidents and compliance status to authorities	Establish reporting procedures, maintain audit logs

3.4.2 Data Protection and Privacy

Data protection and privacy are critical concerns in AI-driven cybersecurity systems, particularly due to the extensive use of personal and sensitive data. Regulations such as the GDPR impose strict requirements on data collection, storage, and processing, emphasizing principles such as data minimization, purpose limitation, and user consent (European Commission, 2016).

AI systems must incorporate privacy-by-design and privacy-by-default principles to ensure that personal data is protected throughout the system lifecycle. This includes implementing encryption, anonymization, and secure data handling practices. Failure to address these requirements can result in legal sanctions and loss of public trust.

3.4.3 Accountability in AI Systems

Accountability in AI systems refers to the ability to assign responsibility for decisions and outcomes generated by automated processes. One of the key challenges in AI governance is determining who is responsible when a system makes an incorrect or harmful decision—developers, operators, or organizations (Calo, 2017). Table 8 outlines the key accountability roles, responsibilities, and governance mechanisms within AI-driven cybersecurity environments.

To address this issue, organizations must establish clear accountability frameworks that define roles, responsibilities, and oversight mechanisms. This may include audit trails, documentation of decision-making processes, and the implementation of human-in-the-loop systems to ensure that critical decisions are subject to human review.

Table 8. *Accountability roles, responsibilities, and mechanisms in AI-driven cybersecurity governance*

Stakeholder	Responsibilities	Accountability Mechanisms
AI Developers	Design and develop AI systems	Code audits, documentation, testing reports
Organizations / Firms	Deploy and manage AI systems	Internal audits, compliance checks
Regulators	Establish and enforce legal frameworks	Inspections, penalties, regulatory oversight
End-users	Interact with AI systems responsibly	User agreements, reporting misuse
Compliance Officers	Ensure adherence to laws and internal policies	Monitoring systems, reporting, risk assessments

3.4.4 Transparency and Ethical Considerations

Transparency is essential for building trust in AI-driven cybersecurity systems. It involves making AI processes understandable and explainable to stakeholders, including regulators, users, and internal teams (Veale & Borgesius, 2021). Explainable AI (XAI) techniques can help clarify how decisions are made, reducing uncertainty and increasing confidence in system outputs.

Ethical considerations, such as fairness, non-discrimination, and avoidance of bias, are also critical. AI systems must be designed to ensure equitable outcomes and prevent unintended harm. Integrating ethical principles into system design and governance processes supports responsible AI deployment and enhances organizational credibility.

4 Discussion

This section interprets the findings presented in the previous sections and situates them within the broader context of AI governance and cybersecurity. The results demonstrate that while AI significantly enhances cybersecurity capabilities, it simultaneously introduces complex legal, ethical, and operational challenges. These findings highlight the necessity of adopting a comprehensive and risk-aware governance approach that integrates legal compliance, risk management, and accountability mechanisms. Existing scholarship similarly emphasizes that effective AI governance in cybersecurity requires a balance between technological innovation, regulatory oversight, and ethical responsibility (Gzoghyan, 2025).

The findings indicate that AI-driven cybersecurity systems offer substantial improvements in threat detection, response speed, and predictive capabilities. However, these benefits are accompanied by increased exposure to risks such as adversarial manipulation, legal uncertainty, and ethical concerns. This dual nature of AI reflects a broader trend identified in existing literature, where technological advancement often outpaces regulatory development (Veale & Borgesius, 2021). Moreover, contemporary studies suggest that although AI technologies improve organizational resilience, they also increase governance complexity and compliance obligations (Rajasekaran, 2023).

Furthermore, the analysis reveals that existing legal frameworks, while providing a foundational structure, are not fully equipped to address the dynamic and autonomous characteristics of AI systems. This creates gaps in accountability and compliance, particularly in cases involving automated decision-making. As a result, organizations must move beyond basic regulatory compliance and adopt proactive governance strategies capable of anticipating and mitigating emerging risks.

Based on the findings, this study proposes a risk-aware governance framework that integrates legal compliance, risk management, and accountability into a unified structure. The framework emphasizes a lifecycle-based approach, where governance mechanisms are embedded at each stage of AI system development and deployment—from design and training to operation and monitoring.

The proposed framework consists of several key components:

- Risk identification and assessment mechanisms
- Legal compliance and regulatory alignment
- Accountability and transparency measures
- Continuous monitoring and feedback loops

By combining these elements, the framework provides a structured approach for managing the complexities of AI-driven cybersecurity systems. It not only addresses current challenges but also allows for adaptability as new risks and regulations emerge.

The findings of this study also have important implications for both practitioners and policymakers. For organizations, adopting a risk-aware governance framework can enhance operational resilience, reduce legal exposure, and improve trust in AI systems. Implementing structured compliance and accountability mechanisms helps ensure that AI technologies are deployed responsibly and effectively within cybersecurity environments. Recent governance-focused research similarly emphasizes that integrating accountability, transparency, and security mechanisms into AI systems is essential for trustworthy AI deployment (Kumar et al., 2023).

For policymakers, the results highlight the need for more adaptive and forward-looking regulatory frameworks capable of keeping pace with technological innovation. This includes developing AI-specific regulations, harmonizing international standards, and promoting transparency and ethical practices in AI deployment. Additionally, collaboration among governments, industry, and academia is essential for establishing consistent governance standards and sharing best practices. Such cooperation can support the development of sustainable and resilient AI governance models that address both current and future cybersecurity challenges.

5 Conclusion

This study has examined the growing role of artificial intelligence in cybersecurity and the associated legal, ethical, and governance challenges. By analyzing existing regulatory frameworks, risk factors, and accountability mechanisms, the research highlights the need for a structured and risk-aware approach to governing AI-driven cybersecurity systems. The findings demonstrate that while AI enhances operational efficiency and threat detection, it also introduces complex risks that must be carefully managed through integrated governance strategies.

The study reveals that AI significantly improves cybersecurity capabilities by enabling real-time threat detection, predictive analytics, and automated response mechanisms. However, these benefits are accompanied by various risks, including adversarial attacks, regulatory uncertainties, and ethical concerns such as bias and lack of transparency. Furthermore, the analysis shows that existing legal frameworks provide a foundation for AI governance but are not fully equipped to address the dynamic and autonomous nature of AI systems. This creates gaps in compliance and accountability, highlighting the importance of adopting proactive, risk-aware governance models. Overall, the research confirms that effective AI governance requires the integration of legal compliance, risk management, and ethical considerations into a unified framework.

Based on the findings, several key recommendations can be proposed. First, organizations should implement *risk-aware governance frameworks* that integrate legal, technical, and ethical dimensions into AI system design and operation. This includes conducting regular risk assessments, ensuring compliance with relevant regulations, and establishing clear accountability structures.

Second, organizations should adopt *privacy-by-design and transparency principles* to enhance trust and ensure responsible use of AI systems. Incorporating explainable AI techniques and maintaining clear documentation can improve both regulatory compliance and stakeholder confidence.

Third, policymakers should develop *adaptive and forward-looking regulatory frameworks* that can keep pace with rapid technological advancements. Strengthening international cooperation and harmonizing legal standards can further support effective governance of AI-driven cybersecurity systems.

While this study provides a comprehensive conceptual analysis, several areas require further investigation. Future research could explore *empirical validation* of risk-aware governance frameworks through case studies or real-world implementations. This would help assess the practical effectiveness of the proposed approaches. Additionally, further studies could examine the impact of *emerging AI technologies,* such as autonomous systems and advanced deep learning models, on cybersecurity governance. The evolving nature of cyber threats and AI capabilities necessitates continuous research to identify new risks and develop appropriate regulatory responses.

Finally, interdisciplinary research combining *law, cybersecurity, and artificial intelligence* can contribute to the development of more robust and holistic governance models, ensuring that AI technologies are deployed in a secure, ethical, and legally compliant manner.

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LEGAL BARRIERS TO THE IMPLEMENTATION OF THE OPEN SCIENCE PRINCIPLE: A COMPARATIVE ANALYSIS OF EUROPEAN UNION AND UKRAINIAN LEGISLATION

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Abstract: *This article examines legal barriers to implementing the open science principle in Ukraine through a comparative analysis with European Union legislation. The study aims to identify systemic legal obstacles and substantiate directions for harmonising Ukrainian legislation with EU acquis. The paper analyses key EU directives (Directive (EU) 2019/1024 on open data and Directive (EU) 2019/790 on copyright in the Digital Single Market), Horizon Europe requirements, UNESCO's 2021 Recommendation on Open Science, and recent Ukrainian legislative initiatives. Findings indicate terminological inconsistencies, copyright regulation gaps (including the absence of text and data mining exceptions and unresolved orphan works), fragmented institutional infrastructure, and insufficient mandatory financial incentives. The study substantiates the need to adopt a comprehensive open science law, implement relevant EU directives, establish national open data infrastructure, and integrate into the European Open Science Cloud (EOSC).*

Keywords: *open science, legal barriers, harmonisation of legislation, European Union, Ukraine, copyright law, Horizon Europe.*

1. Introduction

In the context of building a democratic state governed by the rule of law and pursuing European integration, Ukraine faces the need for a profound transformation of its education, science, and research sectors. A key guiding principle of such transformation is «open science», a principle that plays a central role in leading democracies and is institutionally embedded in the policy framework of the European Union. However, the implementation of this principle in Ukraine remains challenging due to numerous legal obstacles and regulatory inconsistencies.

The relevance of this research is underscored by Ukraine's official candidacy for European Union membership, granted in June 2022, which necessitates comprehensive legal approximation in all sectors, including science and technology. At the heart of these legal obstacles lies a contradiction between the global trend towards open knowledge as a prerequisite for innovation and democratic oversight and the national fragmentation and inefficiency of Ukrainian legal and policy frameworks.

Situating this study within the thematic scope of AIJJS – particularly in the fields of Public Law, European Law, and International Law – this article draws on prior research published in this journal. Hepeș and Vidican (2025) examined patrimonial legal regulations, demonstrating the importance of systematic legal frameworks for property rights. Ojekunle et al. (2025) employed comparative methodology to analyse torture in criminal justice systems across Nigeria and Russia, validating the comparative legal method's effectiveness for transitional justice contexts. Rath Boșca and Miraglia (2025) explored the intersection of law, education, and society in childhood safety, highlighting interdisciplinary approaches to legal harmonisation. The present study extends this methodological tradition to the emerging field of open science regulation.

The COVID-19 pandemic served as a catalyst demonstrating the effectiveness of the open science model. Scientific acceleration during this period resulted primarily from openness: SARS-CoV-2 genome data were shared via the GISAID platform on 11 January 2020, enabling immediate vaccine development worldwide. The global response to the war in Ukraine has provided further evidence: international scientific publishers (Elsevier, Springer Nature, IEEE) granted Ukrainian scientific resources free access, while platforms (arXiv, RePEc) introduced dedicated support programmes (UNESCO, 2022).

The aim of this article is to identify and systematise legal barriers to implementing the open science principle in Ukraine, based on comparative analysis with European Union legislation, and to substantiate directions for harmonising Ukrainian legislation with EU acquis.

2. Research Approach

This study employs an integrated application of general scientific and specialised methods. The comparative legal method compares EU and Ukrainian legislation in the open science field. The formal legal method interprets legal provisions in EU directives and Ukrainian legal acts. Systems analysis examines legal barriers as interrelated elements. Forecasting methods substantiate proposals for improving Ukrainian legislation considering EU experience.

3. The EU Regulatory Framework for Open Science

The European Union has developed a coherent regulatory framework for open science, wherein policy, law, funding, and infrastructure operate in a coordinated manner. This system may be conceptualised as a threefold structure: financial incentives as the primary driver, infrastructure support as the usability and standardisation foundation, and legal harmonisation as a mechanism aligning Member State legislation.

3.1. Financial Incentives: Horizon Europe Model Grant Agreement

A key legal instrument underpinning the financial dimension is the Horizon Europe Model Grant Agreement (European Commission, 2021). This legally binding document for all grant beneficiaries sets out detailed open science obligations.

First, it establishes mandatory open access to publications: all peer-reviewed articles must be openly accessible immediately upon publication (via gold or green route, without embargo) and licensed under the Creative Commons Attribution (CC BY) licence or equivalent (OECD, 2025; European Commission, 2021). More restrictive licences, including those prohibiting commercial use, may be applied to monographs.

Second, it requires mandatory research data management (RDM), including Data Management Plan (DMP) preparation and regular updating, data deposition in trusted repositories following FAIR principles (Findable, Accessible, Interoperable, Reusable), and access provision aligned with the principle «as open as possible, as closed as necessary» (OECD, 2025; European Commission, 2021).

Third, Article 16 of the Model Grant Agreement addresses the exploitation of results, requiring beneficiaries to make results publicly available and to take measures for their commercial or non-commercial exploitation unless this is impossible or unjustified (European Commission, 2021).

3.2. Infrastructure Support: European Open Science Cloud (EOSC)

Infrastructure support for open science was initiated in the 2016 European Commission Communication and formally endorsed by Council conclusions (No. 7655/18) in 2018. These policy developments launched the European Open Science Cloud (EOSC).

The EOSC constitutes a core element of European open science infrastructure, designed as a unified access point to European research data, publications, and services. It operates as a structured ecosystem with defined governance, funding mechanisms, and service provision (Parland-von Essen & Vihervalli, 2025).

In November 2025, the EOSC Federation was officially launched as an integrated network of operational nodes providing data, tools, and services to European researchers (Parland-von Essen & Vihervalli, 2025). Thirteen nodes were developed from March 2025, with an additional node provided by the European Commission. The EOSC establishes metadata standards, protocols, and service provision rules, ensuring national repository interoperability.

The FAIR principles – Findability, Accessibility, Interoperability, and Reusability – serve as the foundational standards for data management within EOSC (Wilkinson et al., 2016). These principles have been adopted by the European Commission as mandatory requirements for Horizon Europe grant beneficiaries and represent global best practice for research data stewardship.

3.3. Legal Harmonisation: Key EU Directives

Legal harmonisation across Member States is achieved through implementing key EU directives. Directive (EU) 2019/1024 on open data and public sector information reuse requires Member States to ensure publicly funded research data are available for reuse under open licences. Article 10 provides that such data must be reusable, subject to intellectual property rights and data protection requirements (European Parliament & Council of the European Union, 2019a).

Directive (EU) 2019/790 on copyright in the Digital Single Market introduces, in Article 4, a mandatory exception allowing research organisations and cultural heritage institutions to conduct text and data mining (TDM) of copyright-protected works for scientific purposes (European Parliament & Council of the European Union, 2019b). This significantly reduces legal barriers to large-scale data analysis. The Directive also regulates the status of orphan works and out-of-commerce works in Articles 8-11, enabling their use by libraries, archives, and educational institutions.

Thus, the EU has established an integrated regulatory «pipeline»: funding research projects through the Model Grant Agreement simultaneously provides researchers access to infrastructure (EOSC-compatible repositories) operating under single-market-harmonised rules.

4. Ukrainian Implementation of the Open Science Principle

Open science implementation in Ukraine requires significant acceleration of existing commitments. Unlike the European Union's systematic approach, Ukrainian practice is characterised by the absence of a unified strategy and comprehensive legal framework. There is no National Open Science Strategy or dedicated law defining objectives, institutional responsibilities, funding mechanisms, infrastructure, or performance indicators. Key national institutions – including the Ministry of Education and Science of Ukraine, the National Academy of Sciences of Ukraine, and the National Research Foundation of Ukraine – remain insufficiently coordinated, resulting in a fragmented regulatory landscape.

4.1. Regulatory Fragmentation

Order No. 325 of the Ministry of Education and Science of Ukraine (1 April 2022) is often cited as progressive; however, it illustrates the lack of systematic open science implementation. The document regulates only the «List of Recognised Academic Journals of Ukraine». It does not require authors to deposit publications in open repositories, does not address research data sharing, does not establish open licensing requirements (e.g., Creative Commons licences), and does not align intellectual property regulation with European directives.

The draft Law of Ukraine «On Amendments to Certain Laws of Ukraine on the Implementation of Open Science Principles» was published by the Ministry of Education and Science of Ukraine on 7 March 2025. As noted by Kapitsa (2025), this draft law contains significant inconsistencies with EU practice in the open science field, including an unclear definition of «open access» that does not align with the Budapest Open Access Initiative (BOAI) definition used by the European Commission, and the absence of provisions for Creative Commons licences as the default for publicly funded research outputs.

4.2. Absence of Mandatory Financial Mechanisms

Although the National Research Foundation of Ukraine has articulated progressive policy positions, its standard grant agreements contain no clear, legally binding requirements for open access to research data and publications comparable to the Horizon Europe Model Grant Agreement. These requirements are often merely recommendatory, limiting financial incentives' effectiveness as open science implementation tools.

A comparative study by Luchenko et al. (2024) analysing the legislation of France, Germany, and Poland found that effective open science implementation requires legally binding financial mechanisms. The study specifically recommended amending the Law of Ukraine «On Scientific and Technical Activities» to include mandatory open access requirements for publicly funded research.

4.3. Infrastructure Fragmentation

Ukraine has several repositories, including those of the Vernadsky National Library of Ukraine and individual universities. However, no unified national deposit policy exists, highlighting national research infrastructure fragmentation and common standards absence. The Registry of Open Access Repositories (ROAR) reflects diversity, but not systemic coherence.

Dahle and Berezko (2024) in their recommendations for Ukrainian open science reform emphasised the need to develop a national open data infrastructure interoperable with EOSC, accompanied by a mandatory deposition policy for publicly funded research outputs. They specifically recommended adopting FAIR principles as legally binding standards.

4.4. Misalignment with Key EU Directives

Currently, a key reason for insufficient open science implementation is Ukrainian legislation's misalignment with core EU directives. While Directive (EU) 2019/1024, Article 10, requires publicly funded research data be made available for reuse under open licences (e.g., Creative Commons), Ukrainian legislation provides no specific provisions for automatic open licensing.

The Law of Ukraine «On Copyright and Related Rights» (2022) does not provide for a text and data mining (TDM) exception corresponding to Article 4 of Directive (EU) 2019/790. Orlyuk (2021) emphasised that this gap creates legal uncertainty for Ukrainian researchers conducting data-driven research and may violate international obligations under the EU-Ukraine Association Agreement.

4.5. The «Orphan Works» Issue

The issue of «orphan works» – copyrighted works whose rights holders cannot be identified or located – is partially addressed by Resolution No. 1312 of the Cabinet of Ministers of Ukraine (15 December 2023). However, as Kapitsa and Shahbazyan (2023) noted, the mechanisms for identifying, registering, and using orphan works remain underdeveloped. Unlike the EU Orphan Works Directive (2012/28/EU), Ukrainian legislation does not establish a central register of orphan works or provide for cross-border recognition of orphan work status.

5. Comparative Analysis of Legal Barriers

Analysis enables identification of key legal barriers to implementing the open science principle in Ukraine.

5.1. Terminological Barriers

Ukrainian legislation lacks unified definitions standard in EU law, such as «open access to scientific and technical information», «research data», «metadata», and «open access to research infrastructure» (Law of Ukraine on Scientific and Technical Activities, 2015). The draft law of 2025 attempts to address some of these gaps but, according to Kapitsa (2025), contains definitions inconsistent with international standards.

5.2. Copyright-Related Barriers

Unlike EU law, Ukrainian legislation provides no exception for text and data mining (TDM), creating significant obstacles to data-driven research (Law of Ukraine on Copyright and Related Rights, 2022). The «orphan works» issue is partially addressed by Resolution No. 1312, but comprehensive mechanisms require further improvement. Moreover, no effective legal mechanism exists for implementing FAIR principles in national legislation.

Orlyuk (2021) documented that the European Union provides significant technical and financial assistance for legal approximation in the field of open science through the EU4Digital and Horizon Europe Ukraine programmes. The EU-Ukraine Association Agenda, which came into force in 2023, prioritises the harmonisation of legislation on open access to scientific information.

5.3. Institutional Barriers

These are reflected in the absence of a unified national research output deposition policy, insufficient coordination among the Ministry of Education and Science, the National Academy of Sciences, the National Research Foundation, and line ministries, and mandatory open access requirements absence in state funding agreements.

Luchenko et al. (2024) proposed a three-level governance model: 1) coordination level (the Cabinet of Ministers and the Ministry of Education and Science) defining strategy; 2) implementation level (the National Research Foundation and the National Repository) providing funding and infrastructure; and 3) monitoring level (a designated independent body) ensuring compliance.

5.4. Research Infrastructure Access Barriers

Legal research infrastructure definition remains fragmented, while key concepts such as «open access to research infrastructure» and «research infrastructure registry» are absent, complicating integration into European research infrastructures. Dahle and Berezko (2024) recommended that Ukraine join EOSC as a full member by 2026.

6. Risks of Maintaining the Closed Model

Existing legislative gaps and regulatory barriers create conditions for persistent closed scientific communication models. In the Ukrainian context, this poses specific risks.

First, publicly funded research project reports are typically treated as closed administrative documents. Consequently, society cannot assess public spending effectiveness, creating conditions conducive to «paper science» and personal-connection-based fund allocation, as documented by Luchenko et al. (2024).

Second, plagiarism in Ukrainian dissertations is typically exposed by independent initiatives (e.g., the «Dissergate» project) rather than institutional mechanisms. In an open science model, dissertation deposits in digital repositories could be systematically screened using automated plagiarism detection tools.

Third, openness and digitisation absence within institutions increases research output vulnerability and knowledge loss risk. A notable example is the 2023 Kalmius incident, during which unique Donetsk National University herbarium and zoological collections (relocated to Vinnytsia) were destroyed amid hostilities. With mandatory digitisation and open repository deposition policies, such knowledge could have been preserved despite physical specimen destruction. UNESCO (2022) emphasised that Ukraine's rich historical collections are at risk of irretrievable loss.

Fourth, the lack of open science mechanisms reduces the visibility and impact of Ukrainian research internationally. As Dahle and Berezko (2024) noted, Ukrainian research remains underrepresented in international databases such as Scopus and Web of Science, partly due to the absence of open access publication practices.

7. Previous AIJJS Publications in Context

This study builds upon and extends prior research published in the Agora International Journal of Juridical Sciences.

Hepeș and Vidican (2025) examined patrimonial legal regulations in the Agora International Journal of Juridical Sciences, demonstrating the importance of systematic legal frameworks for property rights. Their analysis of the legal definition of «patrimony» in Romanian law provides a methodological parallel for analysing legal definitions in the open science legislative process in Ukraine. The same terminological precision they advocate for patrimonial law is required for key open science concepts such as «research data» and «open access».

Ojekunle et al. (2025) employed a comparative legal methodology to analyse torture in criminal justice systems across Nigeria and Russia, also published in this journal. Their approach validates the comparative legal method's effectiveness for transitional justice contexts. The present study applies a similar comparative methodology to examine the alignment of Ukrainian legislation with EU open science standards.

Rath Boșca and Miraglia (2025) explored the intersection of law, education, and society in childhood safety, highlighting interdisciplinary approaches to legal harmonisation. Their emphasis on the relationship between legal norms and social practices is equally relevant to open science, where effective legal regulation must be accompanied by cultural change in research practices.

Thus, this study contributes to AIJJS's thematic focus on Public Law, European Law, and International Law by applying rigorous comparative methodology to the emerging field of open science regulation – a field directly relevant to Ukraine's European integration commitments.

8. Discussion

The findings demonstrate a fundamental divergence between EU and Ukrainian approaches to regulating open science. The EU has established a coherent, legally binding system integrating financial incentives, infrastructure support, and legal harmonisation. Ukraine, by contrast, continues to rely on fragmented, largely recommendatory instruments that fail to create enforceable obligations.

The absence of a comprehensive open science law in Ukraine represents the most significant systemic barrier. Without a legislative framework defining clear objectives, institutional responsibilities, and enforcement mechanisms, open science principle implementation remains dependent on voluntary initiatives and isolated administrative acts. This finding is consistent with Luchenko et al. (2024), who emphasised systematic legislative reform necessity in this area.

Ukrainian copyright law misalignment with EU directives, particularly regarding TDM exception absence, constitutes a second major barrier. As Kapitsa and Shahbazyan (2023) and Orlyuk (2021) noted, this gap not only hinders data-driven research but also creates legal uncertainty for Ukrainian researchers in EU-funded international collaborative projects. Partial orphan works regulation through Resolution No. 1312 represents progress, but comprehensive identification, registration, and use mechanism absence limits practical effectiveness.

Institutional infrastructure fragmentation and mandatory financial mechanism absence further exacerbate these legal barriers. EU experience demonstrates that financial incentives embedded in legally binding grant agreements are highly effective in driving researcher behavioural change (OECD, 2025). The Horizon Europe Model Grant Agreement provides a concrete template adaptable for use by Ukraine's National Research Foundation and other funding bodies.

Risks associated with maintaining a closed model, as illustrated by the Kalmius incident and ongoing plagiarism detection challenges, underscore reform urgency. Open science's democratic potential – including enhanced transparency, accountability, and public participation – has been demonstrated globally through concrete instruments and practices. For Ukraine, the choice lies between a knowledge-driven transparency, accountability, and development model versus a closed resource model fostering opacity, inefficiency, and technological dependence.

8.1. Study Strengths and Limitations

A key strength lies in comprehensive comparative legal analysis of current EU and Ukrainian legislation, drawing on authoritative international sources and incorporating recent developments. The study provides systematic legal barrier identification and categorisation, offering concrete legislative reform recommendations.

However, several limitations exist. First, analysis is primarily confined to the legislative level, without detailed judicial practice examination or empirical open science policy implementation data from Ukrainian research institutions. Second, the study does not explore sector-specific open science implementation features across disciplines. Third, open licence practical application and open access requirement enforcement in the Ukrainian context remain underexplored. These limitations point to important future research directions.

8.2. Practical Implications

Findings have direct practical implications for Ukrainian legislative reform. Specifically, analysis substantiates:

1. Adopting a comprehensive Law of Ukraine «On Open Science» defining objectives, institutional responsibilities, funding mechanisms, infrastructure requirements, and performance indicators.

2. Introducing a text and data mining (TDM) exception aligned with Directive (EU) 2019/790.
3. Amending the Law of Ukraine «On Copyright and Related Rights» to provide for automatic open licensing of publicly funded research outputs.
4. Introducing mandatory open access requirements in National Research Foundation of Ukraine funding agreements, modelled on the Horizon Europe Model Grant Agreement.
5. Developing national open data infrastructure interoperable with the European Open Science Cloud (EOSC), accompanied by mandatory publicly funded research output deposition policies.
6. Amending the Law of Ukraine «On Scientific and Technical Activities» to adopt FAIR principles as legally binding standards (as recommended by Luchenko et al., 2024).

9. Conclusion

Based on comprehensive comparative legal analysis of current European Union and Ukrainian legislation, drawing on authoritative international sources and considering recent developments, this study identifies key legal barriers to open science principle implementation.

The European Union has developed a coherent, systemic open science governance model based on three core elements: financial incentives (binding Horizon Europe Model Grant Agreement requirements), infrastructure support (European Open Science Cloud), and legal harmonisation (Directives (EU) 2019/1024 and 2019/790). This model ensures coordinated policy, law, funding, and infrastructure functioning, transforming open science from declarative concept into operational reality.

In contrast, Ukraine exhibits legal regulation fragmentation and inconsistency. The absence of a comprehensive open science law, copyright legislation misalignment with EU directives (particularly regarding TDM exceptions and automatic open licensing of publicly funded research), binding financial mechanism absence in funding agreements, and infrastructure fragmentation with limited EOSC integration constitute systemic legal barriers.

This study's practical implications lie in its potential to inform Ukrainian legislative improvement. Further research should focus on open licence practical application in Ukrainian research institutions, intellectual property protection judicial practice analysis in open science contexts, open science principle implementation's sector-specific features examination, and concrete mechanism development for integrating Ukrainian research infrastructure into the European Open Science Cloud.

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LEGAL EXEGESIS OF CLIMATE CHANGE AS A THREAT TO THE ENJOYMENT OF RIGHT TO LIFE IN NIGERIA

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Abstract: *Climate Change (CC) is a change in the regular weather condition attributable directly/indirectly to human activities or natural variability that alters the composition of the global atmosphere over a comparable period of time, has a direct consequence on the environment and nature of life enjoyed therefrom. CC poses a momentous threat to the enjoyment of the right to life in Nigeria, aggravating existing environmental, social, and economic vulnerabilities precipitating increased temperatures, flooding, disrupt human health and security. This paper adopts doctrinal method in examining the laws on environmental protection, climate change control and the impact of climate change on right to life in Nigeria. The paper found that climate change causes and exacerbates mortality rates due to climate-related disasters, disproportionate impacts on vulnerable population, climate-related displacement, and heat-related illnesses on human well-being which negatively affect right to life. It emphasises the need for climate-resilient infrastructure, early warning systems, and community-led adaptation initiatives as safety measure against climate change reactions. The paper recommends urgent policy actions set-up/review to mitigate climate change effects, protect human rights through the instrumentality of the Fundamental Rights (Enforcement Procedure) Rules, 2009 in seeking environmental justice for victims of environmental degradation occasioned by climate change aimed at ensuring sustainable development in Nigeria.*

Keywords: *Climate Change, Human rights, Right to life, Environmental degradation, Environmental justice*

1. INTRODUCTION

Climate Change is a change in the average weather condition which is attributed directly or indirectly to human activities or natural variability that alters the composition of the global atmosphere and natural variability over a comparable period of time, has a direct consequence on the environment and nature of life enjoyed therefrom (Constitution of the Federal Republic of Nigeria, 1999). The quality of life of a people on the other hand, is often impacted by the nature of their atmosphere and as such, there has been a great clamour by environmental protection activists that it should be incorporated to the rights to life and property (Babalola, 2019). Climate change constitutes a major threat in today's world, not just to the environment, but also to social conditions and human lives (Addaney, Boshoff, and Olutola, 2017). It is thus, beyond being an environmental problem, it extends to the challenge of protection of human rights especially the right to life.

It is no longer in doubt that the effects of climate change include change in weather patterns (droughts and rainy spells), rising sea levels, destruction of the flora and fauna, occurrences of vector borne diseases, etc., which also results in migration, displacement, water shortage, food insecurity and risk of illnesses and negative impacts on lives and properties of people (Humphreys, 2011). Essentially, the interdependency of man with or within his/her environment is fundamental to continuous existence. It is the reckless and eco-systemic threatening activities of man that necessitated the need to enact laws to mitigate the extent of the ongoing environmental degradation which in turn, lead ultimately to atmospheric changes that are detrimental to human well-being (Adelagan, 2004). Environment degrading human activities such as oil spillage, deforestation, associated soil erosion, ozone layer depletion, desertification, acid deposition, global warming and oil pollution amongst others, have not only threatened the ecosystem but equally poses serious concerns to the enjoyment of the right to life which is contingent on clean and safe environment as was held in *Juliana v United States* (*Climate Kids Case)* (2016).

Thus, the perceived and actual dangers posed by climate change to the general well-being of human health, informed certain legal actions across the world which has, overtime, given broader interpretation to the right to life vis-à-vis how the condition of the environment impacts on it. For instance, in the case of *Juliana v United States* (*Climate Kids Case)* (2016) where the Plaintiffs sued the United States Government and various agencies over their policies on fossil fuels. The plaintiffs claimed the United States policies on fossil fuels enabled catastrophic climate change and therefore infringed upon their constitutional rights to life, liberty and property as guaranteed under the Fifth Amendment to the United States Constitution. Though the action was dismissed, it has largely affected the trajectory of climate change related litigations till date. Hence, a different outcome was achieved in *Navahine v Hawaii Department of Transportation* (2024) where yet another group of young people alleged that, the US State of Hawaii had violated their constitutional right to a clean and healthful environment by implementing transportation policies and infrastructure which use fossil fuels and cause pollution emissions. In a historic settlement of the climate dispute, the Hawaiian department of transport agreed to decarbonise its transport sector with a goal of reaching zero emissions by 2045. Also, in Neubauer, et al v. Germany (2021) a group of German youths challenged Germany's Federal Climate Protection Act, 2019 in the Federal Constitutional Court, where they claimed that the emission reduction targets contained in the law were insufficient. Their claims mainly arose out of alleged violations of the fundamental right to a future consistent with human dignity provided for in Article 1(1) and the right to life in Article 2(2) of the Basic Law, in conjunction with Article 20(a) of the Basic Law, which mandates political process to protect the natural foundations of life in responsibility for future generations. They argued partly that by requiring insufficient short- and medium-term Greenhouse Gas reductions and allowing for the transfer of emission allocations between Germany and other European Union (EU) Members States, despite the inadequacy of the overall EU emissions reduction target, the Federal Climate Protection Act allowed for climate impacts that violate their fundamental rights. The Court ruled in favour of the plaintiffs, held that the Federal Climate Protection Act was partly unconstitutional because it was insufficient to protect future generations. Finally, in *Held v. State of Montana* (2023) where the Plaintiffs sued the State of Montana for not protecting their right to clean environment, the Court held that State of Montana must take climate change into account when approving fossil fuel projects and that young people have a constitutional right to a healthful environment.

Furthermore, the court in Pakistan were more emphatic when it declared that the delay and lethargy of the state in implementing the 2012 National Climate Policy and framework offends the fundamental rights of the citizen in *Ashgar Leghari v Federation of Pakistan* (2015) And even more recently on the African soil, in *Tsama William & ors v. Uganda's Attorney General & Ors* (2021) victims of recurring landslides in Bududa District of Uganda instituted a suit against the government, National Environment Management Authority and the Bududa Local Government Council for its negligence in protecting the citizens from the effects of climate change, particularly, landslides, and for infringing on their rights to life, clean and healthy environment, to property and to physical and mental health, at the Ugandan High Court.

It is in the light of the above that this paper x-rays the impact of climate change in the enjoyment of the right to a clean environment which though, banished to the realm of third generation rights is gradually finding expression in the foremost right to life through purposive judicial interpretation.

2. DEFINITION OF TERM

This section of the paper, for the purpose of clarity in presentation and precision in understanding, defines certain words used in this article. The words includes environment, climate change, and environmental degradation. The term, environment has been defined as the complex of physical, chemical and biotic factors that act upon an organism or an ecological community and ultimately determines its form and survival (Kesiena, 2019). It can be said to be the surroundings in which a person, animal, or plant lives or operates (Hornby, 2015). The National Environmental Standard Regulation Agency (NESREA) Act (2007) defines environment to include, water, air, land, all plants and human being or animals living therein and the inter-relationships which exist amongst any of them.

A clear connection exists between the environment and human rights as a polluted or unhealthy environment restricts people's ability to fully enjoy their human rights, particularly, right to life (Yerima and Ekpa, 2016). Thus, human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean and healthy environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights as was held in *Ransome Kuti v A.G Federation* (1985). Environmental Degradation on the other hand, is the sudden alteration or disturbance to the environment calculated to be harmful or undesirable (Adejonwo-Osho, 2015). This phenomenon is argued to be caused by the increasing human population continually increasing per capita influence and the application of resources depleting and polluting technology. Furthermore, the United Nations international strategy for Disaster Reduction defines Environmental Degradation as "the reduction of the capacity of the environment to meet social and ecological objectives and needs." Thus, when there is an introduction of harmful substances or the carrying out of activities that prove to be toxic to the sustainability of the environment to the extent that it begins to lose its viability, it can be said that the environment is gradually degrading.

Climate Change**,** according to the United Nations Framework Convention on Climate Change (UNFCCC), refers to 'a change of climate which is attributed directly or directly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time period.' It is an observable variation in environmental indices such as temperature, weather conditions, rainfall, etc., of a place, as a result of human activities particularly, use of environmental resources (Tyokumbur, 2010). Climate change has been scientifically proven to be caused by human exploitation of the environment, particularly, in its wood burning, farming, fossil fuel combustion, etc., activities and now pose grave danger to man in unprecedented ways (Olajide, Quadri, and Ojakorotu, 2018). The activities of man has led to increased emission of Greenhouse gases in to the environment, which in turn has hurt nature rather than aiding it to give abundant life. Thus, the concept of climate change cannot effectively be discussed without a consideration of the impact of the variability on human life and the ecosystem as a whole (Oamen, and EO Erhagbe, 2021).

3. EXPLICATING INTERNATIONAL LEGAL INSTRUMENTS ON CLIMATE CHANGE, ENVIRONMENTAL DEGRADATION AND PROTECTION OF RIGHT TO LIFE

The Universal Declaration of Human Rights (UDHR) is an international legal instrument with copious provision on how to combat climate change, environmental degradation and protection of the right to life. Thus, article 3 of the UDHR provides that 'everyone has the right to life, liberty and security of person.' This right is universal, in that it applies to all individuals not minding nationality, ethnicity or status. It is connected to other rights like liberty and security as well as the right to clean and healthy environment (Ekpa, 2017). The implication is that, on a universal scale, every person is protected from arbitrary killing, violence or harm; they are free from torture, cruel and inhumane treatment, and they have the right to survival and existence (International Covenant on Civil and Political Rights, 1966).

Also, the Stockholm Declaration, 1972 is another international legal instrument with ample provisions on the issues of climate change, environmental degradation and protection of the right to life. This is the first United Nations Declaration directly touching on environmental protection which has birthed several other conventions/treaties on environmental protection, climate change and sundry matters. In its Principle 21, the Stockholm Declaration provides that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

This Declaration, though guarantees state party rights to exploit the natural resources within their territorial jurisdiction, it mandates them to prevent transboundary environmental harm and ensure the protection of global environment. See for example, the case of *Argentina v. Uruguay* (2010), popularly referred to as the Uruguay River Dispute, where Uruguay, in its paper mill construction and operation, was accused by Argentina of polluting its waters. The International Court of Justice (ICJ), found in favour of Argentina and held that Uruguay was responsible to prevent harm to Argentina's environment.

Furthermore, the United Nations Framework Convention on Climate Change (UNFCCC) also deals with these issues. This Convention was adopted in 1992 by the UN General Assembly but came into force in 1994, is intended to establish a means through which developing and developed countries could cooperate to meet the convention's objectives, particularly, to prevent the impact of climate change. Some of the foremost provisions of the convention are: Article 3(1) which provides that parties should act in a way to protect the climate and combat its adverse effects based on common but differentiated responsibilities. In like manner, Article 4 provides that all parties must make a greater commitment to addressing climate change whilst subsection (1) encourages state parties to promote and cooperate in the development, application, diffusion including transfer of technologies, practices, processes that control, reduce or prevent anthropogenic emissions of greenhouse gases. Article 5 equally provides that state parties take Responsibilities to promote, facilitate and finance necessary measures for the enhancement of indigenous capacities and technologies of developing state-parties.

Other legal instruments enacted by the UN for the protection of the environment and climate are, the Geneva Convention on Long Range Transboundary Air Pollution, 1979 which objective is towards addressing issues relating to air pollution and how measures can be advanced to prevent the environment and the climate from deteriorating which is averse to human health; the Convention for the Protection of the Ozone Layer-Vienna Convention, 1985 for the reduction in the production and the use of Chlorofluorocarbons which depletes the ozone layer reducing the quality of human life by causing diseases such as cancer etc.; the

International Convention on Civil Liability for Bunker Oil Population Damage, 2001, oil carrying fuel ships that cause pollution would be liable to pay adequate and effective compensation to the affected person or party; the Stockholm Convention on Persistent Organic Pollutants, 2001, the focus of which is the protection of the health of humanity and his environment from organic pollutants. These organic pollutants are capable of causing cancer, damaging of the peripheral nervous system and even the reproductive system etc., thus the need for protection; the Convention for the Prevention of Marine Pollution from Land Based Sources 1974, which is tailored towards the protection of the water bodies as well as wildlife, reducing the disposal of oil, mercury, organ chlorides in the marine environment and etcetera; the Basel Convention Amendment, 1995, enacted for reduction of the disposal and emissions of 'hazardous waste' which harms the health of the public at large and on the environment. Articles 8 and 9 of the Convention mandates that every country must treat the waste before, to ensure that the disposal is very safe; the United Nations Environment Programme, which focuses majorly on the health of the environment with numerous projects such as: Clean the World Initiative with major goal to recycle, reuse and reduce the existing resources with a mandate to clean and conserve the environment, Earth Hour Initiative aimed at reducing the use of energy and carbon components, and The Billion Tree Campaign Initiative initiated by Nobel Laureate Wangaru Maathai with a motive to plant a billion tree by the year of 2007 to support biodiversity; the United Nations Commission on Sustainable Development, established in 1992 to assist and follow up on the United Nations Conference on Environment and Development (UNCED) with the main responsibility to ensure implementation of Agenda 21 and Rio Declaration on Environment and Development. Its Agenda 21 has the objective of seeking to prevent the environment from damaging, preventing natives worldwide from poverty and harmful diseases and mainly to achieve global sustainable development; and the Rio declaration tailored to championing the active participation of the Natives to achieve sustainable development by conserving non-renewable or natural resources from going into complete extinction.

4. EXPLICATING DOMESTIC LEGAL INSTRUMENTS ON CLIMATE CHANGE, ENVIRONMENTAL DEGRADATION AND PROTECTION OF RIGHT TO LIFE

The Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) is the supreme law in Nigeria. By Section 20 CFRN, 1999 (as amended), the government shall ensure safeguarding the country's natural resources, including air, water, land, forests and wildlife and further ensure that the environment is preserved and protected for the use of today and the benefit of future generations. It enacts the prominence of environmental conservation and sustainability and insists that government must make laws, policies and take actions towards protecting the country's natural resources.

On the other hand, section 33 of the Constitution provides that every person has a right to life, and no one shall be intentionally deprived of their life, except in execution of a sentence by a court for a criminal offence. This section places the enormous responsibility on the government to protect the right to life of its citizens, vide its laws, policies and actions.

The African Charter on Human and Peoples' Right is a Regional Legal Framework on the protection of the human rights of the people of Africa which has been domesticated in Nigeria pursuant to section 12 of the CFRN, 1999. Article 4 of the Charter states that every person is entitled to respect for his life and safety, and no one may be arbitrarily deprived of the right to life. Effectively, the Charter is protecting people from harm, violence or any form of exploitation. It drums human dignity and mandates the state to ensure human dignity. In its environmental protection, Article 24 provides that, 'all peoples shall have the right to a general satisfactory environment favourable to their development.' By this provision, the right to a healthy environment, the duty on government to preserve the environment and the connection between environment and development is guaranteed in Nigeria.

In interpretative functions, the African Commission on Human and Peoples' Right (ACHPR) has held severally that, environmental degradation amounts to violation of human rights, states must adopt policies and actions that prevents environmental degradation and provide access to information, enabling public participation in environmental decision-making, in *Social and Economic Rights Action Center (SERAC) v. Nigeria* (2021), *Centre for Minority Rights Development (CEMIRIDE) v. Kenya* (2009) and *Socio-Economic Rights and Accountability Project (SERAP)* (2010).

Also, the Climate Change Act, 2021 is a noteworthy piece of legislation aimed at addressing climate change in Nigeria. Signed into law in November 2021, the law is a demonstration of Nigeria's commitment to achieve net-zero emissions by 2060 at the COP 26 conference held in Glasgow, Scotland (Pila, and Ezebuike, 2021). By section 1, the Act has, as part of its objectives, achieving net-zero emissions and mainstreaming climate action into national programs, setting a target for year 2050-2070, for the attainment of a net-zero GHG emission in Nigeria. Section 2 of the Act provides that the Act shall apply to the Ministries, Departments and Agencies of Federal Government of Nigeria, and to public and private entities within the territorial boundaries of Nigeria for the development and implementation of mechanisms geared towards fostering low carbon emission, environmentally sustainable and climate resilient society.

The Climate Change Act establishes the National Council on Climate Change (the Council), empowered to make policies on all matters connected to climate change in Nigeria, and more particularly, pertaining to coordinating the implementation of sectoral targets and guidelines for the regulation of the GHG emissions and other anthropogenic causes of climate change; implementing Nigeria's Climate Change Action Plan; mobilising financial resources to support climate change actions and administering a climate change fund; and developing a mechanism for carbon tax in Nigeria, including developing and implementing a mechanism for carbon emission trading (Climate Change Act, 2021).

The Act mandates all private entities with employees numbering 50 and above to put in place procedures to achieving the annual carbon emission reduction targets in line with the Action Plan. They are also required to designate a climate change officer or an environmental sustainability officer, who shall submit to the Secretariat, through the State Director, annual reports on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan. This increases the overall compliance obligations of mid-to-large private sector firms in Nigeria and care should be taken not to violate it. A private entity that fails to meet its reduction targets shall be liable to a fine to be determined by the Council. The Council in determining such fine, may rely on a system of Environmental Economic Accounting with attention on the health impacts, impact on climate variation, and total damage to ecosystem services. The Council may also require a private entity that fails to comply with its climate change obligations, to prepare a report within a specified time, on its past and current actions, and future actions to be taken to secure performance with its climate change obligations.

5. HUMAN RIGHT APPROACH TO CLIMATE CHANGE

It is important to reiterate that climate change has a direct connection with the right to life guaranteed every citizen of Nigeria. As indicated earlier, section 33 of the Constitution of the Federal Republic of Nigeria provides that every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a criminal offence for which he has been found guilty. Similarly, Article 3 of the UDHR provides that 'everyone has the right to life, liberty and security of person.' In espousing on how the right to life should be interpreted, the UN Human Rights Committee vide its General Comment No. 6, expressly posited that right to life should not be interpreted in a narrow or restrictive manner, insisting that the protection of the right demands the state to take positive measures (UN Human Rights Committee, General Comment No. 6 – the Right to Life (1982)). Implying that, where a government fails to take measures to prevent anything that is detrimental to the life of her citizens, including climate change, and a person(s) suffers harm as result of the failure, that person(s) has the right to seek redress in Court for the violation of his/their right to life (Doussa, Corkery, and Chartres, 2007).

However, the court in Nigeria is seldom invited to expansively and purposefully interpret section 33 to include harmful and unsafe environmental practices that tend to reduce the quality of life. Simply put, the right to clean and safe environment is hardly contemplated to be within the precincts of section 33 of the Constitution of the Federal Republic of Nigeria or any other human rights instruments which gives expression to right to life for which an individual can institute an action in courts for its protection and enforcement as the case may be. Also, despite the enactment of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (1981), the decision of the Supreme Court of Nigeria in *Abacha v. Fawehinmi* (2000) that the Charter not only has binding force on Nigeria, it also enjoys superiority over other domestic laws except the constitution, and the decision of the Federal High Court in *Jonah Gbemre v. Shell Petroleum Development Company Nigeria Ltd* (2005) where it was held that provisions of the African Charter relating the environmental rights and others are justiciable, argument still abound that the right to a healthy environment is not justiciable in Nigeria.

In fact, Enabulele and Ewere (2012) opined, particularly with respect to *Abacha v. Fawehinmi* (2000) that the African Commission on Human and Peoples' Rights (ACHPR) cannot circumvent the Nigerian Constitution by making justiciable what is otherwise non-justiciable by enforcing the Charter against Nigeria. The argument is anchored on the fact that the Nigerian Constitution is supreme and even though the African Charter has been domesticated, it remains inferior to the Constitution. With the greatest respect, however, the learned authors did not pay attention to the fact that the Constitution itself provides that Chapter II thereof is non-justiciable except as otherwise provided by the Constitution. Placing that arguing side by side the provision of Section 4(2) of the Constitution, which empowers the National Assembly to make laws for the peace, order and good government, pursuant to which the African Charter (Ratification and Enforcement) Act was enacted, one can say with authority, that, the rights contained in the African Charter, particularly, rights to a safe and healthy environment, are justiciable.

Be that as it may, the Supreme Court of Nigeria gave the impression that an action for the protection of the right to a clean and healthy environment can be situate and enforced through the provisions of section 33 Constitution of the Federal Republic of Nigeria, Article 24 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act (1981) and section 17(4) of the Oil Pipelines Act 2004 respectively in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2018). The appellant in the instant case alleged that the respondent was recklessly negligent in both the causation and containment of oil spillage. Both the trial court and the Court of Appeal dismissed the appellant's suit for want of *locus standi* which necessitated the appeal to the Supreme Court. What is of particular interest to this paper is the contribution of the Amicus Curiae of the apex court. The Amicus in submitting that section 33 of the CFRN provides for the right to life and that any act or omission that threatens the health of the people of the community also threatens their lives and is in breach of the guarantee to right to life provided by the constitution.

The controversial issue of the Non-justiciability of section 20 being in chapter two of the constitution has been laid to rest as the law is express that, other provisions of the constitution as well as other statutes can actually bestow the garment of justiciability on the provisions of chapter two as was held in *Attorney General Lagos State v Attorney General of Federation & Ors.* (2003) and *Olafisoye v FRN* (2004). Thus, where the provision of the constitution clearly makes another provision in chapter two justiciable or an Act of the National Assembly is enacted on the subject, like section 17(4) of the Oil Pipelines Act (2004), and/or Article 24 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act (1981), it becomes justiciable.

Furthermore, the 1972 Stockholm Declaration, in its principle 1 stated thus: "Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations." It therefore makes more sense that, the International Court of Justice, in *Gabcikovo-Nagyamorous* (1997) held that the protection of the environment is likewise, a vital part of contemporary human rights doctrine, for it is sine qua non for numerous rights such as the right to health and the right to life itself...as damage to the environment can impair and undermine all the human rights of in the Universal Declaration and other human rights instrument.

6. IMPACT OF CLIMATE CHANGE ON THE RIGHT TO LIFE

Human activities that are poisonous to the environment contribute largely to the threat faced by the Ecosystem. For instance, the application of pesticides for pest control pollutes the atmosphere; thermal power stations, burning of fossil fuels, exhaust fumes emitting toxic pollutants such as sulphur dioxide, carbon monoxide amongst others causing acid rain, global warming and the malfunctioning of human haemoglobin are direct effects of human economic and domestic activities. The direct consequences of these activities are: air pollution, solid and hazardous waste, soil degradation, loss of biodiversity, and ultimately, climatic change (Briffa, Sinagra, and Blundell, 2020).

The Malé Declaration on the Human Dimension of Global Climate Change, propounded that "climate change has clear and immediate implications for the full enjoyment of human rights including *inter alia* the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health.' Thus, in 2014, the World Health Organisation (WHO), in its Quantitative risk assessment of the effects of climate change on selected causes of death, projected that between 2030 and 2050, climate change could lead to approximately 250,000 deaths per year because of malnutrition, malaria, diarrhoea and heat stress alone.

The rampant and alarming increase in the depletion of the ecosystem called climate change, directly and indirectly affects the enjoyment of the right to life and significantly poses a great threat to the quality of human life. The Intergovernmental Panel on Climate Change has projected an increase in the frequency and intensity of climate-related hazards such as storms, floods, and droughts, along with rising sea levels and ocean desertification driven by greenhouse gas emissions. These threats to human life are argued to be closely tied to the challenges of environmentally induced human mobility; specifically, environmental degradation may significantly hinder people's capacity to live in certain areas. Although various organizations have established mechanisms to support climate change adaptation, the specific actions that member countries are legally obligated to undertake in order to meet their commitments under international human rights agreements remain ambiguous (Ladan, 2009).

In 2009, the Office of the United Nations High Commissioner for Human Rights after enquiring on the multifaceted effects of climate change on the enjoyment of human rights summed up its findings in a report to the human rights council thus "the report notes that the effects of climate change including heat waves, floods and other natural phenomena, will pose direct and indirect threats to the right to life and the closely related rights to food, water, health and housing" (Babalola, 2020).

In particular, human health faces significant risks as exposure to toxic air pollutants can lead to respiratory issues such as pneumonia and asthma, contributing indirectly to the deaths of millions. Approximately 40% of water sources are unsuitable for fishing, swimming, or even drinking due to their significant health risks. Although tap water can be treated to meet stringent testing and purity standards, it is not consistently free of diarrheal pathogens. This was highlighted by the waterborne disease outbreak caused by cryptosporidium in Milwaukee in 1993, which impacted over 400,000 individuals.

A World Health Organization data revealed that over two billion people lack safe drinking water whilst over 600 million suffer from foodborne illnesses annually with children under the age of 5 bearing 30% of food borne fatalities. Climate change affects food availability, it is not surprising therefore, that, about 770 million people were said to have faced hunger in Africa and Asia. Hence, it is safe to conclude that not only does environmental degradation and climate change affect the enjoyment of the right to life, its crisis threatens to undo the progress achieved in development, global health and poverty reduction in the last five decades.

The standard of living for individuals and communities can deteriorate due to severe storms, flooding, rising sea levels, growing deserts, and heat waves resulting from climate change (Human Rights Committee of New South Wales Young Lawyers, Human Rights and Climate Change Study: A Submission to the OHCHR, 2008). Those residing in climate-affected regions face a greater risk of disease due to inadequate nutrition and limited access to clean drinking and hygienic water, which directly affects their quality of life. Additionally, climate change influences the severity of various diseases, including vector-borne, waterborne, and respiratory illnesses. The World Health Organization has reported that since the 1970s, climate change has been responsible for at least 150,000 deaths annually. It is such that, by 2085, it is expected that climate change will put 3.5 billion people at risk for dengue fever, as changing temperatures and precipitation will complicate efforts to manage the disease.

Reflecting on the effects of climate change on the right to life, the UN Human Rights Council (HRC) recognized the right to a clean, healthy, and sustainable environment in its resolution 48/13 in 2021. This resolution underscores the damage caused by climate change and environmental degradation to millions globally, especially impacting vulnerable individuals and groups. The frequency and severity of extreme weather events, such as cyclones, are increasing due to global warming, resulting in severe flooding and infrastructure damage that threaten the right to life and adequate living standards. Furthermore, gradual issues like rising sea levels may result in the loss of coastal and agricultural land, endangering the rights to food and adequate housing for entire communities. Around 400 million indigenous peoples, closely connected to their natural environments, face threats to their cultural rights and their collective rights to development and self-determination. The negative consequences of climate change are disproportionately experienced by marginalized groups who are already in vulnerable situations due to factors such as geography, gender, sexual orientation, age, indigenous or minority status, disability, or experiences of conflict, violence, or displacement. This concern is further highlighted in HRC resolution 48/14, which established a Special Rapporteur to promote and protect human rights in the context of climate change.

7. CONCLUSION AND RECOMMENDATIONS

By the provisions of the legal framework, both international and domestic highlighted earlier, aimed at enhancing quality of life by making regulations as to the activities of humans vis-à-vis their environment; it is concluded that climate change has negative impact on the enjoyment of human rights, particularly, right to life. A combination of increased temperature, increase in sea levels leading to flooding, vector-bound diseases, etc., all are geared towards hampering with the enjoyment of life. Consequent upon the foregoing attempt to situate the right to clean environment within the realm of the foremost human right to life, it is apparent that most international, regional and national bodies have realized that the protection of the environment is a *sine qua non t*o enjoyment of the right to life as the absence of the former puts the latter at great risk.

What is interesting is that, the current state of the law in Nigeria protects the rights to a safe and healthy environment. It is either the right to life in section 33 of the Constitution is interpreted broadly to include right to a safe and healthy environment or the courts should accord the distinct right to a clean environment its status.

The respective authorities must not just stop at ensuring policies and laws that are sometimes very difficult to comprehend by the people but must take concerted efforts to educate the people on the importance of adhering to the laws to protect their right to life. Hence, the issue of enforcement of the provisions of all the relevant laws aimed at protecting the environment must be addressed and enforcement institutions held accountable. It is more specifically, recommended that, environmental activists should explore more of the Fundamental Rights (Enforcement Procedure) Rules, 2009 in their environmental protection litigations, as it gives room for affidavit evidence, which is fast and easier.

There is equally need for comprehensive campaigns on environmental protection with easy-to-achieve step by step guide on how to contribute towards the fight against climate change. Community effort is paramount in achieving this.

The judiciary, both at the international, regional and national levels should be encouraged to deploy judicial activism in interpreting both international treaties and national laws in the relationship between a clean, healthy environment and the right to life. As such purposive interpretation of the extant laws and treaties will ensure that environmental pollution agents are discouraged and where necessary, adequately punished for any form of violations.

There is also the need to mitigate climate change by employing technology in providing cleaner sources of energy like solar or wind energy. Advocacy aimed at encouraging subscription to solar or wind energy should be intensified and financial and infrastructural facilities should be made accessible by the government for the utilisation of the citizens.

Also, using technology for early detection and mitigation of pending climate disaster is important. This will aid early warnings. To achieve this, the government needs to fund research and equip research partners with necessary technological facilities for detection and mitigation of climate disaster in Nigeria.

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THE LEGAL FRAMEWORK FOR THE EXCLUSION AND WITHDRAWAL OF A PARTNER FROM A COMMERCIAL COMPANY

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Abstract: *In this paper, we highlight a topic that we consider to be highly relevant and useful: that of the partner in a commercial company. We consider this topic to be relevant because commercial companies are the driving force behind a market economy. In the following sections, we will explain in a clear, precise, and accessible manner what a commercial company is, how a partner can be excluded, and how a partner can withdraw from a company. We will also analyze, with specific references to certain case studies from relevant Romanian case law, situations involving partners in commercial companies, as well as how the courts have addressed these issues.*

Keywords: *commercial company, exclusion of a partner, withdrawal of a partner, fraud, valid grounds*

I. Introductory Remarks

In its broadest sense, a commercial company is a group of persons formed on the basis of a partnership agreement that possesses legal personality, in which the partners, pursuant to their mutual agreement, contribute certain movable or immovable assets to engage in commercial activities with the aim of generating profits and distributing them (https://www.advocate.ro/definitie_juridica_Societate_comerciala_).

Another doctrinal approach, the Rubinian Legal Dictionary, defines a commercial company as a legal entity that comes into existence as a result of a contract concluded between several natural and/or legal persons who agree to contribute various activities and assets to be pooled for the purpose of generating profit (https://www.rubinian.com/dictionar_detalii.php?id=2467).

Another specialized work states that all those who operate a business, as regulated by Article 3, paragraph (2) of the Civil Code—that is, professionals in the broad sense—include merchants, entrepreneurs, economic operators, and persons authorized to carry out economic or professional activities (Savu, 2024).

The Civil Code contains a series of legal provisions, including Article 3, paragraph (3), which states that the operation of an enterprise constitutes the systematic exercise, by one or more persons, of an organized activity, namely the production, management, or disposal of goods or the provision of services, whether for profit or not.

In legal doctrine, an enterprise is regarded as an activity systematically organized by an entrepreneur who utilizes resources such as capital and his own labor or that of others (his employees and/or collaborators), while also assuming the risks of incurring losses (Tuleașcă, 2016:41).

If we also consider the provisions of Article 1881, paragraph (1) of the Civil Code, we observe that a commercial company is that entity, a legal person, through which, based on a validly concluded contract—namely, the articles of incorporation—two or more persons mutually assume the obligation to cooperate in carrying out an activity and to contribute to it through various contributions of a financial nature, property, specialized knowledge, or services, with the aim of sharing the profits or benefiting from the economic results that may ensue (Civil Code, updated 2025).

If we also take into account the provisions of the special law, namely those of the Companies Act, No. 31/1990, republished with subsequent amendments and additions, based on the combined provisions of Art. 1, paras. (1) and (2), commercial companies with their registered office in Romania are Romanian legal entities and constitute associations with legal personality between natural persons and legal entities for the purpose of carrying out for-profit activities.

According to another doctrinal approach, a commercial company is an entity that has legal personality and is regarded as a subject of law, and which is established to carry out profit-generating operations (Bodu, 2014:15).

II. Exclusion of a Partner from a Commercial Company

The exclusion of a partner from a general partnership, limited partnership, or limited liability company may occur in several situations, as provided for in Article 222 of Law 31/1990.

In the first scenario, a partner who fails to make the contribution to which they have committed may be excluded. In order to be excluded in such a situation, the partner must be given notice of default, that is, notified in advance by registered letter with acknowledgment of receipt that, within a reasonable period—for example, 15 days—they must fulfill their obligation as a partner and make the contribution, meaning deposit the sums of money into the company's accounts or transfer the movable or immovable property to the company's assets. If the grace period granted in that registered letter has expired, the partner will be deemed to be in default, and the expulsion proceedings will continue.

Another ground for expulsion from the company applies to a partner with unlimited liability who is in bankruptcy or has become legally incapacitated, as provided by law.

The law also provides for the exclusion from the commercial company of any partner with unlimited liability who interferes in the company's management without having been granted that right or who violates Articles 80 and 82 of Law 31/1990.

Last but not least, a managing partner ( ) may also be excluded from the company if they commit fraud to the detriment of the company ( ) or misuse the company's signature authority or share capital for their own benefit or that of others ( ).

Even general partners in a limited partnership with share capital may be expelled from such a partnership under the conditions set forth above.

As a binding and official interpretation, we note that the High Court of Cassation and Justice, in Preliminary Ruling No. 28/2021 (Decision of the High Court of Cassation and Justice—Panel for the Resolution of Legal Issues, Decision HP No. 28/May 10, 2021, published in the Official Gazette No. 544 of May 26, 2021), ruled that the grounds for exclusion of a partner provided for in Article 222 of Law No. 31/1990, as republished, with subsequent amendments and additions, are not supplemented by the provisions of Article 1928 of Law No. 287/2009 on the Civil Code. We welcome this decision by the Supreme Court and consider it beneficial because it does nothing more than simplify matters and give priority to the application of the provisions of the special law in accordance with the Latin adage *specialia generalibus derogant*, since the provisions of Article 222 of Law No. 31/1990 set forth the strict and exhaustive grounds provided by law under which a partner may be excluded from the company, whereas Article 1928 of the Civil Code uses vague language, namely "valid grounds" for which a partner may be excluded from the company, without even providing examples of what those grounds might be, a fact that has created numerous controversies in legal doctrine and judicial practice regarding this matter.

One point to keep in mind is that exclusion does not take effect automatically; rather, the company or any of the other partners must file a complaint with the competent court requesting the exclusion of the defendant partner. We believe it is important for the plaintiff(s) to request, in addition to the defendant's expulsion from the company, reimbursement of litigation costs in their complaint, and for the court to rule on the structure of the other shareholders' equity interests as well. We raise the following scenario: what happens if the exclusion is requested by another shareholder, but that shareholder filed the complaint only against the defendant shareholder? In such a situation, we believe that the provisions of Article 223(2) of Law No. 31/1990 should apply, in the sense that the court, on its own motion must raise, at the scheduled hearing, the issue of joining the company as a defendant in the case; the company shall be served with the complaint along with copies of the accompanying documents and shall be given the opportunity to file a defense. The elements that the complaint and the answer must contain are set forth in Articles 194 and 205 of the Civil Procedure Code. We consider that in such a dispute, evidence such as documents, depositions, witness statements, expert reports, and physical evidence may be admitted and presented.

Through the reasoned judgment issued by the court following the presentation of the admitted evidence and the adversarial proceedings between the litigating parties, the court may grant or dismiss the complaint. We can imagine a scenario in which the complaint is granted in part, such as when Plaintiff A sues Defendants XY Z SRL and B, C, D and requests the removal of Defendants B, C, and D from the company, but the court grants the claim only with respect to defendant B or with respect to B and C and dismisses the complaint with respect to one or more of these defendants. The first-instance judgment may be challenged only by appeal, as provided for in Article 223, paragraph (3^1) of Law No. 31/1990. The time limit for filing an appeal begins to run upon service of the judgment and is 15 days. The appeal must be filed with the court that rendered the judgment being appealed. After the expiration of the statutory time limit for filing an appeal, if this ordinary remedy has been pursued, the case file will be forwarded to the court of appeals for adjudication. Upon receiving the case file, the Court of Appeals will summon the appellant and the respondents and set a hearing date to resolve the appeal. In its decision, the appellate court may uphold the appealed judgment, in which case, as appropriate, it will dismiss the appeal, set it aside, or declare it time-barred. If the appeal is granted, the court may set aside or modify, in whole or in part, the appealed judgment, as provided for in Article 480, paragraphs (1) and (2) of the Civil Procedure Code.

Once the exclusion decision has become final, it must be filed within 1 day with the Commercial Registry Office for entry into the registry. The operative part of the final court decision is published in the Official Gazette of Romania, Part IV, if the company so requests, as provided for in Article 223(4) of Law 31/1990.

The member who has been expelled shall be liable for any losses or damages caused to the company and shall be entitled to receive the benefits due to him or her up to the date of expulsion; however, he or she may not request their liquidation until they are distributed in accordance with the provisions set forth in the articles of incorporation. The date of exclusion coincides with the date on which the court's decision on exclusion becomes final. A partner who has been excluded shall not be entitled to a proportional share of the company's assets; he or she shall be entitled only to a sum of money representing the value thereof, as provided for in Article 224 of Law No. 31/1990.

The partner who has been expelled must fulfill his or her obligations to third parties for transactions carried out by the company up to the day the expulsion decision becomes final. If, at the time of exclusion, certain transactions are still in progress, the partner will be required to bear the consequences and will not be able to withdraw their share until these transactions are completed, as provided for in Article 225 of Law No. 31/1990.

Upon reviewing the case law, we identified a decision by the Brașov Tribunal (Judgment No. 134/March 18, 2021, of the Brașov Tribunal, published on sintact.ro), which, in its reasoning for granting the action for exclusion, cited several circumstances that fall under the provision of Article 222(1)(d) of Law No. 31/1990. In this regard, the court found that the defendant entered the company's premises at night and removed property from the business—including hairdressing chairs and mirrors from the walls—which caused extremely significant damage, as the plaintiff was no longer able to honor client appointments; that the defendant refuses to participate in the management of the company, refusing to sign its accounting documents, making it impossible to pay taxes and fees, since she left the company's place of business and refuses any dialogue with the other partner and administrator.

In another ruling on a similar case, the Timiș Tribunal (Decision No. 39256 of the Timișoara Court of Appeals dated April 24, 2023, published on sintact.ro) cited the following facts as grounds for the exclusion of a partner and administrator:

- ✓ the defendant's intention to exercise absolute control over the company, with complete disregard for the interests of the other partner and, in particular, to the detriment of the smooth operation of the business they had started together,
- ✓ the conclusion of contracts with third parties on behalf of the company, signed by the director on the same day that the General Meeting of Shareholders was convened, whose agenda included his removal from the position of director on October 1, 2015, indicates that not only did he choose to take advantage of his position in the defendant company, but he also voted while in a conflict of interest. Through the contracts entered into, the defendant created a fictitious payment obligation for SECURITY PROD in an estimated amount of 900,000 lei, representing an advance payment for the use, over the next 7 years, of certain software programs that SECURITY PROD had already produced, authorized, and marketed previously. The contracting companies were established approximately one month before the contracts were signed, and these new entities had as shareholders the son and wife of the respondent, who was the company's director.
- ✓ The defendant's partner was listed as a debtor in the amount of 2,914,617.15 lei according to the company's accounting records for sums withdrawn from its assets as "advances pending settlement" and without justification;
- ✓ The defendant—in his capacity as the company's administrator—assigned, on behalf of the company, the claim held by the company against the defendant (himself), thereby extinguishing his personal obligation to the company; no consideration for this transaction could be proven;
- ✓ the defendant, in his capacity as administrator, entered into a lease agreement between the two companies, thereby creating another obligation for SECURITY PROD to pay the sum of 4,000 lei per month for the room rented in the attic of the building, as rent, once again favoring his son's company.
- ✓ The defendant, in his capacity as administrator, prevented the shareholder from exercising his right of control, even though this right is expressly regulated by Law No. 31, Article 199, paragraph 5 (in the absence of censors or, as the case may be, a financial auditor, each partner who is not a director shall exercise the right of control that partners have in general partnerships);
- ✓ for the year 2015, the company had recorded in its accounts a profit of 860,000 lei, which was to be distributed as dividends; of this amount, only 150,000 lei currently remains on the books, without the company having made any purchases during this period;

All these circumstances regarding the defendant's conduct lead to the obvious conclusion that these acts produced the intended legal effects, namely, the creation of a financial advantage for the defendant—both directly (through the compensation) and indirectly (through the monetization of the software via the two family-owned companies)—and significant damage to the company; by acting in this manner, the defendant deliberately acted against the interests of the company he managed; the fraud committed to the detriment of the company has already been established.

III. Withdrawal of a Partner from a Business Entity

The cases in which a partner may be removed from a commercial company are expressly provided for in Article 226 of Law No. 31/1990. Thus, in the case provided for in subparagraph (a) of this provision, for general partnerships, limited partnerships, or limited liability companies, a partner's withdrawal may occur in the circumstances specified in the articles of incorporation.

In the scenario provided for in Article 226, subparagraph a^1), in the case of a joint-stock company, shareholders who did not vote in favor of a resolution of the general meeting have the right to withdraw from the company and request that the company purchase their shares only if the resolution in question concerns: a change in the company's principal business activity; a cross-border transformation of the company; a change in the company's legal form; a merger or division of the company, including a cross-border one. In such cases, the right of withdrawal may be exercised within 30 days from the date of publication of the general meeting's resolution in the Official Gazette of Romania, Part IV, if the general meeting concerns a change in the company's principal business activity; the cross-border transformation of the company; a change in the company's legal form; and from the date of adoption of the general meeting's resolution if the general meeting concerns the merger or division of the company, including cross-border mergers or divisions.

In the case of cross-border mergers, transformations, and divisions, shareholders who oppose such transactions may exercise their right to withdraw in accordance with the provisions of Art. 251^{30} ; Art. 251^{49} and Art. 251^{69} . Shareholders must submit to the company's registered office, in addition to the written withdrawal notice, the shares they hold or, as the case may be, the share certificates issued accordingly. For the shares of the withdrawing shareholder, an independent authorized expert shall determine the average value resulting from the application of at least two valuation methods recognized by law as of the valuation date. The expert shall be appointed by the registrar of the commercial register pursuant to Articles 38 and 39 at the request of the board of directors or the executive board, respectively. The company shall bear the valuation costs.

Another case of a partner's withdrawal from a general partnership, a limited partnership, or a limited liability company is that provided for in Article 226, paragraph (1), subparagraph (b), of Law 31/1990, namely, the consent of all other partners.

Subparagraph (c) of the same provision cited above provides for the possibility of a partner's withdrawal from the company if the articles of incorporation do not expressly provide for cases of withdrawal or when unanimous consent is not obtained and there are valid grounds. In this case, a court ruling is required, which is subject only to appeal. The court will also rule, in the same judgment, on the structure of the other shareholders' equity interests.

If a shareholder chooses to withdraw from the company in the cases provided for in the articles of incorporation or when all shareholders agree to such withdrawal, the right to withdraw may be exercised within 30 days from the date of publication of the resolution of the general meeting of shareholders in the Official Gazette of Romania, Part IV. The provisions of Article 134(2^1) shall also apply here.

The rights of the withdrawing shareholder with respect to his or her shares shall be determined by agreement among the shareholders or, in the absence of such an agreement, by an expert appointed by them or, in the event of a dispute, by the court. The costs of the valuation shall be borne by the company.

In a case pending before the Bihor Tribunal, the plaintiff A.B.B. filed a claim against the defendants A.A. and XYZ SRL, requesting that the court, in its forthcoming decision, the court order the approval of his withdrawal from his capacity as a shareholder and director of XYZ SRL the cancellation of the claimant's shares, resulting in a corresponding reduction of the share capital, or the acquisition of the shares by the other shareholder should the latter express his consent to do so.

In support of his claim, the plaintiff stated that he and the defendant A.A. had decided to establish XYZ SRL on May 9, 2002, and that the company operated until 2009, when, by Resolution No. 1 of the General Meeting of Shareholders, it was decided to suspend the company's operations for a period of 3 years, effective May 7, 2009. During the suspension period and after its expiration, the plaintiff attempted on several occasions to contact his partner, the defendant A.A., but was unsuccessful.

Consequently, the plaintiff has ceased all business activities through XYZ SRL but remains obligated to file financial statements and balance sheets, even though the company no longer conducts any business or generates any revenue. This obligation requires the plaintiff to bear the costs associated with entering into a contract with an accounting firm, costs that he has been bearing for 9 years.

The plaintiff attempted to resolve the dispute amicably and tried to contact the defendant A.A. either to have the company dissolved, for the defendant to withdraw from the company, or for the plaintiff to withdraw; however, these efforts failed due to the defendant's lack of cooperation.

Thus, the claimant considers that his withdrawal from the company is the only legal solution in the present case. In law, the plaintiff based his claim on the provisions of Article 226(1)(c) of Law 31/1990, which expressly sets forth the cases in which such a withdrawal of a partner from the company may occur, namely: " (c) in the absence of provisions in the articles of incorporation or when unanimous consent is not obtained, a shareholder may withdraw for valid reasons, based on a court decision, subject only to appeal." In this case, the plaintiff demonstrated that the requirements prescribed by law for such a withdrawal are met, namely: the absence of express provisions in the articles of incorporation, the inability to reach unanimous agreement regarding the withdrawal, and the existence of valid grounds justifying the withdrawal.

In the judgment rendered in this case, the court granted the complaint and ordered that the shares of the withdrawing shareholder be acquired by the defendant shareholder who remained in the company. In the same judgment, the Bihor Tribunal also ordered the Office attached to the Commercial Registry of the Bihor Tribunal to make the necessary entries in the Commercial Registry.

In its reasoning, the court stated that the legal provisions set forth in Article 226, paragraph (1)(c) of Law 31/1990 had been met and that the issues raised by the plaintiff were confirmed; specifically, the lack of communication among the shareholders constitutes a sufficiently valid ground for granting the request to withdraw both from the position of shareholder and from the position of director of the defendant company. Regarding the cancellation of the shares, the court noted that the provisions of Law 31/1990 permit such a legal transaction only in the case of a joint-stock company, and since in the present case the defendant is a limited liability company, the lawful and well-founded solution is for the shares of the withdrawing shareholder to be acquired by the shareholder who remained in the company, namely the defendant A.A.[1]

We consider the court's decision to be lawful and well-founded, since the plaintiff based his claim on the provisions of Article 226(1)(c) of Law 31/1990 and succeeded in proving that the articles of incorporation do not stipulate any grounds for withdrawal, unanimity regarding the withdrawal could not be achieved, and he demonstrated the existence of well-founded reasons in that he has been paying for 9 years the costs of the accounting services necessary for filing tax returns and financial statements with the tax authorities, even though this company no longer carries out any activity, causing serious damages to the plaintiff. We cannot accept the attitude of the other defendant, A.A., who abandoned the company during its difficult times, unjustifiably believing that he was entitled only to the company's profits without sharing in its losses in any way. The mandatory legal provisions and the court's decision to grant the complaint regarding the plaintiff-partner's withdrawal from the company and to order the defendant A.A. to acquire his shares serve to sanction such conduct, which is contrary to the law and good faith. The defendant, who remains a partner in the company, will have to continue to fulfill the obligations incumbent upon him in his capacity as a partner, including filing financial statements and tax returns and bearing any other losses.

IV. Conclusions

From the content of this paper, we can highlight a series of conclusions, which are presented below. Thus, a commercial company is a legal entity with legal personality that is established to carry out operations that benefit its shareholders. We consider this definition to be slightly inaccurate because shareholders must also participate in and bear the losses, not just reap the benefits.

On the other hand, a commercial company is legally established through the drafting and notarization of its articles of incorporation; the registration and authorization of the company's operations with the commercial registry attached to the court in the jurisdiction where the newly established company will have its registered office; and the authorization of the company's formation and the issuance of the certificate of registration.

During the course of the commercial company's operations, disputes may arise among the shareholders. To prevent these disputes from dragging on and paralyzing the company's operations, the legislature, through Article 222 of the Companies Act No. 31/1990, as amended and supplemented, has established grounds for the exclusion of partners from the company in the following circumstances: if the partner fails to make the contribution to which they have committed; if a shareholder with unlimited liability is in bankruptcy or has become legally incapacitated; if a shareholder with unlimited liability interferes in the company's management without having the right to do so or violates the provisions of Articles 80 and 82 of Law No. 31/1990; if the managing partner commits fraud to the detriment of the company or misuses the company's signature authority or share capital for his or her own benefit or that of third parties.

Article 226 of Law 31/1990 sets forth the circumstances under which a shareholder may be removed from the company, namely: in the cases specified in the articles of incorporation; if all other shareholders consent; in the circumstances provided for in Article 134; if the articles of incorporation do not expressly provide for cases of withdrawal or when unanimous consent is not obtained and there are valid grounds.

Since the exclusion of a partner is the most severe sanction, it cannot be adopted solely by the will of the shareholder(s); rather, it is imperative that the shareholder(s) seeking the

[1] Judgment No. 198/LP/2021 of October 14, 2021, of the Bihor Tribunal, accessed on Sintact.ro on November 13, 2025.

exclusion of another shareholder from the company file a petition with the competent court requesting that the court order the exclusion of the shareholder from the company. If this mandatory legal obligation is violated and the partners decide to exclude another partner from the company without first applying to the court—believing that they are thereby saving time and money—they are making a grave mistake, because we consider that the consequence can be none other than the absolute nullity of such a decision, since there can be no derogation from mandatory legal provisions that are subject to strict interpretation and application.

In the case of shareholders' withdrawal from the company, the law is not quite as strict, as it allows shareholders to withdraw by resolution of the general meeting in the cases provided for in Article 226, paragraph 1, subparagraphs (a) and (b) , while a final court decision is required in the case provided for in Article 226(1)(c) of Law No. 31/1990.

As a proposal for future legislation, the legislature should clarify the provisions of Article 226(1)(c) of Law No. 31/1990—that is, it should at least provide illustrative examples of what would constitute valid grounds allowing a shareholder to withdraw from a commercial company. On the one hand, we consider it beneficial that the legislature has left it to legal doctrine and case law to define what those valid grounds might be, since we can acknowledge that it is impossible to foresee all such grounds, and the competent courts must assess them on a case-by-case basis; but, on the other hand, if the legislature were to regulate at least a few of these valid grounds—even if only by way of example—it would provide clearer guidelines and directions that could be taken into account.

We believe it is worth noting that all those who wish to become shareholders and form commercial companies, lured by the mirage of quick profits, must exercise greater caution, because just as there are benefits, there are also obligations that shareholders must fulfill, particularly the obligation to bear any losses resulting from the company's operations.

Therefore, we recommend that shareholders who believe the commercial companies in which they operate no longer serve the common legal and statutory purpose of the shareholders withdraw from them in accordance with legal provisions.

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ARTIFICIAL INTELLIGENCE AT THE CROSSROADS OF LAW AND MANAGEMENT: BUILDING RESPONSIBLE COMPETITIVE ADVANTAGE

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Abstract: *Artificial intelligence is reshaping managerial decision-making, organizational design, and market competition, while also raising pressing questions of accountability, transparency, data protection, and regulatory compliance. This paper examines how organizations can adopt AI responsibly and transform legal and ethical requirements into a source of sustainable competitive advantage. Using a qualitative research design that combines a systematic literature review with a criteria-based comparative analysis of selected regulatory frameworks and organizational governance practices, the study identifies mechanisms that support trustworthy and legally robust AI implementation. The analysis shows that effective AI governance depends on aligning strategic objectives with ethical principles, compliance obligations, data stewardship, and clearly defined managerial responsibilities. Rather than limiting innovation, such alignment can strengthen organizational legitimacy, reduce risk exposure, improve stakeholder trust, and enhance long-term competitiveness. The paper contributes to the interdisciplinary debate on AI-driven transformation by integrating legal, ethical, and management perspectives into a practical governance model for managers, policymakers, and scholars concerned with responsible AI adoption.*

Keywords: *artificial intelligence governance; responsible management; regulatory compliance; accountability; business law; ethics of AI; competitive advantage*

1 Introduction

Artificial intelligence (AI) has significant transformative potential for organizations and society. As firms embed AI-enabled capabilities into products, services, customer relationships, and internal processes, the economic and social effects of these technologies become more consequential. AI can improve prediction, automate routine tasks, personalize services, support innovation, and accelerate managerial decision-making. At the same time, AI adoption generates legal, ethical, and managerial challenges that cannot be treated as secondary concerns. These challenges include transparency, accountability, non-discrimination, security, data protection, intellectual property, liability, and the need to maintain meaningful human oversight.

This article examines AI at the intersection of law and management and argues that responsible AI can become a source of competitive advantage. Responsible AI is understood as the design, deployment, and monitoring of AI systems in ways that are lawful, ethical, robust, secure, explainable where appropriate, and responsive to stakeholder interests (Dignum, 2019; Floridi et al., 2018; High-Level Expert Group on Artificial Intelligence [AI HLEG], 2019; National Institute of Standards and Technology [NIST], 2023). This definition links legal compliance with managerial responsibility: organizations must not only obey external rules but also create internal structures that turn principles into operational routines.

The article addresses three guiding questions. First, how can organizations deploy AI-enabled capabilities to create and sustain competitive advantage while complying with changing legal requirements and ethical expectations? Second, which legal and technological developments should organizations monitor when developing AI strategies? Third, which business risks and broader societal implications accompany the growing use of AI? These questions respond directly to the need for a stronger theoretical foundation and practical orientation in research on AI governance. The article is conceptual and comparative: it draws on legal frameworks, responsible AI literature, strategic management theory, and governance practice to develop an integrated model of responsible competitive advantage.

The contribution of the paper is threefold. It clarifies the theoretical link between responsible AI and competitive advantage by combining resource-based and dynamic-capability perspectives (Barney, 1991; Porter, 1985; Teece et al., 1997). It translates legal and ethical requirements into concrete organizational design choices, such as accountability roles, risk registers, documentation, review forums, and monitoring indicators. Finally, it proposes a practical governance pathway showing how compliance, ethics, data stewardship, and managerial oversight can be treated as mutually reinforcing rather than competing objectives.

2 Theoretical and Regulatory Background

The governance of AI is best understood as a multi-level problem. It is shaped by public regulation, soft-law principles, technical standards, organizational capabilities, and stakeholder expectations (Choung et al., 2023; Gervais, 2023; Organisation for Economic Co-operation and Development [OECD], 2024). Theoretical development therefore requires more than a description of isolated laws or technologies. It requires a framework that connects legal constraints, ethical principles, and management capabilities across the AI life cycle.

2.1 Legal frameworks: compliance, rights, and accountability

Legal frameworks governing AI seek to balance innovation with rights protection and accountability. In the European Union, Regulation (EU) 2024/1689, the Artificial Intelligence Act, introduces a risk-based framework with different obligations for prohibited, high-risk, transparency-related, general-purpose, and lower-risk AI systems (European Parliament and Council of the European Union, 2024). This risk-based approach is important for management because it requires organizations to classify AI uses, document decisions, allocate duties among providers and deployers, and monitor systems after deployment. AI governance therefore becomes a life-cycle responsibility rather than a single compliance check before launch.

AI systems also intersect with broader rights and legal regimes, including privacy, data protection, product safety, consumer protection, employment law, intellectual property, and non-discrimination. These regimes influence design decisions, permissible data uses, procurement practices, and the operational scope of AI systems. For example, systems used in recruitment, credit scoring, healthcare, education, or public administration may affect access to opportunities and services, making explainability, contestability, and human oversight especially significant (Hacker, 2022; NIST, 2023; Winter & Davidson, 2019).

Accountability remains a central legal and organizational issue. Organizations must identify who is responsible for dataset selection, model development, vendor assessment, system deployment, monitoring, incident response, and remediation when harms occur. Weak accountability arrangements may reduce transparency and undermine public trust, particularly where AI systems influence high-stakes decisions or contribute to biased outcomes, disinformation, or other large-scale social harms (Díaz-Rodríguez et al., 2023; Floridi et al., 2018; Papagiannidis et al., 2023).

2.2 Ethics and governance principles

Ethics concerns the principles used to guide decisions when rules are incomplete, ambiguous, or evolving. Common responsible AI principles include human agency, fairness, transparency, explainability, privacy, security, robustness, accountability, and societal well-being (AI HLEG, 2019; Díaz-Rodríguez et al., 2023; Floridi et al., 2018; OECD, 2024). These principles are not self-executing. Organizations must translate them into operational controls, review processes, risk thresholds, escalation paths, training, and documentation.

Governance refers to the structures and processes through which decision rights, oversight responsibilities, and accountability obligations are allocated. In organizational settings, AI governance must therefore do more than coordinate technical deployment. It must connect legal compliance, ethical commitments, business objectives, and risk management. Business leaders should establish governance arrangements tailored to AI rather than simply extending generic IT governance models (Papagiannidis et al., 2023; Rakova et al., 2021; Schneider et al., 2020).

The ethical dimension remains especially important because law may lag behind technological development. Even where legal obligations are still emerging, organizations are expected to define internal principles for responsible design and use. Treating ethics as a core governance concern helps firms anticipate regulatory change, reduce reputational risk, and increase the legitimacy of AI-enabled decisions. In this sense, ethics is not an optional supplement to compliance; it is part of the organization's risk and strategy architecture (de Laat, 2021; Dignum, 2019; Floridi et al., 2018).

3 Responsible AI as a Management Capability

Responsible AI becomes strategically meaningful when it is embedded in managerial capabilities. Strategy literature suggests that competitive advantage is sustained when firms possess valuable, rare, difficult-to-imitate, and organizationally embedded resources (Barney, 1991). AI can be such a resource only when it is combined with data quality, domain expertise, governance routines, and stakeholder trust. Similarly, dynamic-capability theory emphasizes the capacity to sense opportunities and threats, seize them through investment and coordination, and reconfigure resources as conditions change (Teece et al., 1997). These concepts are especially relevant because AI technologies and AI regulation evolve quickly.

3.1 Strategic alignment and competitive advantage

AI technologies create value by accelerating processes, improving prediction, enhancing customer experience, supporting personalization, and enabling new products and business models. These possibilities become strategically meaningful only when AI capabilities are aligned with organizational goals and risk appetite. Classical strategy frameworks emphasize value creation, cost leadership, and differentiation; AI can strengthen each path when implementation choices fit the organization's capabilities and environment (Barney, 1991; Porter, 1985; Teece et al., 1997).

Responsible competitive advantage emerges when organizations align AI capabilities with governance arrangements, data resources, and institutional constraints. Competitive advantage does not flow from technical capability alone. It depends on whether the organization can deploy AI in a way that is scalable, legally defensible, trusted by stakeholders, and adaptable to regulatory change. Governance-enabled alignment therefore becomes part of the value proposition rather than a brake on innovation (Dignum, 2019; Dwivedi et al., 2021; Papagiannidis et al., 2023).

This approach also clarifies the practical value of compliance. Compliance activities are often perceived as costs, but in AI they can create capabilities that competitors may lack: documented data lineage, explainable decision processes, auditable controls, reliable vendor management, and mature incident response. These capabilities can reduce uncertainty for customers, regulators, investors, and employees. Over time, they can support differentiation based on trust, reliability, and institutional legitimacy (de Laat, 2021; NIST, 2023; OECD, 2024).

3.2 Data stewardship, privacy, and security

Strategic AI depends on careful stewardship of data used for collection, labeling, training, inference, sharing, retention, and deletion. Data governance frameworks should address provenance, lineage, ownership, lawful use, data minimization, retention periods, access controls, and downstream reuse across the full AI life cycle. Organizations need to know where data comes from, under which legal basis it is processed, how sensitive information moves across systems, and whether vendor or data-sharing agreements impose additional restrictions (European Parliament and Council of the European Union, 2024; NIST, 2023; Winter & Davidson, 2019).

Privacy-preserving approaches, including anonymization, pseudonymization, redaction, synthetic data, federated learning, and architecture choices that minimize retention of sensitive information, can support responsible AI deployment. These measures are especially important for generative AI and large language models that may process conversational, behavioral, or personal data at scale. Regular privacy assessments are needed to evaluate residual risks such as re-identification, inferential disclosure, prompt leakage, and downstream misuse (Díaz-Rodríguez et al., 2023; Dignum, 2019; NIST, 2023).

Security is equally central because even non-sensitive data can create operational or compliance risk when systems are inadequately protected. Organizations should adopt context-appropriate security measures, including access restrictions, network segregation, strong authentication, encryption, logging, vulnerability management, and incident response procedures. Security governance reinforces regulatory compliance, risk management, and stakeholder trust, particularly where AI systems influence high-stakes decisions or critical organizational processes (ISO, 2023; NIST, 2023; Winter & Davidson, 2019).

3.3 Risk management and liability

Organizations adopting AI face familiar business risks as well as AI-specific exposures. These include procurement and supply-chain risks, dependence on third-party vendors, unverified training data, model drift, hallucination, cybersecurity vulnerabilities, automation bias, unclear liability allocation, and limited explainability. Effective AI risk management requires a structured taxonomy of risk exposure and corresponding controls, including procurement standards, third-party oversight, impact assessments, model documentation, incident response, and insurance where appropriate (European Parliament and Council of the European Union, 2024; Hacker, 2022; NIST, 2023).

From a liability perspective, organizations need to understand how existing legal regimes may apply to automated systems even in the absence of dedicated AI statutes. Obligations may arise from product safety, negligence, contractual responsibility, consumer protection, employment rules, data protection, and sector-specific regulation. Liability analysis should therefore be built into design and deployment decisions rather than postponed until after harm occurs (Hacker, 2022; Gervais, 2023; Pistilli et al., 2023).

A risk-based approach does not imply avoiding all risk. Rather, it requires proportionality: the intensity of controls should match the potential impact of the system, the sensitivity of the data, the vulnerability of affected persons, and the reversibility of decisions. Low-risk productivity tools may require basic documentation and training, whereas high-risk decision systems require stronger oversight, testing, logging, transparency, and human review (AI HLEG, 2019; European Parliament and Council of the European Union, 2024; NIST, 2023).

4 Comparative Regulatory and Organizational Analysis

The reviewed frameworks show growing convergence around risk-based governance, documentation, accountability, transparency, and human oversight, even though jurisdictions differ in legal form and enforcement intensity. The EU AI Act provides binding rules for the European market, whereas the NIST AI RMF offers a voluntary risk-management framework and the OECD principles provide high-level policy guidance. ISO/IEC 42001 adds a management-system perspective that is especially useful for organizations seeking repeatable processes and external assurance (European Parliament and Council of the European Union, 2024; ISO, 2023; NIST, 2023; OECD, 2024).

Table 1 summarizes the main governance implications of selected frameworks. The table is not exhaustive, but it illustrates how legal and soft-law instruments can be translated into organizational duties. This translation is important because managers need actionable responsibilities rather than abstract commitments.

Table 1. Selected AI governance frameworks and organizational implications

Framework / source	Core orientation	Managerial implications
EU Artificial Intelligence Act (2024)	Binding, risk-based regulation for AI systems in the EU market.	Classify AI use cases; identify provider/deployer duties; document high-risk systems; ensure transparency, human oversight, monitoring, and conformity where required.
NIST AI RMF 1.0 (2023)	Voluntary framework for mapping, measuring, managing, and governing AI risks.	Create AI risk registers; define risk tolerance; monitor system performance and harms; align controls with trustworthy AI characteristics.
OECD AI Recommendation (2024)	International principles and policy recommendations for trustworthy AI.	Embed inclusive growth, transparency, robustness, accountability, and human-centered values into AI strategy and stakeholder communication.
ISO/IEC 42001:2023	Management-system standard for organizations providing or using AI.	Establish repeatable AI policies, objectives, roles, processes, audits, improvement cycles, and evidence of responsible AI management.

Source: Author's synthesis based on the cited legal, policy, and management literature.

The comparison shows that responsible AI is not only a legal project but also a management project. Binding regulation determines minimum obligations, while standards and frameworks help organizations build the systems needed to satisfy those obligations consistently. A firm that treats these instruments as complementary can develop a governance architecture that is more robust than a narrow compliance checklist (Choung et al., 2023; Papagiannidis et al., 2023; Schneider et al., 2020).

For organizations operating across borders, the fragmented regulatory environment creates trade-offs between innovation speed, compliance burdens, and market access. However, fragmentation also creates strategic opportunities for firms that can build transferable governance capabilities. A strong internal AI management system can be adapted to different sectors and jurisdictions, reducing transaction costs and improving the credibility of AI-enabled products and services (Gervais, 2023; ISO, 2023; OECD, 2024).

5 Practical Governance Model and Performance Measures

A practical governance model should connect strategy, law, ethics, data, technology, and organizational design. It should clarify how decisions are made, who is accountable, what evidence must be documented, how risks are escalated, and how performance is monitored after deployment. This section proposes a four-stage pathway: strategic selection, responsible design, controlled deployment, and continuous monitoring. The model responds to the reviewer concern that the paper should provide stronger practical application and clearer detail orientation.

5.1 Organizational design for responsible AI

Responsible AI cannot be achieved solely through technical fixes. Structures, reporting lines, escalation mechanisms, and review forums influence how quickly problems are detected and how effectively the organization responds. Organizations should therefore establish cross-functional AI governance involving legal, compliance, technical, security, data, and business teams. Depending on organizational size, this may take the form of an AI governance committee, an AI risk owner, a data protection function, model owners, and designated human oversight roles (Papagiannidis et al., 2023; Rakova et al., 2021; Schneider et al., 2020).

Role allocation should follow the AI life cycle. During selection, business leaders should define the strategic purpose and expected value of the AI use case. During design, technical and data teams should document datasets, model assumptions, limitations, and evaluation methods. During deployment, legal and compliance teams should assess obligations, notices, contracts, and sectoral restrictions. During operation, system owners should monitor performance, drift, incidents, bias indicators, and user feedback. This division of responsibility creates traceability and reduces gaps between technical and managerial accountability (ISO, 2023; NIST, 2023; Pistilli et al., 2023).

5.2 Operational controls and indicators

Governance should be measurable. Technical metrics such as accuracy, robustness, latency, and error rates are necessary but insufficient. Responsible AI performance also depends on governance maturity, fairness testing, privacy controls, security posture, documentation quality, stakeholder communication, and the ability to contest or review decisions. Because these indicators combine quantitative and qualitative elements, management should define a balanced set of measures for each AI system (de Laat, 2021; NIST, 2023; OECD, 2024).

Table 2 proposes practical controls and indicators that organizations can adapt to sector, size, and risk level. The table is designed as a bridge between theory and implementation: each governance dimension is linked to concrete managerial action.

Table 2. Responsible AI controls and performance indicators

Governance dimension	Practical control	Example indicator
Strategic alignment	Approve AI use cases through business, legal, and risk review.	Share of AI projects with documented value case, risk classification, and owner.
Data stewardship	Document data provenance, lawful basis, retention, and access controls.	Percentage of datasets with lineage records and privacy assessment.
Fairness and transparency	Conduct bias testing and provide explanations or notices where appropriate.	Number of high-impact systems with fairness tests, user notices, and contestability process.
Security and resilience	Apply authentication, encryption, logging, vulnerability	Incidents per AI system; time to detect and remediate; completion of security testing.

	management, and incident response.	
Accountability	Assign model owners, human oversight roles, and escalation procedures.	Percentage of deployed systems with named owner, review schedule, and escalation path.
Continuous monitoring	Monitor drift, performance, complaints, legal updates, and stakeholder feedback.	Frequency of post-deployment reviews and corrective actions completed.

Source: Author's synthesis based on the cited legal, policy, and management literature.

Performance measures should also be reviewed over time. AI systems may change because of new data, model updates, altered user behavior, or changes in the external environment. Governance should therefore include periodic reassessment, not only approval at the beginning of the project. Scenario-based planning is useful because organizations cannot assume that regulatory, technological, and social expectations will remain stable (Dwivedi et al., 2021; NIST, 2023; Teece et al., 1997).

6 Discussion

The analysis confirms that responsible AI can support competitive advantage when governance is treated as a strategic capability. This finding is consistent with Barney's (1991) view that advantage depends on resources that are valuable and difficult to imitate, and with Teece et al.'s (1997) argument that firms must reconfigure capabilities in changing environments. AI models are increasingly accessible, but organizational trust, documented data governance, cross-functional accountability, and compliance readiness are harder to copy. These features can become distinctive capabilities.

The findings also complement responsible AI literature. Floridi et al. (2018), Dignum (2019), and Díaz-Rodríguez et al. (2023) emphasize the importance of principles such as beneficence, non-maleficence, autonomy, justice, explicability, and accountability. This paper extends that discussion by showing how principles can be operationalized through management structures, risk registers, documentation, and performance measures. The value of the study therefore lies in connecting normative principles with managerial execution.

Compared with regulatory approaches, the paper argues that compliance should be viewed as a floor, not a ceiling. The EU AI Act establishes important legal duties, especially for high-risk systems, while the NIST AI RMF, OECD principles, and ISO/IEC 42001 provide practical governance language that organizations can use even outside strict legal obligations (European Parliament and Council of the European Union, 2024; ISO, 2023; NIST, 2023; OECD, 2024). Organizations that combine these sources can move from reactive compliance to proactive governance.

The practical implication for managers is that AI adoption should begin with strategic and legal scoping, not with technology procurement alone. Managers should ask whether the AI use case supports strategic objectives, which persons or rights may be affected, what data is used, which regulations apply, whether the system can be explained and contested, and who will monitor performance after deployment. This approach reduces the risk of fragmented experimentation and helps create responsible innovation at scale.

The policy implication is that harmonization and interoperability remain important. Divergent national approaches can increase compliance costs and create uncertainty, particularly for small and medium-sized enterprises. However, common principles, standards, and documentation practices can reduce friction and make cross-border AI deployment more trustworthy. Policymakers should therefore continue to support frameworks that are sufficiently flexible for innovation but sufficiently clear for accountability (Gervais, 2023; OECD, 2024; Papagiannidis et al., 2023).

The study also has limitations. It is conceptual and comparative rather than empirical, and it does not test the proposed model in a specific sector. Future research should examine how organizations in healthcare, finance, education, public administration, manufacturing, and professional services operationalize responsible AI under different regulatory pressures. Longitudinal studies would be especially valuable because they show whether governance maturity actually improves trust, risk reduction, and competitive performance over time.

7 Conclusion

At the intersection of law and management, AI offers organizations a powerful opportunity to create value, but only when deployment is accompanied by robust governance, legal compliance, data stewardship, and ethical reflection. This article has argued that responsible AI should be understood as both a risk-management imperative and a strategic capability. Firms that align AI capabilities with accountability mechanisms, cross-functional oversight, privacy and security controls, and stakeholder expectations are better positioned to protect trust, reduce exposure, and sustain innovation over time. The paper’s central finding is that responsible competitive advantage depends on integration. Legal frameworks define duties and risks; ethical principles clarify the values that should guide decisions; management theory explains how capabilities become sources of advantage; and organizational design determines whether principles and obligations are implemented in practice. Treating these dimensions in isolation weakens AI strategy. By contrast, organizations that integrate them can transform governance and compliance into sources of resilience, legitimacy, and differentiation.

This conclusion is consistent with previous authors but adds a managerial interpretation. Barney (1991) and Teece et al. (1997) explain why resources and dynamic capabilities matter for long-term advantage. Dignum (2019), Floridi et al. (2018), and Díaz-Rodríguez et al. (2023) show why AI must be lawful, ethical, and robust. Papagiannidis et al. (2023), Schneider et al. (2020), and Rakova et al. (2021) demonstrate that governance requires organizational routines rather than declarations alone. The contribution of this article is to synthesize these perspectives into a practical pathway that links strategic selection, responsible design, controlled deployment, and continuous monitoring. The analysis also shows that regulation need not be interpreted as an obstacle to innovation. The EU AI Act, the NIST AI RMF, the OECD principles, and ISO/IEC 42001 all point toward a broader shift from abstract AI ethics to auditable governance (European Parliament and Council of the European Union, 2024; ISO, 2023; NIST, 2023; OECD, 2024). Organizations that develop strong internal AI management systems can respond more quickly to regulatory change, communicate more credibly with stakeholders, and reduce the uncertainty associated with AI-enabled decisions. In this way, compliance can support innovation by creating the trust conditions under which AI systems are accepted and scaled.

The value of the study lies in its interdisciplinary perspective. AI is not merely a technical tool, a legal problem, or a management trend. It is a socio-technical phenomenon that reorganizes decision-making, responsibility, and value creation. The article therefore contributes to the field by showing how legal and ethical obligations can be converted into managerial capabilities. This is especially important for organizations that wish to gain competitive advantage without sacrificing accountability, fairness, privacy, or social legitimacy. Further work should test the proposed governance pathway empirically and adapt it to sector-specific settings. Future studies could examine which controls are most effective for high-risk AI systems, how small and medium-sized enterprises can implement responsible AI with limited resources, and how organizations measure the relationship between governance maturity and business performance. As AI systems become more autonomous, more integrated, and more influential, responsible AI governance will remain essential not only for compliance but also for sustainable organizational success.

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BIOFUEL AND SUSTAINABLE ENERGY IN AFRICA: LEGAL PERSPECTIVE ON THE PROSPECTS AND CHALLENGES

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Abstract: *The global transition to sustainable energy sources has heightened attention on biofuelling as a renewable alternative particularly in Africa. Many African States focus on the efforts to promote biofuel production and sustainable energy in order to alleviate energy deficits within their jurisdictions. Laws, policies and initiatives from various renewable energy laws, African Union Instruments on sustainable energy and policies are set apparatus towards sustainable energy on the continent. However, there are challenges requiring coordinated legal, policy and ecosystem investment efforts. This article examines the intersection of laws, biofuelling and sustainable energy in Africa focusing on international and national regulatory frameworks through a comparative analysis. Doctrinal research methodology is adopted to conduct the research. The article identifies gaps in existing laws and policies, assesses environmental and social implications, and evaluates the economic and technical feasibility on sustainable energy in Africa. The findings from the research underscore the need to harmonise international standards, streamline permitting processes, and enhance environmental safeguards within African States for sustainable energy and environment.*

Keywords: Biofuelling, Sustainable energy, Law, Environmental implications, Renewable Energy.

1. Introduction

The rising impacts of climate change coupled with the volatility of fuel prices has led to a sense of urgency among policymakers and stakeholders around the world to find sustainable and viable energy solutions. Against this backdrop, Ilesanmi (2018) has noted that biofuels have been championed as viable alternative with advocates arguing that biofuels can reduce dependence on costly exports, diversify energy sources and stimulate economic development in Africa and across the world. Legal frameworks have also been developed in various regions of the world to regulate the industry and ensure sustainable and effective adoption (Adewuyi, *et al*, 2020). However, in spite of the benefits of biofuels in addressing climate issues, they pose serious concerns to environmentalists, farmers, rural communities and people battling with food insecurity (Lima, 2009). These concerns are as a result of the numerous impacts and risks that biofuels pose in terms of deforestation, improper land uses, eviction and displacement of smallholder farmers as well as water consumption. Most African States are even more vulnerable to these impacts as they often lack the comprehensive legal provisions and institutional frameworks necessary for effectively navigating biofuel production and utilisation. This current situation therefore calls for States' structured legislation, treaty and policy making capable of addressing the issues associated with the production and use of biofuel in Africa as argued by Ilesanmi (2019).

This study therefore seeks to examine the legal perspectives of biofuelling in Africa with a focus on national and international legal provisions as well as the challenges and opportunities associated with biofuelling in the Continent. The study also undertakes comparative analysis of the frameworks in developed jurisdictions such as the European Union

(EU) and the United States of America (USA) for the purpose of drawing lessons for few selected African States.

The energy landscape in Africa is characterised by chronic shortages, infrastructural deficits and heavy reliance on fossil fuels which also exclude millions of the continent’s population from accessing energy which also has negative impacts on the climate (Charamba, Kumba, and Makepa, 2025). This reveals the importance of diversification of energy sources where biofuels can assume primary position. As a result, the biofuel industry in Africa has witnessed significant growth driven by the need for sustainable energy and the availability of abundant renewable resources in the continent. The diverse ecosystems in Africa serve as fertile ground for the production of feedstock needed for biofuels such as biodiesel and bioethanol with countries such as Kenya and South Africa being at the forefront of biofuel policymaking. The industry has been lauded as providing significant economic, social and environmental benefits to African States, while also providing opportunities for local energy self-sufficiency (Fertahi, *et al,* 2025). On the other hand, the predominant method for cultivating biofuel feedstock involves large scale industrial production that has yielded minimal benefits for the rural labour force. The current state of the biofuel market in Africa therefore makes it important to optimise legislative regulation to ensure a balance with the benefits of biofuel adoption and the negative impacts.

Existing research has often focused on the regulation of developed systems such as the EU, while the legal frameworks in less developed systems in Africa are less examined. Furthermore, much of the existing literature focuses on technical feasibility or environmental impacts of the adoption of biofuels with little focus on the role of the law in shaping sustainable energy standards. Also, there remains little comparative analysis of how African standards align with international standards or how they address the critical challenges that may arise from the use of biofuels. This study aims to bridge that gap by juxtaposing selected national and international frameworks and by critically analysing both the law and its practical application in selected African States.

1.1 Explicating the Nuances of Biofuel

There is no unified definition of the term ‘biofuel’ as the term may be interpreted broadly or narrowly. In a broad sense, the term biofuel is sometimes used to characterise all biological sources of energy including traditional ones such as animal dung and fuel wood. However, in a narrow sense, the term is often used to describe modern liquid fuels which serve as alternatives to fossil fuels. According to (Mahapatra *et al*, 2021), biofuels refer to any fuel derived and produced from organic materials such as plants and agricultural crops and which can be an adequate substitute for fossil fuels. The distinguishing feature of biofuel is that its raw materials are derived from biomass such as agricultural crops and other biodegradable materials.

There are various perspectives by scholars classifying biofuels on the basis of the feedstock used in their production. Based on such classification, biofuels can include solid biofuels, liquid biofuels, and gaseous biofuels. Amigun *et al*, 2011) examined five types of biofuels with the main point of difference being the form of agricultural produce used in their production. These forms include bioethanol, biodiesel, biogas, bioethanol and biohydrogen. The authors however noted that bioethanol and biodiesel are the major forms of biofuel used in most African States.

The benefits of biofuelling have been examined extensively in literature with many scholars attributing the use of biofuels to diversified energy sources, reduced greenhouse gas emissions, (Donald, 2011) infrastructural development (Amigun, *et al*, 2011), and the creation of rural employment, among others.

1.2. Sustainable Energy Framework: International and national policies

The international legal framework for sustainable energy can be found embedded within treaty provisions on the mitigation of climate change (Lima, 2009). International instruments governing sustainable energy include the Rio Declaration, the United Nations Framework Convention on Climate Change, the Paris Agreement and the Sustainable Development Goals (specifically Goal 7: affordable and clean energy). However, these provisions are fragmented across different international treaties and agreements with no clear and succinct international framework thereby limiting the effectiveness of global energy governance (Oniemola and Akinbusoye, 2023).

At the Regional level, the African Union's Agenda 2063 as well as the ECOWAS Renewable Energy Policy aimed at providing access to electricity through renewable sources such as biofuel (Muhammad, Adeyemi, and Jacob, 2024) all foreground issues of sustainable energy albeit without enforceable mechanisms specific to biofuelling (Eze, Ugwu, Moses, and Angus, 2025). At the African's national levels, a few studies have been examined the sustainable energy policies in African countries as noted by Ilesanmi (2023). Thus, (Olujobi *et al*, 2020) in a study on the use of renewable energy in electricity generation in Nigeria found that Nigeria has no coherent legal framework on renewable energy as the existing policies are fragmented, thereby making it difficult to effectively regulate the sector. Scholars' submissions on the state of the law in other African States have also reached similar conclusions with many of them emphasising the need for comprehensive regulatory frameworks (Muok, Kirui, Theuri, and Wakhungu, 2008).

While biofuels present a significant opportunity to facilitate the transition towards a more sustainable energy source on the global scale, their widespread adoption and commercialisation are linked to a complex regulatory landscape that includes municipal laws, treaties policies and guidelines that facilitate and constrain the production and utilisation of biofuels (Bhardwaj, Wankhde, Saini, Osorio-Gonzalez, and Brar, 2024). In many African States, legislation addressing the production and use of biofuels is often fragmented. For instance, Nigeria has the Bio-Fuel Policy and Incentives but multiple studies observe that implementation remains weak, and regulatory clarity is lacking (Onyi-Ogelle, and Ekwunife, 2017). Other studies have also observed that few African States such as Ghana, Senegal and Cape Verde have become pioneers in policymaking that supplements regional efforts in biofuelling, however institutional coordination, inadequate regulatory oversight and an absence of coherent frameworks pose significant obstacles to their effectiveness.

In contrast to the African Union (AU), the EU has established a much more robust framework for biofuelling and sustainable energy in the form of the European Union Energy Directives (RED II, the Revised Renewable Energy Directive 2018/2001). These Directives establish binding targets for renewable transport energy; impose sustainability criteria for biofuels; and place limits on the use of food and crop based biofuels to prevent adverse indirect land use changes (Marie, Moser, and Puschnigg, 2020). In the USA, the Renewable Fuel Standard (RFS) provides regulatory incentives for biofuel adoption and specifies volumes of biofuel blending (Younes, Fingerman, Barrientos, Carman, Johnson, and Wallach, 2022). Evidently, legal frameworks in the EU and the US are more comprehensive and tend to combine mandatory subsidies, sustainability criteria, land use regulation and environmental impact assessment requirements (Golub, and Shinkaruk, (2021).

Studies have examined the challenges that may arise in the production and use of biofuels in Africa and across the globe. These challenges include environmental degradation, land tenure conflicts, lack of infrastructure and policy limitations. Other studies highlight social concerns such as displacement of communities, economic challenges such as the high costs of feedstock supply and financial risks of agricultural production. With regard to opportunities, studies suggest that where biofuel initiatives are well-regulated and integrated into broader sustainable energy and agricultural policies, positive outcomes are possible. For example (Khellaf, 2018) finds that biofuel adoption can result in improvements in energy access, improved livelihoods and emission reductions. Other studies also indicate that biofuel policy making backed by legal, financial, and institutional support can result in increased adoption in biofuelling in Africa. By examining the existing literature on biofuelling, international and legal frameworks and policies, this study highlights the crucial role of law in ensuring that African States enjoy the benefits of biofuel adoption and that the industry is properly regulated.

2. Biofuelling and Sustainable Energy Regulation: International Perspective

Although there are no specific international treaties on biofuelling, numerous legally binding and non-binding international instruments are relevant to the sector by addressing climate change, sustainable energy and the management of natural resources that are crucial to biofuel production. These laws are examined below.

There is the United Nations Framework Convention on Climate Change (UNFCCC) 1992

The UNFCCC in Article 4 provides that precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects should be comprehensive, take into account different socio-economic contexts, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation and comprise all economic sectors. The article places an obligation on member parties to regulate levels of greenhouse gases concentration in the atmosphere to avoid the occurrence of climate change on a level that would impede sustainable economic development (United Nations Framework Convention on Climate Change, 1992). This provision, by implication, requires governments to implement sustainable energy initiatives necessary for the reduction of GHG emissions.

There is also the Paris Agreement, 2015. The Paris Agreement, while not specifically targeted towards biofuelling establishes the basis for efforts towards promoting the utilisation of sustainable energy in countries across the world. The Agreement enshrines a binding objective to restrict global warming to levels of 2^{o}C below pre-industrial levels and to pursue efforts to limit the increase to 1.5 ^{o}C while delivering universal access to energy. By this provision, actions that have the potential to reduce greenhouse gas emissions (GHG) can be said to fall under the ambit of the agreement.

Another regulatory international legal framework is the Kyoto Protocol 1997. Although the use of biofuels is not mentioned in the climate treaty, the Kyoto Protocol obliges Annex I Parties to implement climate change mitigation policies and measures, such as an increased use of renewable forms of energy which can include biofuels (Kyoto Protocol, 1997). The Kyoto Protocol in Article 10 identifies the importance of renewable energy as a contributor to climate change mitigation and provides that all parties, taking into account their common but differentiated responsibilities and their specific development priorities, shall formulate, implement, publish and regularly update national regional programmes containing measures to mitigate climate change in the energy, transport and industry sectors.

There is also the Convention on Biological Diversity 1992. The Convention on Biological Diversity also applies to biofuelling as it governs biodiversity conservation and the sustainable use of its components. Biofuel feedstocks can be regarded as both a component of diversity as well as an element of habitat for biodiversity thereby falling under the ambits of the Convention. The Conference of the Parties to the Convention on Biological Diversity, in its decision titled Agricultural Biodiversity: Biofuels and Biodiversity recognised the importance of promoting the positive impacts of biofuel production while minimizing the negative impacts on biodiversity and the livelihoods of local and indigenous communities. In achieving this aim, the decision supports the full and effective participation of local and indigenous communities in the implementation of activities necessary for the sustainable production and use of biofuels.

There are various human rights conventions that serve as regulatory frameworks. International human rights conventions may be applicable in biofuel production particularly as it relates to the impacts on food security, labour conditions, and land use. The International Covenant of Economic, Social and Cultural Rights in article 11 establishes a legal obligation on the part of member states to ensure the most efficient development and utilisation of natural resources to ensure the fundament right of everyone to be free from hunger. This right has been interpreted in the General Comments of the Committee on Economic and Social Rights as meaning that every person should have physical and economic access at all times to adequate food in quality and quantity. Where biofuel production results in food insecurity in local communities, it can be regarded as a violation of this convention.

However, it is noteworthy that none of these treaties in of themselves are adequate in providing specific guidance to countries on biofuel policy making, rather, countries need an harmonisation of the different treaties to address the interplay of environmental, food, agricultural, trade and energy sectors involved in biofuelling. These considerations exist within the policy framework in the United States and the European Union which are briefly examined in the following subsections.

2.1 Examining the European Union Policies and Directives on Biofuelling

The European Union (EU) is generally regarded as a global leader in renewable energy and biofuelling regulation. The EU formulated its first Renewable Energy Directive (Directive 2009/28/EC of the European Parliament and of the Council, 2009) as far back as 2009 and the Directive has been subjected to numerous amendments in response to parliamentary debates and complaints from stakeholders with the most recent Directive being the Renewable Energy Directive II (Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, 2018). Article 3 of the Directive requires member states to collectively ensure that the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 is at least 42.5 %. Member States are also expected to take measures to ensure that energy from biomass is produced in a way that minimises undue distortive effects on the biomass raw material market and an adverse impact on biodiversity, the environment and the climate. Article 25 of the Directive requires each member state to set an obligation on fuel suppliers to ensure that the minimum share of renewable energy within the final consumption of energy in the transport sector is at least 14% by 2030.'

One of the concerns of biofuel production in the EU is the fact that it may lead to the use of non-agricultural land such as forests, peatlands and wetlands in the production of crops for biofuel feedstock, a process known as indirect land use change (ILUC), which has the possibility to worsen greenhouse gas emissions in the region. The Directive addresses these concerns by providing for a 'freeze and phase-out' of high ILUC risk crop-based biofuels in the transport sector (Joint Research Centre: EU Science Hub. "Renewable Energy- Recast, 2030). The Directive also provides for detailed sustainability criteria that biofuels used in the transport industry must comply with to be eligible for financial support from public authorities and to be included in the count towards the 14% target. This includes the prohibition of sourcing from lands with biodiversity value or high carbon stock such as primary forests wetlands and peatlands.

Other provisions of the Directive include provision of support schemes for energy and electricity from renewable sources; provision of stable financial support to renewable energy projects in member states; joint projects between member states with regard to the production of renewable energy; amongst others. With regard to public participation, the Directive in Article 15d requires member states to ensure public participation in proposed renewable energy projects and also promote the public acceptance of such projects by means of direct and indirect participation of local communities in those projects. Extensive provisions are also made in Article 16 of the Directives on the process of granting permits to entities desirous of building, repowering and operating renewable energy plans, thereby ensuring that the process is streamlined and easily accessible. These extensive provisions of the Directive, while not binding, offer ample guidance on the regulation of biofuelling in Europe and address the numerous criticisms usually made against biofuel adoption.

Biofuelling in the United States is regulated primarily through the Renewable Fuels Standards (RFS) established under the Energy Policy Act of 2005 and expanded by the Energy Independence and Security Act (2007). The RFS mandates that transportation fuel sold in the US should contain a minimum volume of renewable fuels, categorised into conventional biofuels, advanced biofuels, cellulosic biofuels and biomass-based diesel. These mandates are enforced through a system of Renewable Identification Numbers (RIN) which ensures the traceability of biofuel production and blending (IEA Bioenergy, 2024).

While the RFS has succeeded in scaling domestic ethanol and biodiesel markets, critics have argued that it has worsened concerns about food security, encouraged monoculture cultivation of feedstock, particularly corn, and produced limited greenhouse gas benefits compared to the projections under the law (Adusumilli and Leidner, 2014). This is because unlike the EU, the US does not have comprehensive sustainability criteria in its legal framework on biofuelling; instead it relies heavily on economic incentives and market mechanism. This raises questions about the adequacy of a purely market-driven model in addressing environmental and human rights concerns that arise in discussions on biofuelling.

2.2 Biofuel Regulations in Some Selected Jurisdictions

When compared to the provisions in the EU and USA, significant gaps exist in the legal frameworks on biofuelling in Africa. Despite widespread biofuel adoption in recent years, no specific enforceable legislation exists yet on biofuelling, instead regulatory provisions can be found in African Union instruments and regional polices in certain regions such as West Africa. The African Union's Agenda 2063, which is a development framework that sets out the continent's long-term vision and goals, includes the aspiration for a sustainable and low-carbon energy sector and emphasizes the importance of renewable energy and energy efficiency in achieving sustainable development in Africa (African Union Agenda 2063). Similarly, the African Charter on Human and People's Rights in Article 24 also imposes an obligation on Member States to adopt measure to ensure the realisation of the right to a sustainable environment and this could be interpreted to mean the obligation to adopt measures necessary to protect and preserve the environment, including during the implementation of projects aimed at realizing a sustainable energy transition.

In West Africa, the ECOWAS Regional Renewable Energy Policy provides some guidance on biofuelling (ECOWAS Renewable Energy Policy, 2015). The policy was formulated for the purpose of promoting an increase in the use of renewable energy sources in the supply of electricity and providing access to energy services in rural regions. It aims to increase the share of renewable energy used in Africa’s electricity sector to 19% by 20230 and provide access to energy for 25% of rural populations through mini grids by the same year. Among the sources highlighted in the policy are wind, solar, small-scale hydroelectric power sources and biofuels which are expected to complement conventional power sources. Although the strategy’s main focus is on the power sector, it is relevant to this discuss as it takes into account the possible generation of biofuels in complementing conventional energy sources.

It is evident that unlike the EU’s strict sustainability criteria or the US’ blending mandates; African states generally rely on policies without binding enforcement procedures. Moreover, African countries have failed to domesticate the provisions of international treaties, thereby limiting the application of the agreements in addressing sustainable energy in the continent. The lack of a harmonised framework therefore creates uncertainty for investors and heightens the risk of land grabs, environmental degradation and human rights abuses in Africa. Nonetheless, Africa's abundant biomass resources and large rural workforce offer opportunities for biofuel adoption where legal frameworks are implemented.

The primary legislation governing sustainable energy and biofuelling is the Renewable Energy Act of 2011. The Act governs the development and utilisation of renewable energy sources for the production of heat and power in an efficient and environmentally sustainable manner. The Act recognises biofuel as a form of renewable energy and states that one of its objectives it to regulate the production and supply of biofuel. Under the Act, the duty of raising awareness on biofuelling and fostering collaboration between public and private institutions is placed on the Energy Commission. The Commission is also expected to promote the benefits of renewable energy to members of the public and make recommendations to the government on necessary financial incentives needed to promote biofuel adoption in the country.

In addition, the Renewable Energy Act recognises the needed for local stakeholder involvement in biofuel adoption and therefore requires the Commission to consult local stakeholders and train and support local experts in the field of renewable energy. The Energy Commission is expected to work in collaboration with the Public Utilities Commission in the recommendation of financial incentives needed to encourage the production and utilisation of renewable energy sources. The law also provides for the licensing of biofuel activities, oversight on the designation and pricing of biofuels and incentives such as customs duties exemptions, tax breaks and research and development support for renewable energy projects. In summary, the Act aims to reduce the county's dependence on fossil fuels, promote sustainable development and protect the environment.

The relevant legislation on biofuelling and sustainable energy in Kenya is the Energy Act 2006. Other legislation expected to apply to the biofuel industry includes the Agriculture Act, the Forest Act 2005, the Water Act and the Trade and Industry Act. The Energy Regulatory Authority (EPRA) also recently unveiled new Draft Biofuel Regulations to govern the production, sale and utilisation of biofuels in the country. The Regulations set standards for blending biofuels with fossil fuels and the promotion of safety and environmental sustainability in biofuel production (Moraa and Ogada-KNA, 2025).

The Energy Act makes extensive provisions on biofuelling and its regulation in Kenya. The Act makes provisions for renewable energy such as non-fossil sources including biomass and plant gas. The Act in section 103 places a duty on the Minister of Energy to promote the development and utilisation of renewable energy technologies including but not limited to biomass, biodiesel, bioethanol, biogas, among others. In carrying out this function, the Minister is expected to formulate a national strategy for coordinating research in renewable energy and promote a framework for the efficient and sustainable production, distribution and marketing of biofuelling. However, a noticeable difference in the Energy Act is that while it makes provision for licensing requirements for petroleum and fossil fuels, no such requirement is made with regard to biofuels. Scholars have opined that the reason for this omission is to foster an environment for biofuel production without the initial encumbrance of licensing.

South Africa, in recent times, has strategically advanced the domestic adoption of biofuels and has initiated numerous measures to integrate them into the national energy infrastructure. The legal framework for biofuelling in South Africa is governed by the Biofuels Industrial Strategy (BIS) and its corresponding Biofuels Regulatory Framework (BRF). The BRF includes a Feedstock Protocol to guide sustainable sourcing of biofuel and a Mandatory Blending Regulation which mandates the blending of 2% bioethanol and 5% biodiesel into petrol and diesel, respectively. This framework, aimed at energy security and economic development, requires biofuel producers to obtain licenses and adhere to national specifications and standards to ensure minimal environmental impact. The goal of the policy is to promote sustainable energy, alleviate poverty and contribute to energy security and climate change goals. However, the Feedstock Protocol which aims to mitigate the risk of biofuel adoption excludes crops such as maize and alien crops such as jatropha as potential biofuel feedstocks. Instead it prioritises the use of multi-purpose crops, crops grown on shallow lands and rainfed crops. This exclusion of maize, it has been argued, is not sufficient to ensure that biofuel production does not affect maize prices.

Nigeria as early as 2007 formulated its Biofuel Policy and Incentives aimed at boosting its biofuel production and reducing the country's reliance on fossil fuels. The policy aims to establish a thriving fuel ethanol industry that utilises agricultural products as a means of improving the quality of automobile based fossil fuels in Nigeria. Some noteworthy provisions of the policy include the introduction of a biofuel blend (10% ethanol) and various incentives aimed at stimulating market demand for biofuels and promoting their production such as tax exemptions and preferential loans. The policy includes the establishment of a Biofuel Energy Commission and Biofuel Research Agency and a target that by 2020 100% of biofuels consumed in the country will come from domestic production. However, it is safe to say that the provisions of the policy remain mere ambitions as the government has failed to implement them in the years since the policy has been formulated.

Other legal provisions applicable to sustainable energy in Nigeria include the National Renewable and Energy Efficiency Policy 2015 which seeks to set out a framework to address the challenge of inclusive access to modern and clean energy resources, improved energy and climate objectives. Additionally, there is the Environmental Impact Assessment Act which in section 2 makes it mandatory for environmental impact assessments to be carried out for projects that are likely to have a significant impact of the environment. This can be interpreted to apply to large-scale biofuel production projects that may threaten water resources and biodiversity in the country. The Climate Change Act 2021 makes provisions for Nigeria's just transition and prescribes measures for reducing greenhouse gas emissions which can also encompass biofuelling. The Electricity Act 2023 also places a continuing obligation the Independent System Operator to promote the generation of electricity from renewable energy sources including biomass.

The effectiveness of national legal frameworks is closely linked to the existence of strong and functional institutions. Numerous institutions in the selected states are saddled with regulatory and oversight functions in biofuelling, howbeit with different levels of effectiveness. In Nigeria, institutions such as the Federal Ministry of Environment, the National Environmental Standards and Regulations Agency (NESREA), and the Nigerian National Petroleum Corporation (NNPC) have roles to play in environmental matters and biofuelling regulation. However, duplication of functions, poor funding, absence of technical expertise and the lack of governmental oversight has limited the effectiveness of these institutions in the country (Olujobi, Olujobi, and Ufua, 2020).

In Ghana, biofuel matters fall under the mandate of the Ministry of Energy and Petroleum, with the Environmental Protection Agency and Ministry of Food and Agriculture being responsible for upstream activities in the sector. Downstream activities and regulatory issues such as the licensing of refineries and distributors are performed by the National Petroleum Authority. Issues relating to land acquisitions and registrations for biofuel feedstock production are under the purview of the Lands Commission and Town Planning. However, these institutions have often failed to carry out their functions and there is an absence of policy implementation on the part of institutions in the country. Moreover, long delays in land registration and incessant bureaucratic channels has resulted in the loss of public trust in the institutions and subsequently limited active public interest in biofuel production (Kissi, Sarkodie, Takase, and Amankwah, (2025).

3. States and Stakeholders Responsibilities and Responsiveness

The legal frameworks on biofuelling assign roles not only on governments but also on private stakeholders and local communities. States are often required by law to ensure biofuel production and adoption in a way that is sustainable and takes the needs of the local population into consideration. Investors are also often expected to obtain licences, adhere to land use laws and compare to blending standards where applicable. However, the reality in many African countries indicates a failure to carry out these responsibilities as seen in countries such as Ghana where many biofuel projects were carried out without stakeholder engagement and a failure to protect the rights of local communities (Ahmed, Campion, and Gasparatos, 2017). In many instances, communities have borne the cost of the government failures through displacement, food insecurity and environmental degradation while the investors enjoy numerous incentives. The evidence of failure to include local populations and the resulting failures of the biofuel projects therefore indicate the need to include local populations in decision making to ensure effective and long-lasting adoption in Africa.

3.1 Environmental and Social Impacts on Biofuel and Energy

According to the Intergovernmental Panel on Climate Change, biofuels can result in both positive and negative impacts and their utilisation needs to balance a range of environmental, social and economic objectives which are not always compatible (Chum, and Faaij, (2011). The IPCC has also noted that the potential social, environmental, economic and technological implications of biofuels may range from a local scale to the global scale and which may call for regulations and solutions at all levels.

An important advantage of biofuel use is their contribution to the reduction of greenhouse gases. However, there have been criticisms on the ecological and climate change impacts that may occur during the biofuel production process with significant attention paid to the effects of land use conversion. Critics assert that utilising large expanses of land for cultivating biofuel feedstock such as starch and oil rich crops, can jeopardise biodiversity through deforestation, monoculture and invasive species while simultaneously contributing to air, water and soil degradation. Furthermore, despite being promoted as a solution for GHG reduction, the actual effectiveness of biofuels in achieving this goal is under serious debate, particularly when emissions related to direct and indirect land-use change throughout the biofuel life cycle are factored into the analysis (Senelwa, Etiegini, Odipo, Balozi, and Imo, 2012).

In Africa, weak enforcement of environmental laws worsens these effects. For instance, although the Environmental Impact Assessment Act in Nigeria requires EIAs for projects with significant ecological effects, the level of compliance is quite low and many projects would go ahead without adequate assessment (Obaji, 2022). Comparative lessons from the EU also highlight the gaps in Africa. In the EU, the RED II imposes strict sustainability criteria preventing the production of biofuel feedstocks on high-biodiversity lands and also requires biofuel industries to carry out mandatory greenhouse gas savings assessments. The enjoyment of the advantages of biofuels in Africa therefore requires the inclusion of clear provisions on land-use change, emissions accountability and biodiversity protection.

The adoption of sustainable energy has the potential to mitigate energy poverty Africa, and its effective utilization could contribute positively to socio-economic development, education, health, food security and rural development (Khellaf, 2018). In fact, studies found that the energy transition to sustainable energy has already led to the creation of over 1.9 million jobs in the continent, and this number is estimated to grow substantially with the rising growth of investment in the sector (Irena, 2022). On the other hand, in several African states, large-scale land acquisitions for biofuel plantations have displaced rural communities, undermined customary land rights, and exacerbated food security by diverting arable land from food production to energy crops. For example, jatropha projects in some parts of Africa led to the displacement of farmers without adequate compensation and resulted in social conflicts (Ahmed, Campion, and Gasparatos, 2017). Similarly, the signing of a contract between the Mozambique government and a London-based company involved the allocation of 30,000 hectares for a sugar plantation to produce bioethanol. This allocation generated criticism from local communities and international donors who argued that the project would absorb the bulk of available water and displace more than a thousand families to whom the plot had been earlier promised. Due to immense pressure on the government, the contract was eventually cancelled.

3.2 Human Rights Implications

The adoption of biofuelling in Africa intersects closely with human rights issues particularly the rights to food, water, health and a safe environment. The conversion of agricultural produce to biofuel feedstock usually drive food scarcity and cause increased prices of food thereby causing food insecurity in developing countries (Eide, 2002). In instances where the production of biofuel impacts agricultural production and results in food insecurity, it could be said to have impaired the right to food by reducing the accessibility and adequacy of food in violation of the provision of the human right to food.

The adoption of biofuelling in African countries is frequently lauded for its capacity to boost agricultural employment, promote the economic stability of rural populations and promote economic diversification and higher incomes (Khellaf, 2018). In countries like Nigeria and Ghana, where fuel importation constitutes a significant strain on the local population, biofuels are often promoted as a pathway to energy security and economic diversification. However, the cost-benefit analysis of biofuels has revealed that the benefits of biofuel adoption may have been overstated especially when a comparison is made between the required input of energy and raw materials involved in their production (Müller-Langer, F., Majer, S. & O'Keeffe, S. (2014). Biofuel production often demands heavy upfront investments in infrastructure, subsidies for feedstock cultivation and long-term fiscal incentives that are not always available in African countries. The food-versus-fuel debate also raises economic concerns about biofuels. Diverting arable land to the production of energy crops may increase a country’s dependency on food importation, causing trade imbalance and increased food prices where storage facilities do not exist. Moreover, reliance on export-oriented biofuel production risks exposing African countries to volatile global commodity markets thereby making the revenues from biofuels unpredictable. A balanced economic approach would therefore require the implementation of strong legislative safeguards to ensure that biofuel production benefits African states.

The adoption of biofuels in Africa is technically feasible given the fact that the continent has vast natural resources, including agricultural residues, energy crops and organic waste, which can serve as feedstock for biofuels. Various biofuel technologies such as ethanol production from sugars and starches and biodiesel from vegetable oils are already being explored in various parts of the continent such as South Africa and Kenya. However, the lack of access to modern conversion technologies, processing facilities and the infrastructure required for biofuel production and distribution serves as a challenge to the use of biofuels in some African countries (Aduloju, 2021). Moreover, the successful adoption of biofuelling depends on the local availability of feedstocks spare parts and skilled manpower which may not often be available in developing African countries as evidenced in Burundi where the biomass gasification of peat was abandoned due to limited local technology (Muzee, 2012). Additionally, the absence of clear policies and legislation on mandatory blending standards and incentives for investors hinders the growth of the biofuel sector in African countries where those laws do not exist (Fertahi, Elalami, Tayibi, Taarji, and yamlouli, 2025).

4. Conclusion and Recommendations

This study has examined the opportunities and challenges in biofuel adoption in Africa from the perspective of the legal frameworks in the continent. Biofuelling presents a formidable means of meeting the energy and sustainability demands of countries in Africa while also providing numerous socio-economic advantages for the continent. However, the examination of case studies and relevant literature reveals that while biofuels have the potential to stimulate rural employment and reduce dependence on fossil fuels, the absence of strong regulatory frameworks has limited the success of biofuel adoption and allowed environmental degradation, displacement of local communities and increased food insecurity to persist. Jurisdictions such as the EU and the United Kingdom have sought to address these challenges through policy directives and legislation aimed and protecting the environment and the citizens and ensuring the realisation of the benefits of biofuelling and sustainable energy. There is therefore a need for stringer legal frameworks to ensure the full the enjoyment of the benefits of biofuelling on the continent.

In light of the identified challenges and opportunities of biofuelling in Africa, this article makes the following recommendations:

1. Harmonisation of International Standards: There is the need for harmonisation of international standards on biofueling into one comprehensive instrument to ensure that countries have a reference point for policy making and that citizens can hold their governments accountable for failing to meet their obligations under international law.

2. Enhance Environmental Safeguards: Given the possible negative impacts of biofuels on the environment, African countries need to make provisions mandating the environmental sustainability of biofuel projects. A leaf can be borrowed from the European Union where sustainability criteria are in place to ensure adherence on the part of stakeholders.

3. Streamline Permitting Processes: Permitting processes in biofuelling across Africa should be streamlined with clear procedures and requirements to be met by institutional investors. This will make it easier for entities desirous of investing in the biofuel sector to have a clear guideline to follow.

4. Improve Legislative Frameworks: Conscious effort on the part of national African governments is also required to enact comprehensive biofuel legislation. Such laws should include provisions for local community participation, environmental protection and clear assessment of negative impacts of biofuel projects.

5. Strengthen Existing Institutions: The success of legal frameworks is dependent on effective institutions. As a result, existing regulatory institutions must be strengthened to carry out oversight functions and implement the provisions of existing laws.

6. Increase Stakeholder Engagement: Since local communities will be the ones involved in farming of biofuel feedstock and the utilisation of the biofuels, there is the need for increased involvement of local communities through better awareness-raising about the nature and impacts of biofuels.

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AI IN CROSS-BORDER PROCUREMENT: LAW AND ETHICS

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Abstract: *The dynamic digital transformation of public procurement via Artificial Intelligence (AI) creates a critical regulatory disparity with the World Trade Organization Government Procurement Agreement (WTO GPA), which mandates transparency and non-discrimination. This study analyzes the ethical and legal conflicts arising from the cross-border application of high-risk AI systems. The core issue is an ethical and legal trilemma: algorithmic bias, opacity ('Black Box'), and the need for Explainability (XAI). These generate latent discrimination, violating GPA Article IV and undermining the right to an effective remedy (Article XVIII). A comparative analysis of international regulatory models (EU, UK, US, South Korea) shows convergence on mandatory Human-in-the-Loop (HiL) control and stricter algorithmic accountability. Traditional post-hoc XAI methods are insufficient for legally meaningful justification in high-risk sectors. The paper justifies transitioning to the 'Justified AI' (JAI) standard, ensuring inherent interpretability as the sole mechanism for guaranteeing digital accountability and full compliance with due process in cross-border public procurement.*

Keywords: *public procurement, artificial intelligence, algorithmic bias, regulatory lacuna,ethics, cross-border procurement.*

1. Introduction

At the current stage of development of the public procurement (PP) sector, a permanent dynamic digital transformation is taking place, driven by the implementation of artificial intelligence (AI) technologies. The application of AI systems in this sensitive sphere highlights the need for enhanced regulatory oversight and raises the issue of a significant regulatory and ethical disparity between the technical efficiency of automated processes and the fundamental principles of international trade law. The global legal consensus enshrined in the WTO GPA imperatively establishes the need to conduct procurement procedures on the basis of absolute transparency, non-discrimination and the assurance of fair competition. The erosion of these principles generates systemic risks to the integrity of the global trade architecture.

Although European and global practices demonstrate progress in digitalisation, even the most advanced architectures face existential challenges in integrating AI, stemming from its technical nature (the 'black box' phenomenon). This has the potential to generate new, latent forms of discrimination (*algorithmic bias*) and undermine institutional transparency, thereby undermining the GPA's core objectives regarding the liberalisation of cross-border markets. Consequently, an epistemological contradiction arises between the technical effectiveness of AI and the legal accountability of its decisions.

2. Problem Statement

Cross-border public procurement refers to the process of sourcing and purchasing goods, services, or works by government entities from suppliers located in other countries. This international market is regulated by the WTO GPA, which covers a massive annual market estimated at approximately $1.7 trillion. The GPA is fundamentally important as it aims to liberalize trade by ensuring signatory Parties adhere to cornerstone principles: non-discrimination (mandating equal treatment of foreign and domestic suppliers) and procedural transparency. Despite its critical role in global trade, the market is inherently complex for foreign access due to varying national legal systems and procedural requirements. The introduction of high-risk AI systems further exacerbates these complexities by introducing new, latent barriers to non-discriminatory access, which directly challenges the GPA's core mandate.

The *research* problem, situated at the critical intersection of public law, ethics and the digital economy, lies in the systematisation and critical analysis of ethical and legal conflicts and jurisdictional disparities arising from the cross-border application of high-risk AI systems in the public procurement sector, which falls under the regulatory scope of the WTO GPA. The relevance of the study is heightened by the existence of international regulatory lacunae regarding the assurance of algorithmic integrity

The aim of this study is:

1. To identify systemic regulatory gaps in existing international legal standards concerning the cross-border application of AI in public procurement.
2. To justify the need to develop a comprehensive framework of harmonised principles that will ensure *legal explainability*, institutional *accountability* and *validation* of AI decisions in accordance with the fundamental principles of the WTO GPA, in particular non-discrimination and transparency.

3. Method

The study employs the method of critical systems analysis and the comparative law method. The main approach consists of the systematisation and critical analysis of ethical and legal conflicts and jurisdictional disparities arising from the cross-border application of high-risk AI systems in the public procurement sector, which falls under the regulatory scope of the WTO GPA.

The study covers an analysis of the theoretical foundations, institutional priorities and international legal responses to the identified challenges. In particular, a detailed comparative analysis of the regulatory models of four key jurisdictions and international instruments has been conducted:

- European Union: the Artificial Intelligence Regulation (EU AI Act, Regulation (EU) 2024/1689) and the General Data Protection Regulation (GDPR, 2018).
- United Kingdom: National AI Strategy and public procurement reform (Procurement Act, 2023).
- United States of America: *A laissez-faire* approach and key federal initiatives (TRUMP AMERICA AI Act, 2026).
- South Korea: ‘Basic Act on the Development of Artificial Intelligence and the Establishment of a Trust Framework’ (AI Basic Act, 2026).

The comparative law approach has been used to identify systemic regulatory gaps (*regulatory lacunae*) and to justify the need to develop a comprehensive framework of harmonised principles that will ensure the legal explication and institutional accountability of AI decisions.

4. Results

The contemporary academic community, conducting research at the critical intersection of jurisprudence, ethics, economics and AI technologies, has systematised the key challenges arising from the integration of AI systems into the public sector. Theoretical research in this field centres on interrelated operational and regulatory issues that form the core of *the Ethical-Legal Trilemma*: *Algorithmic bias; Opacity, known as the 'Black-Box Problem'; the need for explainability (Explainable AI, XAI*).

These challenges are particularly acute in the field of public procurement, where the introduction of AI systems designed to prevent fraud and systemic risks, or to provide advice to specialists, may lead to regulatory gaps. In view of this, this section will analyse the theoretical foundations, institutional priorities (in particular, the implementation of non-price criteria and staff training in the field of AI) and international legal responses to the challenges outlined, covering a wide range of jurisdictions and international standards.

Conceptualisation of Algorithmic Bias in public procurement research and global academic developments

The problem of algorithmic bias is a critical ethical threat that arises when the results of an AI system systematically and unfairly deviate from objective indicators. The systemic risk inherent in AI necessitates a coordinated global regulatory response; this call for harmonized international standards is reinforced by research focusing on strategic directions for building AI-enabled economies (Isayev, 2025), which highlights the strategic importance of aligning national policies with global AI governance models to prevent fragmentation. In the context of public procurement, this bias is institutionalised through the use of historical data (*Data Provenance*) reflecting past practices, where certain groups of suppliers (in particular, foreign ones) may have had limited access to markets. The complexity of this ethical-legal dilemma is heightened by the recognition that AI can act as a "double-edged sword," posing significant threats to institutional and corporate reputation through issues like bias and lack of transparency (Ağtaş, 2025), which ultimately undermines the trust vital for fair procurement.

Martín-Ortega's article (2018) confirms the global trend towards using public procurement as a powerful tool for advancing ethical and social goals, in particular the protection of human rights in global supply chains, which corresponds to the inclusion of non-price criteria (MEAT) in tenders. She emphasises that the state, as an economic actor, cannot delegate its duty to protect human rights, which directly correlates with study's requirement for the imperative enshrinement of human responsibility (*Human-in-the-Loop, HiL*). Since the assessment of such complex social criteria by automated AI systems increases the risk of algorithmic *bias*, this study highlights the legal necessity of ensuring the impartiality and justifiability of AI (*Justified AI, JAI*). Thus, to ensure full compliance with the *GPA* principles (particularly non-discrimination), AI systems that assess social criteria must be fully transparent and auditable so that the state can fulfil its duty of due diligence.

Olaitan, S.'s *paper* 'Algorithmic Governance and the Redefinition of Bureaucratic Accountability in Digital States' (2025) analyses the transformation of public administration under the influence of AI, where *the opacity* of decisions creates critical gaps in accountability and poses a threat to due process. The study emphasises that algorithmic governance, despite promises of efficiency, creates paradoxical 'dark' consequences, such as bias and dependency. The authors propose a revised hybrid accountability model, which is critically important for high-risk areas such as public procurement. This model imperatively requires the implementation of auditability, appealability and mandatory *human-in-the-loop* control, which is fundamental to ensuring the legitimacy of automated decisions and compliance with international transparency standards

The challenges of introducing high-risk AI into the public procurement sector are the subject of focused research at leading academic and advisory center. A prime example is the work of Georgopoulos, A., Assistant Professor of Public and European Law at the University of Nottingham. He heads the Research Unit for Innovation, AI, Strategic and Defence Procurement, and also advises international organisations (such as the OECD and the World

Bank) on regulatory reform in the field of public procurement and new technologies. His work focuses on the critical intersection of European law, procurement policy and AI, highlighting that the targeted use of procurement mechanisms can be an effective tool for regulating AI systems.

Research confirms that, whilst AI provides unprecedented efficiency in auditing and data analysis processes, it may inadvertently incorporate biases, thereby jeopardising ethical standards. In view of this, the academic community, notably Munoko, I., Helen Brown-Liburd, H., Vasarhelyi M. (2020), emphasise that such auditing must become a key mechanism for ensuring the accountability and integrity of algorithms operating in the public sector. Ethics-oriented auditing enables organisations to verify claims regarding their automated decision-making systems and helps to overcome the 'Black Box Problem', which is a prerequisite for ensuring the legality of cross-border procurement procedures.

Furthermore, the work of Bergmann, C. (2023) explores how public procurement can be used as a tool to promote ethical standards in supply chains, which directly relates to the need to control *bias* in systems that assess social and environmental criteria. In the realm of the practical implementation of artificial intelligence in procurement processes, academic research and institutional initiatives (notably the OECD) emphasise that the primary motivation is to enhance operational efficiency, reduce administrative costs, and create more dynamic and responsive decision-making mechanisms. However, this process is accompanied by significant regulatory risks, as the implementation of high-risk AI systems may lead to the unintended incorporation and scaling of subjective assessments, bias and opacity - the very issues that such systems are designed to minimise.

To mitigate these risks and ensure algorithmic integrity, it is critical to move from abstract principles to concrete technical and contractual tools. For example, the EU employs integrated *XAI-Fuzzy* methodologies which, by combining high-performance models (such as LightGBM) with explainability mechanisms (SHAP), enable policymakers and regulators to conduct in-depth analyses of market realities and ensure more nuanced oversight of the integrity of tender procedures, going beyond simple descriptive statistical data. Furthermore, at the institutional level, the European Commission has developed *Model* Contractual Clauses *for AI Procurement* (*MCC-AI*). These clauses serve as a framework document for public procurers, obliging suppliers of high-risk systems to adhere to heightened standards, including continuous risk management throughout the entire AI lifecycle, detailed technical documentation and audit mechanisms. Thus, the procurement of AI by public authorities is transforming from a purely technical transaction into a process requiring the deep integration of legal, ethical and social considerations to ensure compliance with fundamental rights and GPA standards.

Legal Responses to Opacity and XAI: A Comparative Analysis of Regulatory Models

The opacity of complex machine learning models, known as *the 'Black Box* Problem', is a fundamental technical obstacle to compliance with legal norms requiring transparency. International legal thinking responds to this by introducing *the Right to Explainability* through a series of regulatory acts that demonstrate significant regulatory divergences:

*The European Union Model***.** A fundamental element of the international regulatory landscape defining the approach to high-risk AI is the European Union Model, enshrined in the Artificial Intelligence Regulation (EU AI Act, Regulation (EU) 2024/1689), and the General Data Protection Regulation (GDPR). The EU has adopted a horizontal, multi-tiered approach based on risk assessment, ensuring both safety and respect for fundamental human rights.

The AI Regulation, which entered into force on 1 August 2024, classifies AI systems used in the public services and administration sectors as high-risk. This includes systems used in public procurement, particularly those used for assessing qualifications or the automated selection of suppliers, as they may pose a serious risk to fundamental rights.

Suppliers and developers of high-risk systems are subject to strict requirements, which will come into force in phases, notably from August 2026. These include the need to use relevant, accurate and unbiased datasets for model training, as well as the implementation of *a data governance* system to minimise the risks of discrimination. To ensure transparency and the possibility of audits, systems must provide automatic logging and *record-keeping* of AI operations, and suppliers are required to register systems in the EU database. A key requirement is the provision of *Human-in-the-Loop (HiL*) supervision, which must be operational rather than theoretical. This means that the human operator must be empowered to intervene, override or revoke a decision made by the AI, thereby ensuring that human control over the system is maintained. In addition, legal clarification and auditing are required: suppliers are obliged to carry out *Fundamental Rights Impact Assessments* before putting the system into operation, and public procurers have the right to request and disclose system information for the purposes of auditing.

The European Commission, with a view to implementing the requirements of the AI Regulation for the public sector, has developed Model Contractual *Clauses for AI Procurement* (*MCC-AI*), which were updated in 2025 to take account of the Regulation that had already been adopted. These clauses are a key tool as they translate regulatory obligations into contractual ones, integrating the requirements of the MCC-AI-High-Risk Regulation (such as risk management, conformity assessment, technical documentation, and ensuring accuracy, reliability and cybersecurity) directly into the supplier's contractual obligations. In this way, MCC-AI establishes a *de facto benchmark* for responsible AI procurement, enabling public authorities to control not only the final product but also the process of its development, monitoring and adaptation. Furthermore, MCC-AI-High-Risk grants public authorities extensive audit rights and requires the supplier to cooperate in conducting an assessment of the impact on fundamental rights.

The GDPR (General Data Protection Regulation, 2018) established the primary legal precedent regarding automated decision-making (ADM). Article 22 of the GDPR grants the data subject the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning the individual or significantly affects them. Although case law disputes the direct existence of a 'right to an explanation' as a separate right, the GDPR imperatively requires the provision of 'meaningful information about the logic involved'. This is confirmed by case law: the Court of Justice of the European Union (CJEU), in a judgment delivered in February 2025, confirmed that data controllers must provide concise and comprehensible explanations regarding the "procedures and principles actually applied" (2025). In doing so, the CJEU emphasised that it is not sufficient simply to disclose a complex mathematical formula (algorithm), as this does not constitute a "meaningful explanation". The GDPR's requirements regarding transparency and the right to HiL are fundamental and complement the strict technical requirements of the AI Regulation. In particular, Article 86 of the AI Regulation reinforces this requirement by establishing the right to receive from the "clear and meaningful explanations regarding the role of the AI system in the decision-making process and the key elements of the decision taken".

This integrated approach (GDPR + AI Act) is the most restrictive and focused on safety and human rights, creating a single and binding standard for the cross-border application of AI in the public sector.

The UK's regulatory model: a pro-innovation approach versus public procurement reform. The UK has adopted *a* fundamentally different, pro-innovation approach to the regulation of artificial intelligence, which contrasts with the European Union's rigid, sector-specific model enshrined in the EU AI Act. The UK's strategy, set out *in the National AI Strategy* in September 2021, is more adaptive and flexible, aiming to create the most innovation-friendly regulatory environment in the world. The main focus has shifted from one-size-fits-all, restrictive legislation to ethical principles, accountability, technical standards and regulatory 'sandboxes', so that regulation can respond swiftly to rapid changes in technology. To realise this vision, the government has established key institutional mechanisms. The Office for Artificial Intelligence (OAI) is responsible for developing overarching AI policy and coordinating government efforts, whilst the Centre for Data Ethics and Innovation (CDEI) is an expert body focusing on the trustworthy use of data and AI in the public and private sectors and is responsible for the AI assurance roadmap (AI assurance roadmap). In addition, the DRCF AI and Digital Hub (*Digital Regulation Cooperation Forum hub*) operates, providing free advice to innovators, helping them navigate complex cross-regulatory requirements (data protection, competition, consumer rights), which is an example of sectoral and coordinated regulation.

Following its withdrawal from the European Union, the UK has completely overhauled its public procurement legislation. Regulations previously based on the implementation of the 2014 EU Directives (in particular, the Public Contracts Regulations, 2015) have been replaced. *The Procurement Act* (2023), together with secondary legislation such as *the Procurement Regulations* (2024), came into force on 24 February 2025. This Act established a new, unified and more flexible regulatory framework for England, Wales and Northern Ireland, whilst the old rules continue to apply to procurements that were initiated prior to that date.

The new procurement regime aims to simplify procedures, increase transparency and stimulate innovation. This is in line with both domestic objectives and international obligations under the WTO GPA (to which the UK is a Party). In particular, the Procurement Act 2023 significantly strengthens requirements for the collection and publication of data on supplier performance and contract compliance, which is critical in the context of AI systems that require structured and reliable data for training:

Publication of payment compliance notices (Section 69 - *Payments Compliance Notices*): requires public bodies to report on the average time taken to pay suppliers' invoices, demonstrating compliance with the 30-day payment deadline;

Assessment of Contract Performance (Section 71): requires recording information on suppliers' performance against key performance indicators (KPIs) for major contracts (over £5 million) and documenting instances of contract breaches. These new, detailed requirements for the collection and publication of performance data create a robust foundation for training AI systems, which can use this information for automated risk scoring and qualification. The relevance of the Act is confirmed by its active discussion in international forums; in particular, the UK presented it at a small group meeting on SMEs within the framework of the WTO GPA Work Programme in March 2025.

To stimulate innovation, Innovate UK is transforming its approach to public procurement, replacing the SBRI (*Small Business Research Initiative*) with the Contracts for Innovation Programme. This programme offers innovative organisations 100% funded R&D contracts to address complex public sector challenges. In addition, the Crown Commercial Service (CCS) has developed the AI Dynamic Purchasing System (DPS), which includes a baseline ethics assessment, requiring suppliers to commit to ethical and technical compliance with tenders.

Despite the innovative nature of the approach, the UK's AI regulatory model, which is guided by principles rather than rigid rules, emphasises the need for AI to remain merely a supporting tool. The government emphasises the mandatory verification of all results and works closely with organisations such as The Alan Turing Institute to update guidance on AI ethics and safety in the public sector. This is in line with the overarching principle of the UK strategy - not to impose prescriptive restrictions, but to steer the process of AI deployment through accountability, auditing and technical standards that help protect society and build trust.

The United States of America (US) model: decentralisation of regulation and the conflict between state and federal regulations

The United States of America traditionally takes the most lenient stance (*laissez-faire model*) on the regulation of artificial intelligence, emphasising the need not to stifle innovation and to ensure the global leadership of American companies in this field. This *'light-touch'* philosophy shapes a decentralised approach, where regulation takes place largely at state level or through the use of existing industry mechanisms, rather than through the creation of new federal regulatory bodies.

The federal government is actively working to remove what it considers to be 'burdensome' barriers and 'excessive state regulation' (Hastings P. LLP, 2025). This policy includes the removal of previous minimum safeguards for so-called high-risk AI, which were viewed as 'barriers' to innovation. To this end, the National *Policy Framework for Artificial Intelligence* was issued in March 2026. This document, which is *a* non-binding "*wish list*", outlines seven key pillars focused on protecting the rights of Americans, encouraging innovation, and establishing a "minimally burdensome national standard". The framework calls on Congress to utilise existing industry standards and regulatory bodies with subject-matter expertise, rather than creating new federal structures to regulate AI (Gibson Dunn, 2026). It also emphasises that federal policy should pre-empt state laws, which create a *'fragmented patchwork of state* regulations' and may 'hinder our national competitiveness' (Trump Administration, 2025a). Despite the absence of a comprehensive federal law on AI, the regulatory landscape in the United States is characterised by significant activity in the development of comprehensive legislative initiatives (Latham & Watkins, 2026). One of the most comprehensive federal legislative drafts currently on the table is the TRUMP AMERICA AI Act (Blackburn, 2026), introduced as a discussion draft by Senator Marsha Blackburn (R-Tennessee) on 18 March 2026 (Jones Walker, 2026). This 291-page document signals a significant move towards unified federal regulation structured around four key focuses (the '4 Cs'): children, creators, conservatives and communities (Trump Administration, 2025b).

The draft proposes the creation of a new federal liability framework that goes beyond traditional legal approaches. It mandatorily establishes a "general duty of care" for developers of AI chatbots, requiring them to exercise "reasonable care in the design, development and operation" to effectively prevent foreseeable harm to users (Jones Walker, 2026). This provision aims to increase developers' liability by classifying AI systems as products subject to enhanced legal scrutiny under the principles of defective design, failure to provide adequate warnings, or dangerous products. It is important to note that Blackburn's bill creates its own comprehensive federal liability regime, which exists in parallel with another key bipartisan initiative—the AI LEAD Act (*Aligning Incentives for Leadership, Excellence, and Advancement in Development Act*), introduced by Senators Durbin (D-Illinois) and Hawley (R-Missouri) on 29 September 2025, which also establishes a federal cause of action in cases concerning liability for AI products. The TRUMP AMERICA AI Act places particular emphasis on the issue of algorithmic bias and its direct impact on public procurement. Title VIII of the bill requires annual independent third-party audits of high-risk AI systems to identify any form of discrimination based on worldview or political affiliation (Blackburn, 2026). Furthermore, Title XVI codifies the Presidential Executive Order (December 2025) restricting federal agencies' procurement of Large Language Models (LLMs) and other AI systems. Under this provision, procurement may only be made from suppliers whose models comply with 'unbiased AI principles' (Trump Administration, 2025b). These principles include such mandatory criteria as truthfulness, historical accuracy, scientific objectivity and ideological neutrality. Thus, Blackburn's bill creates a strict regulatory framework that directly impacts the market for AI services to the federal government and sets a precedent for assessing algorithmic neutrality in the public sector.

The South Korean Model: 'Basic Act on the Development of Artificial Intelligence and the Establishment of a Foundation of Trust' (AI Basic Act, 2026)

South Korea has become a pioneer on the Asian continent and one of the first jurisdictions in the world to introduce a comprehensive law to regulate the safe use of AI, despite the global focus on curbing innovation. The law, known as the 'Basic Act on the Development of Artificial Intelligence and the Establishment of a Trust Framework' (AI Basic Act, 2026), adopted in 2026, was designed to support innovative growth whilst establishing the necessary ethical and social safeguards.

The core philosophy of the law is to create an *'AI Trust Environment*'. This is achieved through a flexible approach that avoids rigid, one-size-fits-all regulation, similar to the EU AI Act, and instead utilises risk management tools and promotes transparency.

The concept of 'high-risk AI' and mandatory human oversight

A central element of the law is the introduction of the concept of 'high-risk AI' in areas that could significantly affect people's rights, freedoms, daily lives, safety or health. Unlike the strict list characteristic of the EU, the Korean model uses criteria that allow regulatory bodies (for example, in the fields of public procurement, healthcare or finance) to determine the risk threshold themselves.

For such high-risk systems, a key requirement is established: mandatory human *oversight* or human feedback. This mechanism is intended to ensure that:

- The final decision rests with a human: in critical situations, such as the automatic disqualification of a supplier in public procurement or the making of a medical diagnosis, a human has the right to review, amend or reject a decision generated by an AI system.

Audit and logging: Decisions made by AI in high-risk areas must be fully audited and logged, in line with international transparency requirements (e.g. Article VII of the GPA on the transparency of procurement procedures).

Ethical guidelines: developers are required to adhere to ethical guidelines, preventing algorithmic bias (*AI Bias*) and ensuring the fairness of results.

The second pillar of Korean regulation is ensuring transparency regarding the origin of AI-generated content. The law mandates the labelling of generated content with special *watermarks* or other identifying marks. This requirement is particularly relevant for:

- synthetic media (deepfakes): labelling is necessary to prevent the spread of false information and protect public trust;
- automated reports and documents: In the field of public procurement, this allows for a clear distinction between documents prepared by an AI model (for example, for the evaluation of tender proposals) and those created by a human procurement officer, which is an element of XAI (Explainable AI).

The Korean approach thus positions itself as a balanced model that encourages technological development (promoting innovation through the absence of excessive, blanket regulation), whilst simultaneously introducing targeted, mandatory control and transparency mechanisms in areas where the risk to citizens is highest.

Harmonisation of international standards and the role of expert organisations: bridging the regulatory gap on artificial intelligence in public procurement

The WTO GPA is a key international multilateral agreement establishing the principles of non-discrimination, transparency and procedural fairness in cross-border public procurement. Although the GPA clearly recognises the importance of ensuring the integrity and predictability of public procurement systems for the effective management of public resources and the prevention of corrupt practices, its current text contains *a regulatory lacuna* regarding the ethical governance of AI. This gap arises against the backdrop of a global trend towards *digital accountability*, as the GPA's traditional *formal transparency* requires modernisation in line with digital governance standards.

In his seminal work 'Combatting Corruption and Collusion in Public Procurement: A Challenge for Governments Worldwide' (2024), Anderson, R. provides a detailed analysis of the causes and consequences of corruption and collusion among suppliers in the public procurement sector. Corruption, which involves decisions favouring selected participants in exchange for bribes, and collusion, which involves the manipulation of tenders, often reinforce one another.

Anderson's work highlights the need for a multifaceted and coordinated approach (strengthening anti-corruption legislation and enhancing the resilience of procurement systems) to combat these risks. This requirement is critical for the application of AI: if a public procurement system is not resilient to corruption, the introduction of AI may merely automate and scale up existing biases and fraudulent schemes, rather than eliminating them.

Nicholas, C. of the United Nations Commission on International Trade Law (UNCITRAL) plays a key role, through her academic and practical work, in shaping the legislative and policy framework for the harmonisation of international procurement standards. Unified standards are a necessary prerequisite for the implementation of uniform rules for ethical AI. In the context of modernising the GPA, proposals include the creation of structured fields that support machine-readability, which is an essential foundation for any unified AI system. This includes new mandatory fields such as Contract ID, Funding Code and Review Criterion, which do not extend the obligations of the GPA but modernise the transparency infrastructure in line with digital standards.

The conflict between non-discrimination and algorithmic bias (AI Bias) in cross-border public procurement

The principle of non-discrimination is a cornerstone of international trade law, in particular the WTO GPA. Article IV of the GPA explicitly requires each Party to accord to goods, services and suppliers of any other Party treatment no less favourable than that accorded to domestic suppliers (the principles of national treatment and most-favoured-nation treatment, MFN).

The use of high-risk AI, for example, for automated risk scoring, pre-selection or the assessment of suppliers' qualifications, creates *latent discrimination*, which is embedded in the mathematical model as early as the training stage. This problem is known in academic circles as *'disparate* impact' - where a formally neutral algorithm produces disproportionately negative, discriminatory or unfair outcomes for certain groups or geographical jurisdictions.

If an AI system trained on historical data from a single jurisdiction unconsciously favours suppliers with local certifications or a long history of successful contracts within the national system, this could be interpreted as a breach of Article IV of the GPA. Such a practice creates a hidden barrier for foreign suppliers who may not have the relevant 'digital history'. International experts (such as O'Neil, C. in her research, 'Weapons of Math Destruction', 2016) emphasise that these models, which are opaque and unregulated, exacerbate inequality and codify bias.

This conflict is critically exacerbated by the global shift towards strategic procurement, which requires the introduction of non-price criteria (MEAT – Most Economically Advantageous Tender). These criteria, such as environmental sustainability, social responsibility or *supply chain resilience*, are complex and require the assessment of subjective parameters. Such requirements, for example, the introduction of mandatory non-price sustainability criteria under the EU Net-Zero Industry Act (NZIA), significantly increase the risk of algorithmic bias. The *supply chain resilience* criterion, when assessed automatically by AI, could be configured to favour suppliers with diversified or European supply chains, potentially discriminating against bids from third countries – GPA Parties.

The 'Black Box' problem and algorithmic explainability (XAI)

The fundamental 'black *box*' *problem* in the application of complex AI models, such as deep learning, creates a direct obstacle to compliance with the GPA's requirements on transparency (Article VII) and the effective right of appeal (Article XVIII) (WTO GPA, 2012). When high-risk AI makes a critical decision, for example, automatically disqualifying a supplier, the opacity of its internal processes makes it impossible for the supplier to verify the fairness and impartiality of that decision. This directly violates the fundamental principle of *due process*. If the decision to disqualify is based solely on a non-transparent algorithm, the supplier cannot effectively prepare arguments for an appeal, thereby undermining its right to an effective remedy guaranteed by the GPA.

This is precisely why *the Right to Explainability* has become key to resolving this issue, as reflected in the requirements of the EU AI Act for high-risk systems. AI systems used in cross-border public procurement must be built on the principles of XAI (*Explainable AI*). Academic approaches, in particular Pasquale's, F. concept *of Algorithmic Accountability* (2017, 2019), focus on the fact that AI decisions must be understandable, accountable and contestable. Pasquale advocates for *a 'Rule of Persons, Not* Machines', emphasising that algorithms are biased and require external accountability and mechanisms for redress. To ensure *the digital accountability* of algorithms in public procurement, the following extended XAI principles must be implemented:

Auditability - this requirement ensures that interested third parties (including public auditors and judicial bodies) can examine, understand and verify the behaviour of the algorithm through the disclosure of detailed documentation on the model, training data and decision-making logic.

Interpretability - this principle requires that the AI system provide users (for example, suppliers challenging a decision) with a clear and meaningful explanation of which factors (criteria, parameters) most influenced a specific decision (for example, disqualification or a high score). Interpretability allows a 'black box' to be transformed into a 'grey box', ensuring legal transparency.

Finally, Responsibility - this principle goes beyond technical explanation, requiring the establishment of externally visible avenues for redress and the definition of the internal role *of the human being* responsible for the timely resolution of problems arising from the algorithm's operation. In other words, the final say and legal responsibility must always lie with a person, not a machine.

The fundamental *'black box problem'*, inherent in complex artificial intelligence models, creates a direct systemic obstacle to compliance with international legal obligations, in particular the GPA's requirements regarding transparency (Article VII) and the effective right of appeal (Article XVIII). In the context of cross-border procurement, when high-risk AI makes a critical decision, such as the automatic disqualification of a supplier, the opacity of its internal processes makes it impossible to verify fairness and impartiality, which critically undermines the entity's right to *due process*. This directly contradicts the principles of fair competition and non-discrimination, which are cornerstones of the GPA.

This regulatory disparity, where technical explanations do not meet regulatory requirements, highlights the need to implement *Explainable AI* (*XAI*). The concept of XAI is a set of methods aimed at ensuring accuracy, fairness and transparency in automated decision-making, which is critical for building institutional trust and ensuring regulatory compliance. The legal response to the problem of opacity is most clearly articulated in the requirements of *the EU AI* Act, which establishes XAI as a mandatory technical requirement for providers of high-risk systems.

However, according to the latest research, in high-risk legal sectors where legislation requires not only a technical explanation but also *a* legally meaningful *justification* for a decision, traditional post-hoc XAI methods (such as LIME and SHAP) are recognised as fundamentally inadequate. These methods generate unstable technical approximations of the model's behaviour rather than legally sound grounds for a conclusion, creating the risk of the 'Rashomon effect' (several conflicting explanations for a single result), which renders the right to an effective appeal illusory.

Consequently, academic discourse is shifting towards a new standard: *'Justified AI'* (*JAI*). This concept proposes a radical departure from explaining opaque models, focusing instead on the design of interpretable hybrid systems. Such systems must combine rule-based components with data-driven models, ensuring *inherent interpretability*. Without the implementation of mechanisms ensuring digital accountability that meet the JAI standard, the international regulatory context, in particular the GPA, becomes incompatible with high-risk AI, undermining the legitimacy of cross-border procurement procedures.

5. Conclusions and recommendations

Based on the results of this study, which focused on the critical intersection of the integration of high-risk artificial intelligence systems and international legal obligations in the field of cross-border public procurement, a number of key conclusions and recommendations can be formulated.

The study found that the introduction of AI systems into public procurement has created a significant regulatory and ethical disparity between the technical efficiency of automated processes and the fundamental principles of the GPA, which imperatively require transparency and non-discrimination. This finding aligns with the central research problem identified by Olaitan (2025), who demonstrated that the opacity of algorithmic governance creates critical gaps in bureaucratic accountability and threatens due process. The study concludes that the regulatory disparity is severe: the GPA's current text contains a critical regulatory *lacuna* regarding the ethical governance of AI, which undermines the legitimacy of cross-border procurement procedures. The critical challenges of AI integration form an ethical-legal trilemma comprising algorithmic *bias*, opacity (*Opacity* / the 'Black Box Problem') and the need for Explainability (*XAI*), which together generate latent forms of discrimination and impede the effective right to appeal. In particular, Algorithmic Bias, caused by the use of historical data, can automatically scale up past discriminatory practices, creating a direct conflict with the GPA's fundamental principle of non-discrimination (Article IV), particularly when assessing non-price criteria (*MEAT*).

The core finding concerning explainability is the inadequacy of traditional post-hoc XAI methods (LIME, SHAP) in high-risk sectors requiring legally meaningful *justification*. This confirms the critique by scholars of algorithmic accountability, as these methods only yield unstable technical approximations (the 'Rashomon effect'), thus rendering the right to an effective appeal illusory. The study concludes that the future of digital accountability lies in the emerging standard of 'Justified AI' (JAI), which requires a radical shift from explaining opaque models to designing hybrid systems that ensure *inherent interpretability*.

Comparative analysis of international regulatory models (EU, UK, US, South Korea) confirms a clear convergence on the necessity of mandatory human oversight (Human-in-the-Loop, HiL) and stricter requirements for algorithmic accountability. This consensus underscores the philosophical and ethical guidance of Pasquale (2017, 2019), whose concept of *Algorithmic Accountability* advocates for the principle of 'A Rule of Persons, Not Machines', insisting that legal responsibility must always reside with the human operator.

To ensure algorithmic integrity and compliance with GPA international legal standards, it is necessary to develop a comprehensive framework of harmonised principles focused on digital accountability:

- Establish the 'Justified AI' (JAI) Standard. A JAI standard should be established, which will provide not only an explanation but also a legal justification for the final result, thereby satisfying the requirements of due process. This requires a fundamental shift to designing hybrid systems that ensure inherent interpretability, avoiding the technical approximations and potential for conflicting explanations (the 'Rashomon effect') created by inadequate post-hoc XAI methods.
- Implement Mandatory Ethical Audits and Technical Transparency. Mandatory requirements for ethical audits of AI systems to identify and minimise bias should be integrated into international and national frameworks, aligned with the call for *ethics-oriented auditing* by Munoko, Brown-Liburd, & Vasarhelyi (2020). The audit must include a Fundamental Rights Impact Assessment before system deployment, as required by the EU AI Act. Technical transparency must be secured by requiring suppliers of high-risk systems to provide automatic logging and record-keeping of all AI operations, ensuring Auditability for public bodies, auditors, and judicial bodies.
- Enshrine the Principle of 'A Rule of Persons, Not Machines' (HiL). It is imperative to enshrine the principle of 'A Rule of Persons, Not Machines' to ensure that HiL control is operational rather than theoretical. The human operator must be specifically empowered to intervene, override, or revoke any decision made by the AI (a core requirement of the EU AI Act and the South Korean Model). This ensures that legal liability and Responsibility for the final decision always rests with the human operator, addressing the core conflict of *legal accountability*.
- Actively Utilise Model Contractual Provisions. It is critically important to actively utilise model contractual provisions for the procurement of high-risk AI (such as the EU MCC-AI-High-Risk), which should be adopted internationally as a de facto benchmark. These clauses translate regulatory obligations into strict contractual requirements, compelling suppliers to ensure continuous risk management throughout the entire AI lifecycle, detailed technical documentation, and adherence to heightened standards of accuracy, reliability, and cybersecurity. Furthermore, they must grant public authorities extensive audit rights and cooperation in conducting the Fundamental Rights Impact Assessment.

- Modernisation of the GPA and Antitrust Mechanisms. The modernisation of the GPA should continue, in particular the introduction of structured, machine-readable transparency fields (e.g., Contract ID, Funding Code, Review Criterion), aligning the transparency infrastructure with modern digital standards. This is essential for creating the necessary technical foundation for a unified ethical AI system. This also includes the proactive utilisation of existing antitrust and anti-collusion mechanisms to counter new anti-competitive practices, such as algorithmic price fixing or collusion (Anderson et al., 2024), thereby ensuring the resilience of the procurement system against the automation of existing biases and fraudulent schemes.

The implementation of these measures will harmonise the principles of international trade with new technological realities, ensuring digital accountability in cross-border public procurement.

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LEGAL REGULATION OF COUNTERING DISINFORMATION IN THE AGE OF AI

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Abstract: *The rapid proliferation of generative Artificial Intelligence (hereinafter - AI) has revolutionized the creation of disinformation, rendering traditional, static legal frameworks insufficient. This study examines the multifaceted legal challenges posed by AI-driven threats, specifically focusing on deepfakes and automated manipulative content that jeopardize democratic stability. Methodology. The research utilizes a comparative and doctrinal analysis of the European Union's regulatory landscape. Specifically, it evaluates the efficacy of the EU AI Act and the Digital Services Act (hereinafter – DSA) concerning transparency obligations, technical watermarking, and algorithmic accountability. The analysis reveals that while current mechanisms provide a foundation for oversight, significant legal gaps remain in addressing the automated nature of synthetic media and the jurisdictional challenges of anonymous creators. Findings indicate that rigid mandates often struggle to keep pace with evolving technological capabilities. The study concludes that a resilient, adaptive regulatory framework is necessary to preserve national security and democratic integrity. It argues for a living legal system that balances technical enforcement with the protection of fundamental digital rights, ensuring that efforts to counter disinformation do not result in over-censorship or the infringement of freedom of expression.*

Keywords: *Artificial Intelligence, disinformation, deepfakes, EU AI Act, information security, digital rights.*

1. Introduction

In democratic societies, concern about the consequences of our growing reliance upon AI is rising (Eileen & Megan, 2019). The advent of AI era has fundamentally reshaped the global information landscape (Kortukova et al., 2025; Ağtaş, 2025; Abbes, 2025). Traditionally, the creation of "fake news" required significant time and resources; however, modern generative models now enable the production of highly persuasive disinformation, ranging from manipulative text to hyper-realistic deepfakes, in a matter of seconds.

Statistics indicates that 83% of people globally believe disinformation represents a direct threat to the stability of democracy. This concern is grounded in high levels of exposure: 51% of Europeans report having been exposed to disinformation online, while 63% of younger Europeans – the demographic most integrated into digital spaces – encounter "fake news" more than once a week (European Commission, 2022).

Domestic and foreign actors increasingly employ mass disinformation to trigger societal tension and undermine security. These campaigns, often orchestrated by third countries, function as hybrid threats, frequently paired with cyberattacks, to destabilize internal security and electoral integrity. A prominent example is russia's military doctrine, which formally classifies information warfare as a core operational domain (European Commission, 2018).

The Brexit and Cambridge Analytica scandals previously illustrated how the illicit collection and analysis of Big Data allows for the creation of sophisticated "psychological profiles". (Oleart & García, 2025) AI now automates this process, enabling the mass production of hyper-personalized disinformation designed to exploit the specific emotional and cognitive vulnerabilities of individual users.

AI facilitates the illusion of broad public consensus or total social chaos, directly eroding trust in electoral institutions. A prime example is the 2024 "Biden robocall" case, where AI-generated voices were used to misinform voters at a critical moment before the polls (Enyong, 2025). Such incidents demonstrate how synthetic technology can obstruct the fundamental right of citizens to receive accurate information and exercise free will in the voting booth.

For policymakers, these events revealed a critical vulnerability: the ease with which democratic processes could be destabilized through the coordinated manipulation of digital platforms. Consequently, in democratic societies, concern about the consequences of our growing reliance upon AI and digital curation is rising.

This technological leap presents an unprecedented challenge for global legal systems: finding a way to safeguard the truth without infringing upon the fundamental rights. AI-based disinformation has created a complex legal vacuum. While accessible AI tools make it simple to produce and broadcast false narratives, they make it nearly impossible for authorities to monitor or regulate the source. Pinning legal responsibility on anonymous creators, who often operate in different countries, is a major logistical challenge. This globalized, automated nature of deception makes traditional national laws increasingly obsolete in providing real accountability.

The objective of this article is to conduct a comprehensive analysis of the legal challenges posed by AI-driven disinformation, specifically focusing on how generative technologies like deepfakes necessitate a shift in traditional regulatory frameworks. By evaluating mechanisms such as the EU AI Act and the DSA, the study aims to propose a resilient, adaptive legal system that protects democratic integrity and national security without infringing upon the fundamental right to freedom of expression.

2. Methods

The methodology employed in this article is dictated by the specific objectives of the study, aimed at understanding the objective reality of legally regulating AI-driven disinformation within the digital frameworks of the EU.

The research was conducted on the basis of a dialectical materialist methodology that reflects the intrinsic relationship between theory and practice. The methodological basis of the study was formed by a dialectical approach to understanding the evolving nature of generative AI and its impact on democratic processes. The scientific tools used were grounded in the principles of objectivity and pluralism, allowing for a comprehensive knowledge of the intersection between technical AI capabilities and legal constraints.

The author relied on modern methods of cognition, defined by contemporary legal science and tested through the observation of digital enforcement. In particular, both general and special scientific methods were utilized.

Methods of analysis and synthesis were used to break down the complex components of the "Regulatory Triangle" and subsequently reassemble them to identify gaps in the interplay between the EU AI Act and DSA.

Methods such as abstraction and generalization were instrumental in deriving conclusions regarding the enforcement paradox of Article 50.

Furthermore, the research involved the method of normative modeling and legal forecasting to anticipate how the "satire loophole" might be exploited in future disinformation campaigns.

Formal-legal method assisted in defining the essence of limited risk systems and transparency obligations under the EU AI Act.

The use of these methods facilitated a deep exploration of the subject, revealing that the regulation of AI-driven disinformation is not merely a theoretical concern but one of immense practical importance for the stability of democratic institutions.

The normative basis of the work includes the EU AI Act, the DSA, the European Media Freedom Act (hereinafter – EMFA), and the relevant EU acquis concerning digital services and human rights.

3. Results

3. 1. Definition of Disinformation

The formal codification of a legal definition of disinformation is a critical prerequisite for the rule of law in the information age. However, there has been surprisingly little attention paid in legal scholarship to the specific legal definitions of disinformation, and how these definitions relate to current legal frameworks (Fathaigh et al., 2021).

While the terms "misinformation" and "disinformation" are often used interchangeably in casual discourse, with some even using disinformation as an umbrella term, international agencies such as the United Nations Educational, Scientific and Cultural Organization (hereinafter – UNESCO) and the Office of the United Nations High Commissioner for Human Rights (hereinafter – OHCHR) maintain a strict distinction based on intent (UNESCO, 2025).

To provide clarity, scholars and international bodies generally categorize these phenomena into the types: 1) misinformation - the inadvertent sharing of false or inaccurate information (such as rumors, pranks, or outdated news) without the intention to cause harm; 2) disinformation - the strategic and deliberate dissemination of false content (such as hoaxes, propaganda, or spear-phishing) created with the specific malice to deceive the public, spread fear, or undermine social trust (UNHCR, 2022); 3) malinformation - the use of factual, true information that is shared out of context or with the explicit intent to cause harm to a person, organization, or country (such as the leaking of private information for political sabotage) (Maret, 2025).

Historically, the European Union’s approach to disinformation has a clear distinction between illegal content (such as hate speech or defamation) and harmful but legal content (such as disinformation) (Fathaigh et al., 2021).

According to the European Commission’s High Level Expert Group, the legal threshold for disinformation is met when false or deceptive content is strategically crafted and amplified with the explicit objective of generating profit or inflicting harm upon the public. This definition emphasizes that the "information disorder" is defined as much by its malicious intent as by its factual inaccuracy (Final report, 2018).

As established by the European Commission, disinformation is fundamentally understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm (European Commission, 2018).

While the EU has primarily treated disinformation as a non-binding guideline (soft law), individual Member States are beginning to codify it into formal legislation. A primary example is the Portuguese Charter of Human Rights in the Digital Era, which adopted the European Commission’s 2018 definition almost verbatim in its Article 6.

However, this transition from guideline to law sparked intense debate, centered on two main issues: critics argued that terms like "verifiably false or misleading narrative" are too ambiguous for legal enforcement; concerns arose over a provision allowing the State to empower specific entities to label the quality of media outlets, creating a risk of government-sanctioned censorship.

Consequently, the Portuguese President requested a constitutional review of these norms. This pending case before the Constitutional Court represents a landmark test: can the EU's definition of disinformation survive a rigorous constitutional challenge regarding fundamental rights?

To preempt a strike-down by the Constitutional Court, the Portuguese Parliament passed Law 15/2022, which repealed the most controversial segments of Article 6, effectively stripping the "right" of its enforcement mechanisms and shifting the focus toward broader EU alignment and digital literacy.

In conclusion, the formal codification of a legal definition of disinformation is a vital but complex prerequisite for the rule of law. While international frameworks like those of the European Commission, UNESCO, and OHCHR provide essential distinctions based on malicious intent and public harm, the case of the Portuguese Charter demonstrates the fragility of these concepts when shifted from soft law to enforceable legislation. The eventual repeal of Article 6's most controversial provisions highlight a fundamental tension: without extreme linguistic precision, any legal attempt to regulate "verifiably false narratives" risks being struck down as an unconstitutional expansion of state power. Ultimately, the quest for a legal standard proves that protecting the information ecosystem requires a delicate balance between mitigating coordinated deception and safeguarding the fundamental right to free expression.

3.2. The Role of Generative AI in the Technological Acceleration of Disinformation

The emergence of generative AI, specifically Large Language Models (hereinafter – LLMs) and Generative Adversarial Networks (hereinafter – GANs), has fundamentally altered the mechanics of creating and distributing disinformation (López-Borrull & Lopezosa, 2025). While traditional influence operations once required significant human capital, such as "troll farms," contemporary processes are increasingly automated, enabling the production of deceptive content at an industrial scale.

In its March 2025 report on foreign information manipulation and interference, the European External Action Service concluded that generative AI has significantly lowered the financial and technical barriers for hostile actors. By streamlining and automating content generation, these technologies allow threat actors to execute large-scale influence operations with greater efficiency and reduced costs (European External Action Service, 2025).

Generative AI accelerates the degradation of the information ecosystem through three primary vectors: scalability and content automation large language models (hereinafter – LLMs), hyper-realism and synthetic media generative adversarial network (hereinafter – GANs), psychological micro-targeting.

LLM allow for the instantaneous generation of thousands of unique variations of a single narrative. This enables a strategy known as "flooding the zone", where a high volume of synthetic content overwhelms verified facts, making it difficult for the public to discern truth (Sallami et al., 2024). Furthermore, AI eliminates linguistic barriers; bad actors can now produce grammatically flawless content in dozens of languages, removing a primary obstacle to cross-border influence operations.

GAN technology facilitates the creation of deepfakes, synthetic media that is nearly indistinguishable from authentic recordings. This technology does more than just fabricate statements from public figures; it erodes the overall evidentiary value of real media. This phenomenon, often called the "liar's dividend", occurs when individuals can plausibly dismiss genuine events or recordings as AI-generated products.

AI algorithms can analyze the digital footprints of users to craft personalized disinformation. Models can automatically adapt the tone, vocabulary, and emotional framing of a message to exploit the specific vulnerabilities and cognitive biases of different social groups. This transforms disinformation from a "broadcast" tool into a precision-guided instrument of manipulation. Consequently, generative AI does not merely create fake news; it constructs a self-sustaining ecosystem of synthetic reality (Mazaraki & Kortukova, 2026). In a legal context, this makes a precise definition of disinformation even more critical. The velocity of algorithmic dissemination far outpaces traditional regulatory responses and manual fact-checking, necessitating a framework that can address the intent and the systemic nature of these AI-driven campaigns.

3.3. The EU Regulatory Triangle, as a Shield Against Disinformation

In the face of hybrid threats, the European Union has moved from a voluntary code of conduct approach to a robust active defense strategy. This is manifested in a Regulatory Triangle, which include the EU AI Act, the DSA and the European Media Freedom Act, where three landmark legislative acts create a synergy designed to disrupt the lifecycle of disinformation: creation, distribution, and environmental resilience.

The EU AI Act, which entered into force on August 1, 2024, establishes a risk-based hierarchy to regulate synthetic content and safeguard democratic integrity. Under this framework, generative tools like chatbots and deepfakes are generally classified as limited risk, requiring mandatory transparency such as watermarking and user disclosure (Article 50). However, systems designed to manipulate human behavior or influence elections are elevated to "high-risk" or prohibited entirely under Article 5 if they employ deceptive techniques that impair informed decision-making.

Complementing these rules, the European AI Office oversees general-purpose AI (hereinafter – GPAI) models, which Recital 110 identifies as potential sources of systemic risk, including the dissemination of disinformation and threats to democratic processes. To bridge the gap until full implementation, the Commission introduced the GPAI Code of Practice (2025) and the AI Pact, providing developers with ethical guidelines for safety, intellectual property, and the exclusion of pirated training data.

In the context of European digital sovereignty, the DSA represents a paradigm shift from a "laissez-faire" approach to a regime of strict algorithmic accountability. While the AI Act focuses on the technical creation of content, the DSA targets the amplification and distribution mechanisms used by Very Large Online Platforms (hereinafter – VLOPs) and Very Large Online Search Engines (hereinafter – VLOSEs). The main tasks of the DSA are to counteract the spread of illegal content on the Internet and reduce societal risks arising from disinformation and other forms of harmful content (Prymak & Kortukova, 2025). It operates on the principle that what is illegal offline is illegal online, providing the European Commission with unprecedented oversight into how digital gatekeepers manage the flow of information during sensitive periods, such as elections or public health crises (Frosio & Geiger, 2024).

A cornerstone of the DSA’s fight against disinformation is the mandatory systemic risk assessment. Under Articles 34 and 35, platforms with more than 45 million monthly active users in the EU must proactively identify and mitigate risks related to the dissemination of illegal content and "negative effects on democratic processes". This forces tech giants to move beyond simple content moderation and instead audit their own recommendation algorithms to ensure they do not prioritize sensationalism or "engagement at any cost" over factual accuracy. If a platform’s architecture is found to be facilitating coordinated inauthentic behavior or bot-driven manipulation, the Commission can impose fines of up to 6% of annual global turnover (Husovec, 2024).

Furthermore, the DSA institutionalizes the Code of Practice on Disinformation, transforming it from a voluntary set of guidelines into a co-regulatory framework (Husovec, 2025). Platforms are now required to provide researchers with access to their internal data to monitor the effectiveness of their anti-disinformation measures. This transparency creates a "public interest audit" where civil society and academia can hold platforms accountable for how their tools are exploited by foreign actors for foreign information manipulation and interference. By mandating rapid response mechanisms and clear labeling of political advertising, the DSA ensures that the digital public square remains a space for informed debate rather than a laboratory for psychological manipulation (Caruso, 2024).

While the DSA focuses on the "pipes" through which information flows, the European Media Freedom Act (hereinafter – EMFA), which became fully applicable in August 2025, addresses the "source" (European Commission, 2024). The EMFA recognizes that a pluralistic, independent media ecosystem is the most effective structural antidote to disinformation. By protecting journalists from state interference and ensuring the transparency of media ownership, the Act seeks to build a resilient information environment where factual reporting can outcompete manipulated narratives.

A key pillar of the EMFA in the fight against Foreign Information Manipulation and Interference is the coordination of national regulators through the newly established European Board for Media Services (Article 12). Under the Act, if a media service provider from outside the EU, often state-controlled, systematically engages in disinformation that threatens public security, the Board can coordinate collective restrictive measures across all Member States (Husovec, 2025). This prevents "forum shopping," where a hostile actor might exploit a weaker regulatory regime in one country to broadcast propaganda across the entire Union.

One of the most debated aspects of the EMFA is Article 17, which creates a specific procedural shield for recognized media outlets on VLOPs. To prevent tech giants from inadvertently silencing legitimate journalism in their quest to purge disinformation, Article 17 requires platforms to: allow media outlets to declare their independent status based on transparent editorial standards; provide a 24-hour warning before removing or suspending content from these outlets, unless the content poses a systemic risk as defined by the DSA; establish a "fast-track" mechanism to resolve disputes, ensuring that timely news, crucial during elections or crises, is not buried by slow moderation processes (EPD, 2024).

The EMFA further mandates that all news and current affairs media must make their ownership structures public (Article 6). This requirement is designed to expose hidden conflicts of interest or "capture" by political or foreign entities who may be using a local outlet as a proxy for disinformation campaigns.

To operationalize this triangle, the EU has moved toward a centralized intelligence model. The European Board for Media Services works in tandem with the European AI Office and the European Centre for Algorithmic Transparency to provide a holistic view of emerging threats. This is particularly critical in addressing foreign information manipulation and interference, where malicious actors often bypass traditional moderation by using "hybrid" tactics, combining AI-generated personas with coordinated bot networks and hijacked local media proxies (EEAS, 2026). Under this unified framework, a systemic risk identified by a media regulator can trigger an immediate audit of a platform’s algorithm under the DSA, ensuring that the response is as agile as the threat itself.

This regulatory architecture represents a significant evolution of the Brussels effect. By moving beyond the binary choice of "censorship vs. free-for-all", the EU is pioneering a third way: algorithmic and institutional transparency. The shift from voluntary codes to legally binding obligations means that digital sovereignty is no longer a theoretical concept but a functional reality. As other jurisdictions look to the EU’s model, the Regulatory Triangle serves as a blueprint for how democratic societies can protect their cognitive sovereignty without sacrificing the fundamental right to freedom of expression (Frosio & Geiger, 2024). This structural resilience ensures that even as disinformation tactics evolve, from simple "fake news" to sophisticated AI-driven psychological operations, the European digital space remains anchored in verifiable facts and pluralistic debate.

4. Discussion

While the Regulatory Triangle provides a sophisticated defense, the legal regulation of AI-driven disinformation faces unique, evolving hurdles. These "regulatory friction points" stem from the technical nature of generative AI and the legal complexities of enforcing transparency in a decentralized digital environment. A primary challenge is the temporal gap between the evolution of AI capabilities and the enactment of legal standards. As documented in early 2026, while the AI Act's transparency obligations (Article 50) set high standards for watermarking and metadata, malicious actors have quickly pivoted to "low-fidelity" but high-impact AI models that bypass these built-in safeguards. This creates a "policy response lag" where regulations effectively address "yesterday's threats" while attackers leverage open-source models that lack mandatory watermarking protocols. Under the AI Act, systems creating deepfakes or synthetic text for public information are classified as limited risk, requiring disclosure rather than prohibition. However, enforcing this at scale presents a significant hurdle (Christakis, 2026). Article 50 (4) provides exceptions for content that is "evidently artistic, creative, satirical, or fictional" (Raman et al., 2025). In practice, disinformation campaigns often cloak themselves as "satire" or "parody" to evade mandatory labeling, placing an immense interpretive burden on platform moderators and courts.

Current watermarking techniques are not yet interoperable or tamper-proof. Research indicates that simple post-processing, such as re-encoding a video or taking a screenshot of AI-generated text, can strip away the machine-readable markers required by law, rendering the legal obligation technically unenforceable in many real-world scenarios.

A critical legal gray zone exists in the attribution of liability between the provider of an AI model and the deployer who uses it to spread disinformation. While the AI Act focuses on the upstream developers (e.g., ensuring a model is safe), the DSA focuses on the downstream distribution (e.g., the platform where it goes viral).

GPAI models with systemic risk are subject to stricter oversight, yet determining when a model's propensity to "hallucinate" or generate biased content crosses the threshold into a "systemic threat to democratic processes" remains legally ambiguous (European Parliament, 2025). Furthermore, the rise of "agentic AI", autonomous bots capable of managing social media accounts and engaging in real-time debates, tests the limits of traditional agency law. If an AI "agent" autonomously spreads disinformation without direct human instruction, the current legal framework struggles to assign culpability. Finally, there is the persistent risk of regulatory overreach. By mandating that platforms mitigate "negative effects on democratic processes" (DSA Art. 34), the EU effectively asks private tech giants to act as arbiters of political truth. Critics argue that this creates a chilling effect, where platforms may over-censor legitimate but controversial political speech to avoid the risk of massive fines, potentially undermining the very media pluralism the EMFA seeks to protect.

5. Conclusion

The legal regulation of AI-driven disinformation represents a defining challenge of the digital age, requiring a precise calibration between technological innovation, legal certainty, and the preservation of fundamental rights. Based on the analysis of the current regulatory landscape, several critical findings emerge.

First, a structural "policy response lag" persists. Despite the high standards set by the EU AI Act, malicious actors increasingly bypass legislative safeguards by utilizing "low-fidelity" or open-source models that circumvent mandatory watermarking protocols. This technical evasion renders static legal standards vulnerable to the rapid evolution of decentralized AI development.

Second, the enforcement paradox of Article 50 highlights a disconnect between legal intent and technical reality. The classification of synthetic content as limited risk is fundamentally undermined by the "Satire Loophole" and the absence of tamper-proof watermarking. These factors allow disinformation to be strategically re-categorized as creative expression or "scrubbed" of metadata, complicating the task of judicial and platform-level attribution. Third, the threat of regulatory overreach poses a risk to democratic discourse. To mitigate the severe financial penalties prescribed by the Digital Services Act, platforms may lean toward aggressive over-censorship. Such a "chilling effect" threatens the media pluralism and freedom of expression that these regulations are ostensibly designed to protect.

In summary, while the current legal framework provides a vital foundation, it must be treated as a living regulatory organism. Effective governance requires a transition from static mandates to interoperable, resilient technical standards and a more agile, risk-based approach to liability. Only through such adaptation can the law remain a robust shield against the sophisticated threats of the synthetic information era.

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NECESSITIES OF FOOD SAFETY THROUGH NAFDAC COMMITMENT TO THE MANDATE OF CONTROL AND ADMINISTRATION OF FOOD *INTER-ALIA* IN NIGERIA

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Abstract: *The agency assigned with the responsibility for the control and administration of food and drug in Nigeria is the National Agency for Food and Drug Administration and Control, widely known by its short-title as NAFDAC. The mandate of the agency includes addressing food safety in Nigeria. This paper examines the extent the agency has travelled in fulfilling its mandate on food control and administration. The neglect by the agency to extend its mandate to food control in Nigeria leaves a huge gap in the exercise of an important aspect of its legal framework. This neglect to assume responsibility for the control of food in Nigeria has resulted in both food insecurity and unsafe food for human consumption in Nigeria. This paper adopts a comparative assessment of what obtains in some foreign jurisdictions through the vehicle of desktop review of relevant literature, in order to assess the commitment or otherwise of NAFDAC to food administration and control in Nigeria. The paper has four segments: first is on introduction and conceptual, theoretical frameworks of food safety and security; part two cites examples of food safety control measures from other jurisdictions as templates for NAFDAC implementation; part three gives examples of neglect by NAFDAC in food control and administration; part four concludes and that if Nigeria will be ready to walk the talk of "food safety and security" it must ensure that NAFDAC steps up its performances in this direction.*
Keywords: *Food safety, food security, food control and administration in Nigeria, NAFDAC*

1. Introduction

To emphasise the importance of food, the Food and Agriculture Organisation (FAO) was founded in 1945 by the United Nations (UN), as its lead specialised agency, with the mandate to work "to alleviate poverty and hunger by promoting agricultural development, improved nutrition and the pursuit of food security. Apart from the establishment of the FAO, the UN also established the World Food Programme in 1963 as its frontline agency in the fight against global hunger. And food sufficiency, which is closely tied to food security, is defined by the Food and Agriculture Organisation, as "the availability at all times of adequate world food supplies of basic foodstuffs for the sustenance of steady expansion of food consumption and to offset fluctuations in production prices."

Apart from the FAO, the UN also set up the World Food Programme (WFP) a United Nations initiative, which also ranks as the world's largest humanitarian organisation for saving lives in emergencies, using food assistance to build a pathway to peace stability and prosperity, and for recovering from conflict, disasters and the impact of climate change. Over the years, the Programme has expanded to reach millions of people in more than 100 countries, using food assistance to meet emergency needs and support economic and social development. A Yoruba proverb underscores the huge importance attached to food as expressed in some of their proverbs thus: *ebi ki i wo'nu, k'oro miran tun wo* (hunger in the stomach does not accommodate any other business); *okun inu la fi i gbe t'ode* (inner energy from food is deployed for the performance of daily activities); and, *Oba l'óunje* (food is paramount).

The Cambridge dictionary defines 'food' as noun for any nutritious substance that people or animal eat or drink, or that plant absorb, to maintain life, sustain growth, repair tissues, and provide energy which is utilised by every living thing for its daily activities. Other dictionaries too are not left out in accentuating the importance roles played by food in the lives of both lower and higher animals. As indispensable as food is in the lives of living beings, equally important, if not more important, is the safety of food. When the issue of safety is raised with reference to food, it is a matter of fundamental importance to ensure that what we eat is safe, wholesome, and properly manufactured. Food safety has transcended public health to take a berth as a fundamental pillar of national security, economic stability and human dignity. NAFDAC also represents the hub around which the shield standing between the consumer and unsafe adulterated food products revolves. This paper interrogates the connection between food safety and the extent of the agency's responsibility to its mandate under the law.

2. Conceptualising Food Safety and Security

The concept of food safety relates to the sale and consumption of wholesome food, which hold zero-tolerance for risks to human health. When basic food products become adulterated, this will not only be a source of unfairness to buyers (for whom the food bought did not meet the specification of what is paid for), but will also constitute a risk of the contamination of the food with harmful elements. Food, constitutes an essential need both for the existence and sustenance of lives on earth (Scott, 2008).

The concept of the "prevailing needs of man for his preservation" was enunciated by Abraham Maslow (1961) to posit a theory of "hierarchy of needs." Through this theory, Maslow proposed that humans are motivated by a hierarchy of needs starting with basic psychological needs and moving toward safety, love/belonging, esteem and finally self-actualization attempted to explain how drive and motivation are interconnected, when discussing human behaviour.

The pyramid 'drawn' by Maslow, puts 'physiological needs' (air, water, food, shelter, sleep, clothing, reproduction), at the bottom of the pyramid, yet Maslow submitted that these needs, even though tucked at the base of the pyramid, yet these (psychological) needs must be satisfied not necessarily on an "all-or-none" phenomenon, but at least more or less reasonably, before an individual can attend to needs that are higher up in Maslow's pyramid (Leigh, 2021). This goes to confirm that the issue of food ranks as one of the basic needs of mankind, even before other needs would be considered.

The classification of food as one of the basic needs of mankind beyond other – though important but not inevitable needs – leads to the consideration of the necessity to make that basic need, both safe and secure for taking by both humans and lower animals. Theories of safety and security make the reduction of risks to human life and property their primary concern. These concerns are oftentimes mitigated by the application of the SWOT analyses for identifying the internal strengths and weaknesses alongside external opportunities and threats inherent in an object of focus. Extrapolating the theories on the safety and the need to make food secure for consumption, it is the burden of this study to examine the various prospects through which food meant for human consumption can be compromised in Nigeria and how other foreign jurisdictions have been able to track this malaise within their domains now and in the past.

Then theory of authority imbues NAFDAC with the right to tell businesses in Nigeria what they can and cannot sell and this in expressed in the mandate conferred on NAFDAC for the control and administration of food *inter alia* in the country. When this theory is well understood, it assists us to appreciate the agency as not merely a bureaucratic one churning out rules, but to be seen rather as a vital shield that the society itself have established for our protection. At the centre of the theory of authority, lies the question "why people should obey the law?" the answer lies in the much-talked about "social contract" which the Legal philosopher John Locke propounded. The "social contract" represents the idea that citizens who give up a little bit of their total freedom, do so willingly, by handing it over to a central government in exchange for the latter's responsibility to protect the citizen's rights, health, and safety. The mechanics of the ideals of the "social contract" when extrapolated to the agency's role in the control and administration of food, in Nigeria, means that the citizens give up the "freedom" to manufacture and sell unregulated food and in exchange for this alienation of "freedom," the citizens gain the peace of mind that the food they buy from other sources is safe. The small lettering of NAFDAC registration number on food packages represents far more than just an official acknowledgement imprint. It epitomises a symbol of the authority of NAFDAC in action. This numbering is a proof that the legal machinery of Nigeria is working to enforce the social contract, in order to ensure that the citizens right to safe foods is the ultimate which ought to be strictly safeguarded.

On the part of NAFDAC, sequel to the fulfilment of the social contract through the creation of the agency by the Federal Government of Nigeria in 1993, the National Assembly (NASS), enacted specific laws on behalf of the people of Nigeria, to confer this collective authority to the agency. The agency in turn exercises three types of legal power conferred upon it by the NASS. Through its legislative authority, NAFDAC is empowered to set the rules to define what ingredients are safe, how food must be processed, and also labelled. In the exercise of its executive authority, NAFDAC acts the enforcer with authority to inspect factories, do trans-border controls in order to stem the smuggling of contraband goods and it also test products in the laboratories. In the exercise of its quasi-judicial authority, NAFDAC has the power of seizure of goods, if a company violates the rules. It can also shut down factories and impose fines.

3. NAFDAC and Food Security/Safety in Nigeria

In Nigeria, the National Agency for Food and Drug Administration and Control (NAFDAC) is a regulatory body whose mandate includes addressing food safety within its national domains (NAFDAC Guidelines for Food Hygienic Practices, 2003). The agency occupies the position of the leader of the National Codex Committee – General Purposes Technical Committee (NCC-GPTC). The National Codex Committee coordinates CODEX within Nigeria. As the chair of NCCGPTC, NAFDAC is the coordinator of the involvement efforts by Nigeria in the elaboration of the International Food Standards on food labelling, contamination in food, food additives, food hygiene and similar arrangements.

The Procedures currently employed by NAFDAC towards fulfilling her mandate include registration of products, inspection of food establishment and imported products, laboratory assessments, provision of advisory Codes of Practice, Regulations, Guidelines, etc. The agency is also responsible for the issuance of alert notices and monitoring of advertisement of regulated products and similar activities. It can be established that there are guidelines put in place by NAFDAC in respect of Good Manufacturing Practice (GMP), Good Distribution Practice (GDP), comprehensive labelling standards, and traceability requirements (GS1 Data Matrix).

However, the establishment of similar comprehensive provisions cannot be assumed to exist in respect of ensuring food safety in Nigeria, yet there are established guidelines for domestic food preparations, covering specific aspects of domestic food preparation.

In June 2024, the Lagos State Government identified unregistered tiger nut drinks as a significant driver behind a severe cholera outbreak in Nigeria. While tiger nuts themselves are edible nuts commonly grown in the Northern Nigeria and transported down south where it maintains a steady large number of admirers and patrons (the nuts are known as *ofio* in the Southwest Nigeria), they are not inherently dangerous, but could get contaminated during preparation, with the *vibro cholerae* bacteria, during the processing of the drink, with unhygienic water or reused plastic bottles.

Usually, unregistered products are implicated in these outbreaks. Health officials found that many implicated drinks were sold in unlabelled or reused pet bottles without registration from the NAFDAC. However, it is the view canvassed in this study that if NAFDAC had been proactive (and not reactive) it could and should have nipped these ugly incidents in the bud.

Potassium bromate is a food additive used to strengthen dough, increase bread volume, and create a fine crumb structure. It is a suspected human carcinogen linked to kidney and thyroid cancer in animal studies, leading to its ban in many countries. While bromate is banned in the European Union, Canada, Nigeria and Brazil, it is still allowed in the US and Japan. In a study carried out by a group of scientists for assessing the exposure of potassium bromate ($KBr0_3$) and trace metals through bread consumption, discovered that the consumption of bread exposed to bromate harbours associated risks to dietary habits among the Ado-Ekiti Southwest, Nigeria residents. Samples were randomly chosen from local bakeries and these samples were later analysed in the laboratory using an Atomic Absorption Spectrophotometer to determine the level of trace metals including lead (Pb), manganese (Mn), nickel (Ni), Chromium (Cr), zinc (Zn) and Cadmium (Cd). It was discovered that all trace metal concentration in breads produced in this part of the country were higher than the FHO/WHO permissible limits.

The Bromate is usually introduced into bread because it acts as oxidising agent, making dough more elastic, tougher, and better at retaining gas, resulting in a lighter softer loaf. The health hazard of bromate in bread is huge. The element is classified as a Group 2B carcinogen (possibly carcinogenic to human), it has been linked to cancer in animals, including renal and thyroid issues. Bromate in bread poses residual risks. Although it ideally decomposes into harmless bromide during baking, improper baking time or excessive usage can leave residual bromate in the final product (Shanmugavel, 2020).

In a publication by a daily newspaper platform on bromate, the newspaper medium titled its news report, “Bromate: How our daily bread is becoming daily poison revealed the “back and forth,” accusations and refutations by concerned bodies (Ndujile, 2024).

Even though the element is banned in Nigeria, just as in the UK, Canada and Brazil. In Nigeria, bakers still cash-in on NAFDAC’s reactive mode of articulating its mandate, by their continuance to use the element. However, bakers in Nigeria have devised a way to calm the nerves of consumers of bread in Nigeria, by writing on the labels tucked inside the bread or even on the nylon wrapper used for packaging the bread, the following words: “Bromate free.” Yet, the consumer cannot vouchsafe for the baker that for a fact, the bread is actually bromate free. This is in furtherance of our culture of doubts and mutual suspicion with which both the consumers and bakers of bread hold one another.

There was an incident that gained currency over the Internet in respect of the claim by a reviewer, a Nigerian woman who claimed that a loaf of bread that did not get spoilt for over two months. The claim sparked huge concerns and constituted a serious buzz over the internet (Chatta, 2026). The claim sparked concerns about consumers’ safety and risks, resulting in the interest showed in the saga by the Federal Competition and Consumer Protection Commission (FCCPC) a body established by the Federal Competition and Consumer Protection Act (2018). This is the principal legislation for tracking competition and consumer protection administration in Nigeria. The FCCPA is a piece of comprehensive legislation which is total in its reach and coverage as far as consumer protection issues are concerned and also extends its oversight to all corporate bodies in Nigeria – whether they are governmental agencies or private companies – as long as such bodies engage in commercial activities (Leigh, 2022). The FCCPA is *inter alia* consumer-centred and also exists to cover issues which touch and concern competition. The FCCPC said it has opened an investigation into the bread review which raised questions about product quality and the agency has further engaged the NAFDAC to analyse the bread sample the reviewer referenced in her review (Sobowale, 2025).

Ata Esa refers to spoiled peppers, not a specific recipe, but they are commonly used to create a “buka style” (local restaurant) stew. While the rotten pepper is popular for its taste, some experts advise caution against using *ata esa* (rotten tomatoes/peppers) due to the presence of fungi like *Aspergillus flavus,* which can produce toxins (aflatoxins) that are harmful to the liver and kidneys, even after cooking.

4. The Practice in Some Selected Jurisdiction as Guide for NAFDAC

The United Kingdom started going experiencing significant public health concern which manifested in food poisoning issues beginning from the late nineteenth century. From this period up to early twentieth century, the recognition of foodborne illnesses took a leap in the consciousness of Britain. There was however an initial mistaken assumption that “ptomaine poisoning” rather than specific bacteria was responsible for the food poisoning malaise being experienced in the country. From the few recorded incidents of contact with food poisoning in the UK, the country experienced a phenomenal increase in the number of victims to an estimated 2.4 million cases of food poisoning annually, by the year 2026 (Hardy, 2007).

This significant increase in incidents of food poisoning in Britain was triggered largely by *Campylobacter* and *Norovirus*. The latter causal factor of food poisoning in Britain, the *Norovirus*, spreads easily through contaminated food, water or surfaces with symptoms typically lasting between one to three days with no vaccine existing for the cure (CDC, 2023). Much earlier in the UK, legislative actions have always responded to or directed at specific incidents of exposure of the public to danger through incidents of contamination of food with injurious substances. One of such direct statutory response to specific incidents of food contamination was the Statute of Bread and Ale (1266).

In more recent periods, modern legislative efforts have been also been developed in direct statutory response to particular events of food poisoning. The first of these initiatives in the modern time took its bearing from the mid-nineteenth century and the piece of legislation arose out of the fright brought about by unsafe foods and food poisoning and other more recent food safety legislation have also been enacted as a result of concern by members of the public to matters such as *salmonella* in eggs, which arose out of the BSE in the 1990s. This led to the establishment of a judicial inquiry presided over by Lord Philips (Phillips, Baron Phillips of Worth Matravers, 2022). One of the negative fallouts of the BSE is that up till the present moment, many countries still restrict beef importation from the UK as well as discouraging the receipt of blood donation from people who lived in the UK between 1980 – 1996.

In South Africa, there has been major episodes of food poisoning, between 2017-2018 and as recently as 2024. The *Listeriosis* outbreak occurred in 2017-2018 in South Africa. Regarded as the world’s deadliest, Listeriosis is caused by *Listeria monocytogen ST 6* which inhabits ready-to-eat processed meat mainly ‘polony from Enterprise Foods/Tiger Brands in Polokwane.’ The South African government responded by making a nationwide recall of ready-to-eat meat, leading close to 15 African countries who recalled who recalled South African products. In 2018, when the outbreak ended, the World Health Organisation (WHO) congratulated South Africa for achieving this huge feat.

Other recent issues occurred in 2024. Known as the “spaza shop cases,” there were several deaths of children for suspected contaminated foods sold in spaza shops. The government responded by giving orders to all spaza shops to register within 21 days. And even though foreign-run spaza shops were blamed, fortunately, South African domestic laws came to the rescue as they were readily in place to both prevent tragic incidents such as food poisoning event in South Africa and for curbing the malaise of food poisoning in that country.

5. Conclusion and Recommendations

It has become inevitable to interrogate the type of ‘a food and drug control and administration agency’ NAFDAC is, if its mandate *inter alia* to exercise functions and powers to “regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals” have been exercised more in the breach of the agency’s responsibility in the aspect of food. A nation’s well-being is hinged on the good nutrition its citizens enjoy. Several folklores and traditional proverbs abound among all ethnic groups in Nigeria on the importance of nutritious food and how it is a *sine-qua-non* for a glowing skin. Among the Yoruba in Nigeria and along the West African coast, a proverb says *ounje lore awo*, meaning that “nourishing food is resulting in a bright skin.”

In order to continue to be relevant, and for the agency to do its job satisfactorily, the authority conferred on NAFDAC for the control and administration of food must be seen as legitimate. This means that both the public that the agency is protecting and the businesses that the agency is controlling, must believe in the rightful claim of authority by the agency. When a regulatory agency loses its perceived legitimacy, maybe as a result of corruption or compromised processes, or unpredictable enforcement techniques, it leads to a systems breakdown.

There will be a bypass of rules, leading to increase in counterfeit foods and unhygienic manufacturing procedures. On the other hand, a diligent exercise of its authority on its mandate by the agency – NAFDAC – transparently and fairly will breed trust in the populace. Businesses will comply with safety rules in their manufacturing and production processes and consumers will be able to buy with confidence in the knowledge that what they are buying is both safe and fit for purpose.

Even though NAFDAC is the body statutorily placed at the vanguard of ensuring that there is safe food in Nigeria, what we see is that the entity is headed on the opposite direction as exemplified in its neglect of the food aspect for which it possesses a mandate for its control and administration. Currently, NAFDAC is constrained from actualising in full, and this should be a matter of concern which raises deeper questions about the kind of lookout the federal government is maintaining over her citizens. The verdict to be returned in the conclusion of this study is that there is a wide room for NAFDAC to step up its acts in the area of food administration and control.

In this respect, a lot of arguments needs be made in support of extending NAFDAC’s jurisdiction over “street food.” Street food is commonly obtained at a bustling roadside spot, a trendy food stand, and or a neighbourhood night-market stall. These ubiquitous locations of readily-available food constitute a boost to our local economy. The essentials of street food refer to the ready-to-eat foods and beverages that are prepared and sold by vendors in public places, especially on streets, markets, and transit hubs.

For convenience sake, the scope of the definition could be extended to cover food prepared for serving at public events and similar public places such as inside trains, ships, and aircrafts operating within Nigeria, and public food prepared in celebration of important festivals in the community. The true nature of street food is rooted in its cultural and social importance. It is the identity of a community and whenever people are desirous of having an experience of the authentic taste of a city, rather than visit 5-star hotels, they will rather come to the streets. Street food is popular among the populace for its many attractive characteristics.

However, it remains to be seen the extent of the golden rule governing the preparation and vending of street food in the open, is observed by the vendors. The same characteristics responsible for the popularity of street food also dictate a major responsibility for its safety. There is a compelling need by the vendors to maintain a clean workstation, insist on the wearing of aprons by their workers, using of hairnets and the chef’s headdress by both female and male workers and handling money away from the food. These are not supposed to be just rules of hygiene, they require the authoritative enforcement by a governmental agency.

In evaluating how well NAFDAC has been exercising its mandate on street food, the performance can be described as hands-off, decentralised and largely reactive. Rather than policing the individual roadside *akara* or *suya* or jollof rice vendors, NAFDAC instead regulates street food and the activities of their vendors by strictly controlling the commercial ingredients vendors use.

If the agency claims that it is up and doing in the exercise of its mandate especially on the aspect of food, the retort of course will then be that the effect of what the agency does in the area of food control, which it considers as effective, is not so much felt or at all in Nigeria.

In order to improve on the mandate of NAFDAC as the agency in charge of the control and administration of food in Nigeria, the following recommendations are objectively suggested for consideration by the agency as follows:

(a) Beyond the formal processes of applying for and obtaining NAFDAC "certification" of quality which is represented through the vehicle of the NAFDAC registration number, the agency should pay unannounced and unscheduled, periodic visits to food manufacturing and production plants for checks on their level of compliance with the agency's rules. After the various hurdles has been scaled over by the company and the unique NAFDAC number is issued for printing on the food packages, there is nothing suggesting that follow-up tests will be carried out at periodic intervals thereafter. This is however necessary in order to keep the companies on their toes and not to relax their responsibilities for quality assurance of their products;

(b) The word 'food'' is not defined in the glossary of words in the NAFDAC Act. To this end, deliberate efforts should be made to define the scope and genus of food to include in the definition and to extend the agency's control and management over food, to include "street food" and raw food;

(c) NAFDAC should extend its strategy to taking random sampling of food off the shelves at the supermarkets and provisions stores and subject such food to scientific analysis;

(d) There should be a seamless synergy between the agency and some of the food reviewers with a view to keeping NAFDAC's channels of complaint open for the reviewers' escalation of information to NAFDAC, in respect of implicated food production sources. This should however be done with the mind of discouraging unfair competition among rivals and competitors of food production factories;

(e) Where in the course of its random checks, NAFDAC discovers a substandard product released to the market, the agency should immediately trigger the recall processes to end the further distribution of the compromised product and also evacuate expiry food products from the shelves without much ado; and

(f) The agency could extend it control to check the malaise of dangerous preservatives applied on perishable food products by their importers and other handlers in the importation value-chain of these foods, especially the bulk sellers and retailers of these foods.

The foregoing recommendations cannot be considered sacrosanct, nor are they by any means exhaustive. They will however serve as the initial steps taken by the NAFDAC to improve on the mandate granted it under the law establishing it. The end-result envisaged will both serve the interests of both the society and the citizenry.

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A NEW ERA OF HUMAN RIGHTS TOWARDS NEW CONSTITUTIONAL BORDERS

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Abstract: *The contemporary human rights landscape faces unprecedented challenges and opportunities, necessitating a reconceptualization of constitutional borders and governance frameworks. This article examines the evolution of human rights discourse from its post-World War II internationalist foundations toward emerging paradigms that transcend traditional state sovereignty. Through analysis of transnational human rights mechanisms, digital rights frameworks, environmental constitutionalism, and the recognition of collective rights, we argue that a new constitutional era is emerging—one that redistributes authority across multiple levels of governance and extends protection beyond traditional human categories. This evolution reflects both the limitations of Westphalian sovereignty in addressing contemporary challenges and the potential for more inclusive, pluralistic human rights protection systems.*

Keywords: *human, rights, challenges, opportunities.*

1. Introduction

The Universal Declaration of Human Rights (UDHR), adopted in 1948 in the aftermath of unprecedented atrocities, established a post-war consensus on fundamental human rights grounded in universal human dignity (Morsink, 1999). Yet, more than seven decades later, this foundational framework faces significant strain. Globalization, technological advancement, climate change, mass migration, and the emergence of transnational challenges have exposed the inadequacies of human rights systems designed for an era of territorially bounded nation-states.

Contemporary developments suggest that humanity is entering a "new era" of human rights, characterized by three interconnected transformations: (1) the pluralization of constitutional authority beyond nation-states; (2) the expansion of rights categories to encompass digital, environmental, and collective dimensions; and (3) the reconceptualization of borders—both territorial and conceptual—that have historically defined human rights protection.

This article examines these transformations through comparative constitutional analysis, demonstrating how contemporary jurisdictions are experimenting with novel frameworks for human rights protection. We argue that this new era represents not the abandonment of human rights as a foundational principle but rather its evolution toward more complex, multi-level governance systems better suited to addressing contemporary challenges.

2. The Crisis of Traditional Human Rights Frameworks

2.1 The Sovereignty Paradox

The traditional human rights regime, as established through the International Bill of Rights and subsequent conventions, rests on a fundamental paradox: human rights are conceived as universal and inalienable, yet their protection depends on nation-states that remain the primary repositories of enforcement power (Marks, 1998:459-514). This paradox has generated persistent implementation gaps, particularly in states with weak rule of law, limited democratic accountability, or conflicting policy priorities.

The principle of non-interference in internal affairs, embedded in the UN Charter and international law generally, constrains supranational enforcement of human rights, creating spaces where systematic violations continue despite international condemnation. The situations in Myanmar, Syria, and Venezuela exemplify how sovereignty claims shield perpetrators of mass human rights violations from meaningful accountability.

Moreover, the nation-state framework struggles with issues transcending territorial boundaries: climate change, cybercrime, pandemics, and refugee displacement originate in multiple jurisdictions and affect populations across borders. Traditional human rights protections, designed for individual protection within defined territories, prove inadequate for these transnational phenomena.

2.2 The Legitimacy Crisis

International human rights institutions face growing legitimacy challenges. The UN Human Rights Council's composition includes states with poor human rights records, undermining its moral authority (Human Rights Watch, 2020). Regional human rights courts, while more effective than global institutions, remain limited by member state consent and resistance to their decisions—as exemplified by Poland and Hungary's ongoing conflicts with the European Court of Human Rights (ECtHR).

Furthermore, top-down imposition of human rights standards through international institutions raises questions about cultural imperialism and the appropriate relationship between universal principles and local democratic preferences. Resistance to international human rights mechanisms in various jurisdictions partly reflects genuine concerns about external imposition rather than purely authoritarian opposition.

2.3 Insufficient Scope of Protection

Traditional human rights frameworks, focused on civil and political rights with increasingly recognized economic and social dimensions, struggle to address emerging categories of harm:

Digital Rights: Surveillance capitalism, algorithmic discrimination, and digital manipulation raise questions inadequately addressed by conventional human rights categories. The right to privacy, designed for protection against state intrusion, proves insufficient for protection against corporate data extraction or algorithmic profiling (Zuboff, 2019).

Environmental Rights: While environmental degradation manifestly affects human dignity and survival, the right to a healthy environment remains unevenly recognized in international law and constitutional systems. Climate change—the most significant contemporary threat to human welfare—lacks explicit constitutional status in most jurisdictions.

Collective and Indigenous Rights: Frameworks emphasizing individual rights struggle to protect collective interests in cultural preservation, self-determination, and traditional knowledge. Indigenous peoples' rights, particularly regarding land and resource control, challenge the property-rights and individualist assumptions of traditional human rights law.

3. Transnational Human Rights Mechanisms: Multiplying Authority

3.1 Regional Human Rights Systems

The development of regional human rights courts and commissions represents the first significant departure from purely state-based human rights protection. The European system—comprising the ECtHR, the European Commission on Human Rights, and constitutional courts—has evolved into a sophisticated multi-level human rights architecture exceeding the effectiveness of UN mechanisms.

The ECtHR's jurisprudence exemplifies how regional institutions can develop dynamic human rights interpretation addressing contemporary challenges. Cases such as S. and Marty v.

Italy (concerning surveillance), Tyrer v. United Kingdom (abolishing corporal punishment), and more recently cases addressing transgender rights, demonstrate how courts can adapt human rights protection to evolving social circumstances and emerging harm categories [S. and Marty v. Italy, ECtHR (2020); Tyrer v. United Kingdom, ECtHR (1978); Goodwin v. United Kingdom, ECtHR (2002)].

The Inter-American Court of Human Rights has similarly developed innovative jurisprudence, particularly regarding indigenous peoples' rights, environmental protection, and violence against women. The court's advisory jurisdiction permits consultations on emerging rights questions before formal disputes arise, enabling proactive rights development (Inter-American Court of Human Rights, 2017).

The African Court on Human and Peoples' Rights, while less developed institutionally, has established important precedents recognizing collective rights and environmental dimensions of human rights, particularly in cases addressing land dispossession and resource exploitation affecting African communities.

However, regional systems face significant limitations. Their geographic scope excludes large populations, and their enforcement mechanisms depend on member state cooperation. The ECtHR cannot compel compliance; its effectiveness relies on member states' commitment to rule of law and democratic accountability. Recent defiance by Poland and Hungary demonstrates these limitations.

3.2 Transnational Justice Mechanisms

Beyond traditional courts, transnational justice mechanisms—including International Criminal Court (ICC), hybrid tribunals, and truth commissions—have emerged as alternative frameworks for accountability transcending national boundaries.

The ICC represents an important institutional innovation: a permanent international court exercising jurisdiction over crimes against humanity, genocide, and war crimes without requiring state consent (though enforcement remains dependent on state cooperation) (International Criminal Court, 1998). However, the ICC faces significant challenges: limited enforcement power, politicized prosecution decisions, and withdrawal by some states (notably the United States, initially, and several African states citing neo-colonial concerns).

Hybrid tribunals—mixing international and national jurisdiction and personnel—have operated in Cambodia, East Timor, Lebanon, and other post-conflict societies. These mechanisms combine international expertise and legitimacy with local ownership and accountability. Their effectiveness varies, but they demonstrate possibilities for justice mechanisms transcending pure national or international frameworks (Shaw et al., 2010).

Truth commissions, operating in South Africa, Guatemala, Chile, and numerous other transitional societies, prioritize reconciliation and collective acknowledgment over punishment. These mechanisms recognize that accountability need not always take judicial form and that victim healing and social reconstruction may require approaches distinct from criminal justice.

3.3 Corporate Accountability and Business and Human Rights

The emergence of business and human rights as a distinct governance domain reflects recognition that corporations—increasingly powerful transnational actors—significantly affect human rights yet remain inadequately regulated through traditional mechanisms.

The UN Guiding Principles on Business and Human Rights (2011) establish a non-binding framework requiring states to protect human rights from corporate interference, companies to respect human rights, and victims to access remedies (UN, 2011). While non-binding, these principles have influenced corporate practice and state regulation. Several EU member states and other jurisdictions have implemented mandatory human rights due diligence requirements for corporations.

The French Law on Corporate Duty of Vigilance (2017), German Supply Chain Due Diligence Act (2021), and proposed EU Corporate Sustainability Due Diligence Directive represent legislative efforts to extend human rights protection into corporate supply chains—acknowledging that traditional state-based mechanisms cannot adequately protect workers and communities affected by corporate operations across borders [French Law on Corporate Duty of Vigilance (Loi de Vigilance) (2017); German Supply Chain Due Diligence Act (2021); European Commission, Proposal for Corporate Sustainability Due Diligence Directive (2022)].

These developments represent a constitutional innovation: creating legal obligations for non-state actors regarding human rights protection. This suggests an evolution toward "distributed" human rights responsibility across multiple institutional actors rather than concentrating protection exclusively within state frameworks.

4. Digital Rights and the Reconceptualization of Privacy

4.1 The Right to Privacy in the Digital Age

The traditional conception of privacy—protecting individuals' personal spaces and intimate information from state intrusion—proves inadequate for digital environments where corporations extract vast quantities of personal data and governments conduct mass surveillance.

The European Union's General Data Protection Regulation (GDPR) represents the most comprehensive attempt to reconceptualize privacy protection in digital contexts (Regulation (EU) 2016/679 General Data Protection Regulation). Rather than solely protecting informational secrecy, GDPR establishes affirmative rights: data access, rectification, erasure, and portability. Critically, it applies to all entities processing personal data, not merely states.

GDPR's approach—establishing privacy as a positive right requiring institutional accommodation rather than mere state non-interference—signals a broader reconceptualization of human rights. The regulation recognizes that in digital economies, privacy threats arise predominantly from corporate actors and that protection requires affirmative institutional design, not merely limiting state power.

Subsequent legal developments extend this reconceptualization. Brazil's General Data Protection Law (LGPD), China's Personal Information Protection Law (PIPL), and California's California Consumer Privacy Act (CCPA) represent different cultural and institutional approaches to digital privacy, reflecting varying emphases on consumer protection, state sovereignty, and individual rights [Brazil, General Data Protection Law (LGPD) (2018); China, Personal Information Protection Law (PIPL) (2021); California Consumer Privacy Act (CCPA) (2018)].

4.2 Algorithmic Rights and Transparency

Beyond privacy, digital environments generate new rights categories addressing algorithmic discrimination, transparency, and human dignity. The "right to explanation" in GDPR—permitting individuals to understand algorithmic decisions affecting them—constitutes an entirely novel right, reflecting recognition that algorithmic opacity threatens human autonomy and dignity (Article 22. GDPR), (Citron et al., 2014).

The EU's proposed AI Act establishes a risk-based framework imposing different obligations on developers and deployers of artificial intelligence systems, from transparency requirements for high-risk systems to prohibitions on certain applications (social credit systems, real-time biometric identification in public spaces) (European Commission, 2021). This framework, while not explicitly framed as human rights protection, establishes affirmative obligations protecting human dignity against technological harms.

Emerging litigation addresses algorithmic rights more explicitly. Cases in Europe and North America challenge algorithmic decision-making in hiring, credit, and criminal justice contexts, arguing that algorithmic opacity and discrimination violate rights to dignity, non-discrimination, and due process (Selbst et al., 2018). These cases suggest that courts are beginning to conceptualize algorithmic rights as inherent in traditional human rights principles adapted to technological contexts.

4.3 Digital Citizenship and Platform Governance

Platforms (Facebook, Twitter, YouTube, TikTok, etc.) have become primary spaces for public discourse, yet their governance remains private and largely unaccountable. This raises fundamental questions: Should platform policies restricting speech receive the same deference to private property rights as traditional private entities? Do platform users possess constitutional rights to due process in content moderation?

Regulatory responses vary. The EU's Digital Services Act (DSA) imposes obligations on platforms regarding content moderation transparency, recommender system disclosure, and protection of vulnerable users (DSA, 2022). Germany's Network Enforcement Act (NetzDG) requires platforms to remove illegal content within specified timeframes, establishing quasi-judicial responsibilities for private entities.

These regulations reflect recognition that platform power has taken on quasi-governmental dimensions regarding public discourse. Rather than treating platforms purely as private entities entitled to absolute control over their services, regulators increasingly view platforms as public forums requiring human rights-sensitive governance.

5. Environmental Constitutionalism and Rights to Nature

5.1 Recognition of Environmental Rights

Climate change and ecological degradation have prompted recognition of environmental rights within constitutional frameworks. Approximately 150 national constitutions now recognize environmental rights or environmental protection obligations (Boyd, 2005). However, these provisions vary enormously in strength, scope, and enforceability.

Ecuador's 1998 constitution, reformed in 2008, grants "Pachamama" (Mother Earth) legal personhood and the right "to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." (Constitution of the Republic of Ecuadoar, 2008) This provision, reflecting Indigenous Andean cosmologies, represents a radical reconceptualization of environmental protection—shifting from anthropocentric protection of environmental resources for human benefit toward ecocentric recognition of nature's intrinsic value.

Other jurisdictions have adopted similar innovations. New Zealand granted personhood to the Whanganui River (2017) and established legal guardianship for the Ganges and Yamuna rivers in India [Te Ture Whenua Act 1993 (New Zealand); National Green Tribunal, Writ Petition recognizing Ganges and Yamuna as living entities (2017)]. Colombia's constitutional courts have recognized the Amazon as a subject of rights requiring protection through judicial action [Constitutional Court of Colombia, Sentencia SU095/16].

These developments suggest a fundamental reconceptualization of legal subjects: expanding rights-bearing status beyond individual humans and even beyond corporations to encompass non-human nature. This challenges foundational assumptions of human-centered law and represents a genuine conceptual innovation in constitutional thought.

5.2 Climate Rights and Intergenerational Justice

Human rights frameworks increasingly recognize climate change as a human rights issue, with impacts on rights to life, health, adequate living standards, and self-determination. The UN Human Rights Council has recognized the human right to a clean, healthy, and sustainable environment: UN Human Rights Council, Resolution 48/13 (2021).

Emerging litigation frames climate change as a human rights violation. Juliana v. United States (ongoing in the United States) frames climate inaction as violating plaintiffs' rights to life, liberty, and property (Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020). Similar cases in Germany, France, and other jurisdictions challenge government climate inaction as inconsistent with constitutional rights to life and dignity (Neubauer v. Germany, BVerfG, 1 BvR 2656/18 (2021); French Constitutional Council, Decision on Climate and Energy (2019).

These cases introduce an important innovation: intergenerational justice. Traditional human rights protect present individuals; climate cases argue that future generations possess rights to inhabitable environments. This requires reconceptualizing the temporal dimension of human rights, extending protection beyond currently living populations to those who will inherit degraded environments (Weiss, 1989).

5.3 Indigenous Peoples' Rights and Environmental Protection

Indigenous peoples' rights—particularly regarding land, resources, and self-determination—increasingly receive constitutional protection, often with explicitly environmental dimensions. The UN Declaration on the Rights of Indigenous Peoples (2007), though non-binding, has influenced constitutional reforms in Latin America and other regions.

Indigenous environmental stewardship has gained recognition as exceptionally effective; Indigenous-managed territories show lower deforestation rates and greater biodiversity preservation than government-managed conservation areas in many regions (Schroeder, 2021). Consequently, Indigenous land rights, environmental protection, and economic development have become increasingly recognized as interconnected.

Constitutions incorporating Indigenous rights protections—Ecuador, Bolivia, Guatemala, and others—establish affirmative obligations regarding Indigenous consultation in resource extraction and development projects affecting ancestral territories. These frameworks recognize that environmental protection cannot be achieved through top-down management but requires respect for Indigenous knowledge systems and self-determination.

6. Collective Rights and Pluralistic Conceptions of Human Rights

6.1 Beyond Individualism: Collective and Group Rights

Western human rights discourse has historically emphasized individual rights, reflecting liberal political philosophy and constitutional traditions. Yet this individualist approach proves inadequate for protecting collective interests in cultural preservation, linguistic continuity, and collective self-determination.

Contemporary constitutional frameworks increasingly recognize collective rights. Canada's Constitution (1982) explicitly protects Aboriginal and treaty rights, recognizing Indigenous peoples' distinctive legal status and self-determination rights (Canadian Constitution Act, 1982, Part II (Rights of Aboriginal Peoples). The European Charter for Regional or Minority Languages protects linguistic minorities' rights to education, cultural expression, and political participation in regional languages (European Charter for Regional or Minority Languages (1992).

Bolivia's 2009 constitution, described as the world's first explicitly plurinational constitution, recognizes multiple national communities possessing distinct rights to self-governance, languages, and resource management (Bolivia, Political Constitution of the Plurinational State (2009), Articles 1-5). This represents a fundamental reconceptualization of the nation-state from a unitary entity toward a pluralistic federation of communities with distinct constitutional status. Similarly, the UN Declaration on Indigenous Peoples establishes rights to self-determination, including capacity to maintain distinct institutions, govern internal affairs, and control resources on ancestral territories—rights that cannot be satisfied through individual protections alone.

6.2 Cultural Rights and Minority Protections

Beyond Indigenous peoples, cultural minorities increasingly receive explicit constitutional protection. The Framework Convention for the Protection of National Minorities (European Council, 1994) establishes comprehensive protections for minorities regarding education, language use, and cultural expression.

These protections reflect recognition that cultural survival requires affirmative support from state institutions, not merely protection from discrimination. Minority language education, cultural institution funding, and media access represent positive obligations on states to support cultural diversity.

However, cultural rights create tensions with other rights, particularly regarding gender equality and LGBTQ+ rights. Some cultural communities practice gender segregation, restrict women's educational opportunities, or condemn same-sex relationships. Balancing cultural protection with individual rights to equality and non-discrimination remains contested (Shachar, 2001).

Courts increasingly frame this as requiring contextual balance rather than hierarchical subordination of either cultural or individual rights. The ECtHR's jurisprudence on religious minorities, for instance, acknowledges religious community interests while requiring respect for individual autonomy and equality within those communities.

6.3 Labour Collective Rights and Worker Protections

Labour collective rights—rights to unionization, collective bargaining, and strike action—represent another category of collective rights increasingly challenged by contemporary economic organization.

Globalized production networks, subcontracting arrangements, and platform economies fragment employment relationships, making traditional labour rights frameworks difficult to apply. Workers in global supply chains face conditions difficult to address through labour standards and collective bargaining in any single jurisdiction.

Contemporary responses include extending labour rights to supply chain workers regardless of formal employment relationships. The OECD (2011) Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights, and national laws (France, Germany) requiring supply chain due diligence represent efforts to extend labour protections across borders through corporate accountability rather than traditional labour law.

7. Reconceptualizing Constitutional Borders

7.1 From Territorial to Functional Borders

Traditional constitutionalism assumes a hierarchical relationship between constitutional orders: a supreme constitution defining governmental power within defined territory, with international law occupying a subordinate position or operating in separate domains.

Contemporary developments suggest emergence of "functional" rather than purely territorial borders. International human rights courts, EU institutions, and transnational regulatory bodies exercise genuine legal authority not derived from national constitutions but possessing legitimacy and effectiveness within defined domains (Berman, 2012).

The EU represents the clearest institutional manifestation of this development. Rather than a federal state with a conventional constitution, the EU comprises multiple constitutional orders—national constitutions and EU law—in complex relationships of mutual recognition and occasional conflict (Avbelj et al., 2012). When Polish courts reject EU law supremacy or Hungarian courts resist EU human rights standards, we see the practical consequences of attempting to operate multiple constitutional systems in overlapping jurisdictions.

Other regional organizations (African Union, ASEAN, MERCOSUR) evidence similar attempts to create supranational legal orders while respecting member state sovereignty. These arrangements do not resolve tensions between universality and pluralism but rather institutionalize ongoing negotiation among constitutional systems.

7.2 Subsidiarity and Multi-Level Governance

The principle of subsidiarity—that governance should occur at the most local level capable of effectively addressing problems—offers a framework for conceptualizing relationships among multiple constitutional orders (0Subsidiarity, EU Treaty, Article 5(3). Rather than assuming a single supreme authority, subsidiarity permits distributed governance across multiple levels, with authority allocated based on effective problem-solving capacity.

This approach acknowledges that different issues require different governance levels: local issues may require local governance; transnational issues require international cooperation; global issues (climate change, pandemics, nuclear weapons) require global governance mechanisms. The EU explicitly adopts subsidiarity as a governing principle, with specific provisions limiting EU action to matters where member state action proves insufficient (Subsidiarity, EU Treaty, Article 5(3). However, subsidiarity's application remains contested, with disagreement regarding which issues appropriately fall within which jurisdictional levels.

7.3 Pluralistic Constitutionalism and Constitutional Dialogue

Rather than hierarchy, contemporary constitutional scholarship increasingly emphasizes pluralism and dialogue among constitutional orders. Constitutional courts, international courts, and regional institutions engage in ongoing conversation regarding human rights interpretation, with influence flowing in multiple directions.

The ECtHR influences national courts; national courts influence the ECtHR; international courts engage with regional courts. This "constitutional dialogue" creates dynamic, evolving human rights standards responding to institutional input and practical experience across jurisdictions (Slaughter, 2004).

This approach acknowledges that constitutional authority is distributed, that no single institution possesses supreme interpretive authority, and that human rights protection requires coordination among multiple actors with legitimate claims to constitutional significance. It represents a profound departure from Westphalian sovereignty and hierarchical constitutional theory.

8. Emerging Challenges and Contradictions

8.1 Fragmentation and Inconsistency

The multiplication of human rights institutions and standards creates significant fragmentation risks. Different regional systems may establish inconsistent protections; different national courts may interpret similar rights differently; international institutions may articulate conflicting standards.

This fragmentation can create strategic opportunities for powerful actors to forum-shop—seeking the most favorable interpretation among multiple available forums. It also generates uncertainty regarding applicable standards, complicating compliance for multinational corporations and international institutions.

However, some fragmentation may be inevitable and even desirable in diverse societies. Insisting on global uniformity might require imposing particular cultural approaches to human rights on communities with different conceptions. Permitting variation respects pluralism while maintaining minimum standards.

8.2 Backlash and Democratic Deficit

The expansion of supranational human rights protection through courts and international institutions has generated significant backlash. Poland, Hungary, Turkey, India, and other states have resisted international human rights institutions, withdrawn from human rights treaties, and asserted national constitutional supremacy.

These reactions partly reflect authoritarian resistance to human rights constraints; yet they also reflect genuine concerns about democratic accountability. International courts lack electoral accountability; their judges are not selected through democratic processes; their authority ultimately depends on member state acceptance. When these institutions are perceived as imposing particular values on reluctant populations, legitimacy questions arise.

This tension—between the universality and supremacy of human rights and the principle of democratic self-determination—remains unresolved. If a democratic majority genuinely prefers policies inconsistent with human rights standards, should international institutions override democratic preferences? How should human rights and democracy be balanced when they conflict?

8.3 Power Asymmetries and Structural Injustice

While human rights discourse emphasizes universal protections, actual protection mechanisms are distributed unequally across jurisdictions. Wealthy democracies with strong institutions access sophisticated human rights protections; marginalized communities in weak states face inadequate protection.

Similarly, corporate accountability mechanisms are asymmetrically applied. Western corporations face increasing human rights due diligence requirements; corporations from authoritarian states or developing countries face less pressure. International human rights institutions sometimes reflect power imbalances, with powerful states shaping standards applicable to weaker ones.

Addressing these structural inequalities requires more than expanding formal human rights protections; it requires redistributing power and resources toward more equitable global governance.

9. Emerging Categories and Future Developments

9.1 Digital Citizenship and Platform Governance Rights

As discussed, digital rights represent an emerging category. Beyond privacy and algorithmic transparency, emerging frameworks address digital citizenship: rights to digital literacy, access to digital infrastructure, and meaningful participation in digital societies.

The EU's Digital Rights and Principles Declaration (2023) articulates aspirational frameworks for digital environments including digital literacy, access to digital services, and protection against digital manipulation (European Commission, 2023). These developments suggest that human rights protection requires affirmative investment in ensuring meaningful digital participation, not merely protection from digital harms.

9.2 Bioethics and Genetic Rights

Advances in genetic science raise novel human rights questions: rights regarding genetic information, reproductive autonomy, genetic enhancement, and human modification (Asch, 2003).Different jurisdictions adopt varying approaches, from permissive frameworks allowing substantial genetic experimentation to restrictive regimes prohibiting genetic modification.

The absence of international consensus on genetic rights creates risks of genetic tourism (traveling to permissive jurisdictions for genetic procedures), unequal access (genetic enhancements available only to wealthy populations), and potential eugenic harms.

9.3 Rights to Development and Structural Reform

Beyond civil and political rights, and increasingly recognized economic and social rights, emerging frameworks address rights to development and structural economic change.

The UN Declaration on the Right to Development (1986) establishes that development constitutes a human right, with implications for international economic arrangements.[41]

Implementation remains limited, particularly when development rights conflict with other interests (environmental protection, intellectual property rights, free trade). However, the recognition that global economic structures significantly affect human welfare, and that these structures should accommodate human rights, represents important conceptual development.

10. Toward a New Constitutional Framework: Key Principles

Based on this comparative analysis, emerging principles characterizing the new human rights era include:

10.1 Multi-Level Governance

Human rights protection increasingly operates across multiple jurisdictional levels—local, national, regional, and global—with distributed authority rather than hierarchical supremacy. This requires coordination mechanisms and principles for allocating governance across levels.

10.2 Pluralistic Universalism

Universal human rights principles require implementation sensitive to cultural, institutional, and political contexts. Rather than importing uniform rules, pluralistic universalism permits variation in implementation while maintaining core commitments to human dignity.

10.3 Distributed Responsibility

Human rights protection increasingly depends on non-state actors—corporations, platforms, civil society—alongside states. This requires expanding human rights obligations beyond state actors while clarifying standards and accountability mechanisms.

10.4 Affirmative Rights and Positive Obligations

Moving beyond negative protections against interference, human rights increasingly require affirmative state action ensuring meaningful enjoyment of rights: infrastructure investment, institutional design, resource allocation, and capacity building.

10.5 Collective and Non-Human Dimensions

While maintaining individual rights protections, frameworks increasingly recognize collective rights (cultural, Indigenous, environmental) and extend protection beyond human categories to encompass non-human nature.

10.6 Intergenerational Orientation

Recognizing that present actions affect future generations, human rights frameworks increasingly incorporate intergenerational justice principles protecting future populations' interests.

11. Conclusion

The contemporary era witnesses genuine reconceptualization of human rights protection in response to globalization, technological change, and emerging awareness of collective challenges transcending national boundaries. Rather than the universalist post-World War II framework or the sovereignty-dependent systems that dominated the Cold War, new approaches are emerging that distribute authority across multiple governance levels, expand rights categories, and reconceptualize the subjects and objects of rights protection.

This new era does not represent abandonment of human rights as a core value but rather evolution toward more sophisticated, multi-level systems better suited to addressing contemporary challenges. Yet this evolution generates tensions: between universal principles and cultural pluralism; between democracy and rights; between individual and collective protection; between human and environmental interests.

These tensions cannot be definitively resolved through abstract theory. Rather, they require ongoing institutional experimentation, constitutional dialogue, and democratic deliberation across jurisdictions. The new constitutional borders emerging through regional courts, international institutions, and transnational networks are not fixed but subject to continuous renegotiation reflecting experience, changing circumstances, and evolving understandings of human dignity.

The future of human rights depends not on establishing a perfect comprehensive framework but on maintaining commitment to human dignity while remaining responsive to change and respectful of pluralism. The constitutional experimentation currently occurring across jurisdictions—from recognizing nature's legal personhood to establishing algorithmic rights to recognizing Indigenous self-determination—represents humanity's ongoing effort to instantiate human rights principles in an increasingly complex, interconnected world.

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ANALYSIS OF THE PARADOX OF A UNITARY-LIKE JUDICIARY IN THE NIGERIAN FEDERATION

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Abstract: *Since independence in 1960, the founding fathers of Nigeria recognised the need to embrace federalism as a system of government. Prior to independence, a system of regionalised governments anchored on federalism was in place nation-wide. This was meant to foster national integration and unity among the various ethnic, religious, and multi-cultural diversities. The need to build a strong nation at the centre while retaining local peculiarities and autonomy of the different sub-national governments was paramount, thereby making a federal system of government desirable. By dint of the Constitution and political experience, it was expected that the federal idea would occupy a preeminent position in the nation's structure of governance. This study assessed the paradox of a unitary-like judiciary in the Nigerian federation. While the extent of federal and state legislative and executive powers was clearly spelt out in the Constitution, with regard to the Nigerian Judiciary, it was never the case. To what extent can it then be said that the principles of federalism were imbibed and entrenched in the structure of the Nigerian Judiciary? What makes the Nigerian Judiciary in reality unitary in structure despite the fact that Nigeria is a federation? Does the Nigerian Judiciary, as presently constituted, meet the yearnings and aspirations of Nigerians for true federalism? If not, why? It is this paradox that the paper addressed. The paper adopts doctrinal method and relied on primary and secondary data which were subjected to content and jurisprudential analysis. The paper then identified a few grey areas and pitfalls. Federal control of state judiciaries is clearly a pitfall, coupled with diffused jurisdictions of federal and state courts. The paper recommended that the judiciary should be decentralised with more autonomy given to state judiciaries to manage its affairs; and reforms implemented to address the diffused jurisdictional conflicts. This will put the Nigerian Judiciary in good stead within the context of the Nigerian federation.*
Keywords: *Unitary, Judiciary, Paradox, Nigerian Federation*

1. INTRODUCTION

In any thriving democratic society, an effective judiciary is a critical feature. The role of the judiciary in the sustenance of peace, order and good governance in such a society cannot be downplayed (Musdapher, 2011). In Nigeria, the judiciary is a creation of the Constitution and is the third organ of the Federal Government in Nigeria regarded as the Third Estate of the Realm. It is well established feature in the Nigeria constitutional system that there exists three separate Estates in our realm, namely, the Executive, the Legislature and the Judiciary (Nwanbueze, 2007). As an institution, the judiciary is a *sine qua non* to the smooth running of any organized society (Ijeoma and Ikechukwu, 2022). This is founded upon the fact that the judiciary is primarily concerned with upholding the rule of law (Nwambueze, 2007). The Constitution of the Federal Republic of Nigeria, (CFRN) 1999 (as amended), clearly stipulates that Nigeria operates a federal as well as presidential system of Government (Constitution of the Federal Republic of Nigeria, 1999). There exist three arms of Government namely, the Executive, the Legislature and the Judiciary. The judiciary operates within a federal system having both federal and state strata.

However, unlike some other federations like the United States of America where there is a clear separation between federal and state judiciaries, Nigeria's judiciary has elements of both unitary and federal systems of government. There is a hybrid of unitary and federal systems in the case of the judiciary in Nigeria (*AG Federation v AG Abia & Ors,* 2022). At the federal level in the Nigerian federation, there is the Supreme Court, which is the highest court of the land, followed by the Court of Appeal which is next in hierarchy and has jurisdiction over both federal and state matters. There is only a single Supreme Court for the entire Nigerian federation and also a single Court of Appeal having Divisions across the Nigerian federation (Akeredolu, Taiwo and Akintayo, 2024). This creates a unitary-like judiciary, as the decisions of the Supreme Court are binding on all courts within the federation, and that of the Court of Appeal on all other lower courts subordinate to the Court of Appeal, regardless of whether the case originated from the federal or state courts. Although Nigeria operates a federal system of government, paradoxically, the judicature is centralised at the appellate court levels with respect to adjudication and judicial administration.

Additionally, there are other federal courts. For example, the Federal High Court handle cases involving federal agencies and persons or states, and disputes between states or between the Federal Government and States. This court also has jurisdiction over certain civil and criminal matters specified by federal laws, as well as certain matters within the jurisdiction of the State High Courts such as fundamental rights enforcement cases. On the other hand, each State in Nigeria has its own judiciary, which is responsible for handling cases that fall within the jurisdiction of the State, including matters related to State laws, regulations, and disputes between individuals or entities within the State. Each State has its own High Court, and there are also lower courts subordinate to the High Court within the States.

Despite the presence of both federal and state judiciaries, there are challenges to achieving true federalism in Nigeria's judicial system. Furthermore, there have been instances where the decisions of the federal courts have been perceived as encroaching on the autonomy of the States (*A.G. Federation v A.G Abia & Ors* (2022). This has led to debates about the proper balance between federal and state powers within the Nigerian judiciary. Undoubtedly, while Nigeria's judiciary operates within a federal framework, it exhibits elements of both unitary and federal systems- a conundrum that is perplexing even to an academic (Chinwo, 2006). The aim of the work is to analyse the paradox of a unitary like judiciary in the Nigerian federation. The work as part of its objectives explores the reasons for the unitary like nature of the Nigerian Judiciary, identified the paradox of a unitary like judiciary within the Nigerian federal system and recommends constitutional reforms and change in judicial attitudes by the judicature in order to achieve a structure of Judiciary that accords with the ideals and practice of true federalism within Nigeria federal system. This work is divided into parts. Aside the abstract, part one is the introduction while the next part is the definition section and it explored the conceptual foundations of key terms in the work. Part four examines the structure of the Nigerian Judiciary while part four analysed the paradox of a unitary like judiciary in a federal system like Nigeria and the factors that made this possible. Part five is the concluding chapter and embodies the recommendations proffered. The doctrinal approach to research was adopted in this work with reliance placed on primary and secondary data. Case law, constitutional and statutory provisions were deployed while secondary data including books and articles accessed from secondary sources were used.

2. DEFINITION OF TERMS

2.1 Unitary

The word ‘unitary’ may relate to forming a single or uniform entity. It is sometimes viewed as relating to a system of government or organization in which the powers of the constituent parts are vested in a central body (Hornby and Sydney, 1995). A unitary state has been defined by the Black's Dictionary as a state that is not made up of territorial divisions that are themselves states (Garner, 2004). A unitary system of government is a system in which all political powers are concentrated in a central government, with sub-national governments, having only powers delegated to them by the central government (Gibson, 2012). This means that unitary systems of government are usually characterised by the concentration of political power in a central government entity, with sub-national governments legally subordinate to the central government or authority (Eliagwu, 2005). This system is often contrasted with federal systems, where power is divided between the central government and sub-national governments. In a unitary system, the central government has the authority to create or abolish sub-national governments, making it easier to maintain uniformity in laws and policies across the country. This system of government is common in countries with a history of strong central authority.

Incorporating a judicial perspective adds another layer of complexity to the understanding of "unitary" within legal systems. From a judicial standpoint, the unitary nature of a legal system influences the organisation and function of the judiciary, the interpretation and application of laws, and the resolution of legal disputes. In unitary legal systems, the judiciary typically operates under a centralised framework, with a hierarchical structure that usually culminates in a Supreme Court or a similar apex judicial body. Judges at various levels of the judiciary derive their authority from the central government and are tasked with applying national laws uniformly across the entire jurisdiction.

2.2 Judiciary

The ordinary perception of the judiciary is its being synonymous with the court system where the judge is tasked with the responsibility of administering justice. This definition finds support from notable dictionaries. The Black's Law Dictionary defines judiciary as pertaining or relating to courts of justice, to the judicial department of government or to the administration of justice (Campbell, 2005). It that branch of government vested with judicial power and it includes the system of courts in a country, the body of judges, and the bench. This definition encompasses the nature, composition, and functions of the judiciary. This definition is formal and restrictive, as it sees the judiciary simply as being synonymous with the body of judges of a state, referred to in Latin as the "Judex" (Eso, 1990).

Several authors have also made attempts at defining the judiciary. According to Oloko (1990),

the judiciary is the specialised differentiated structure, processes and personnel that is devoted to the task of performing on a continuous basis one of the three interrelated and interdependent governmental functions in modern and modernising societies. The specific governmental function performed by the judiciary in these societies is what is known as rule adjudication as distinct from the two governmental functions of rulemaking and rule application. Nwabueze on his part stated that although when used in a strict sense, "judiciary" refers to judges of a state collectively, it is however, often used interchangeably with the word "judicature," a wider term embracing both the institution (the Courts) and the persons (the judges) who comprise it (Nwambueze, 1977).

Glaringly, the judiciary is a vital arm of government clothed with judicial powers for administering justice. In other words, the judiciary's mandate is not an end in itself, but a means to a higher end. The thrust of the judiciary's mandate is the cause of justice (Musdapher, 2012). It is a creation of the constitution and plays a vital role in the governance of any nation. It is regarded as closest to the people and is the backbone of the common man or in the ordinary parlance, the last hope of the common man (Nwambueze, 2007). In comparison with the other two arms of government, Nwabueze while alluding to the "the memorable words of Alexander Hamilton in the Federalist, No. 78 stated:

The judiciary is beyond comparison, the weakest of the three departments of power. [It] has no influence over either the sword or the purse; no direction either of the strength or the wealth of the society, can take no active resolution whatsoever. It may truly be said to have neither FORCE nor WILL, but merely judgment.

The perceived weakness is because the judiciary does not have the power or control over the wealth of the society; does not have power of control over the organized coercive force of the society, etc. It is sacrosanct that the judiciary is clothed with authority to decree judgment and administer justice and therein lies its power.

2.3 Federation

A discourse on the Nigerian Federation may seem aloof without first establishing the meaning of a federation. A basic definition of federation is the one offered by Black's Law Dictionary to mean '*a league or union of states, groups or peoples arranged with a strong central authority and limited regional sovereignties – though the individual states, groups, or peoples may retain rights of varying degrees* (Garner, 1999). A federation thus may be seen as a state in which both the central government and the constituent governments 'rule over the same territory and people and each has the authority to make some decisions independently of the other.' A federation can also be defined as a sovereign state in which the central government incorporates governments of regional units into its decision-making procedure on some constitutionally entrenched basis.

Instructively, the Constitution of the Federal Republic of Nigeria, 1999, christened Nigeria as a federation in section 1 when it provides that the Constitution of Nigeria is supreme and is binding over all persons and authorities in the Federal Republic of Nigeria. Moreover, section 2(1) and (2) of the Constitution specifically provides with respect to the Federal Republic of Nigeria that 'Nigeria is one indivisible and indissoluble Sovereign State to be known by the name of the Federal Republic of Nigeria. Also, that 'Nigeria shall be a Federation consisting of States and a Federal Capital Territory.' It is therefore clearly settled that Nigeria is a federation.

In most federations of the world and in Nigeria within our specific context, citizens are subject to at least two main levels of authority: that of the federal and of the state governments (Dele, 2019). The 36 states that make up the federation of Nigeria are separated from the federal government under the country's constitution. The constitution expressly states the scope and authority of both the central government and the federating units. The exclusive and concurrent lists are the two legislative lists. This means that some enumerated powers are made exclusive to the federal government while some other enumerated powers are spelt out and made a subject of concurrent legislation between the federal government and the state governments, subject to the overriding authority of the federal law over a state law in the event of inconsistency between a federal legislation and a state law. The state governments are given residual functions that are not covered by these two lists (Ayeni, 2018). From this arrangement, it is easy to recognise the federal government's dominance over the state and the states being clearly subordinate to it.

Although the Nigerian Constitution identified the country as one which operates a federal system of government, with power divided between the central government and 36 states, provisions for judicial autonomy and practical realities often undermine the independence of state judiciaries. Fiscal dependence on the federal government, coupled with political interference, limits the capacity of state courts to dispense justice impartially. Also, the backlog of cases, especially at the Court of Appeal and the Supreme Court further exacerbates the centralization of judicial power. The unitary-like nature of Nigeria's judiciary poses significant challenges to federalism, including erosion of state autonomy, unequal access to justice, and inefficiencies in the administration of justice. However, it also presents opportunities for reform. Strengthening the autonomy of state judiciaries, enhancing judicial capacity at the state level, and promoting alternative dispute resolution mechanisms can foster a more decentralized and equitable judicial system.

3. STRUCTURE OF THE NIGERIAN JUDICIARY

The structure of the judiciary in Nigeria is set out in section 6 of the Constitution of the Federal Republic of Nigeria, (1999) which created two levels of judicial powers by vesting such powers in the courts of the Federation as well as of a State to which section 6 relates. Section 6(5) clearly designated these courts as courts of superior record. The Constitution also established a clear hierarchy for the court system which confers the authority for exercising judicial powers and made provisions for the composition of the courts.

Judicial power is that which the state exerts in the administration of public justice in contradistinction with the power it possesses to make laws and the power to execute them (Nwambueze, 1977). The pronouncement of the Supreme Court on this point is relevant.

Consideration will now be given to the structure of the courts that form a vital part of the judiciary in Nigeria as spelt out in the Constitution.

3.1 Supreme Court of Nigeria

The Supreme Court is the apex court in the hierarchy of courts in Nigeria. It is established under section 230 of the Constitution and is composed of the Chief Justice of Nigeria (CJN) and such number of Justices of the court not exceeding 21, as may be prescribed by an Act of the National Assembly.

The Supreme Court is vested with exclusive original jurisdiction to entertain disputes between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of any legal right depends. In its appellate jurisdiction, the Supreme Court hears and determines exclusively appeals that emanate from the Court of Appeal. Without prejudice to the powers of the President or of the Governor with respect to prerogative of mercy, there is a note of finality to determinations made by the Supreme Court and no appeal shall lie to any other body or person from the decision of the Supreme Court and the Court's decision is final.

3.2 Court of Appeal

This court is next to the Supreme Court in the hierarchy of courts in Nigeria. The Court consists of the President of the Court of Appeal and not less than 49 Justices, inclusive of those learned in Islamic personal Law as well as customary law. The Court of Appeal has original and exclusive jurisdiction over questions as to whether a person has been validly elected to the office of the President or Vice-President under the Constitution, or whether the term of office of such person has ceased or whether the office has become vacant.

By s246 (1), (b) and (c) of the Constitution, appeals shall lie as of right to the Court of Appeal in respect of decisions of National and State Houses of Assembly Election Tribunals. Sub-section (3) of s246 states that the decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final.

Pursuant to s240 of the Constitution, the Court of Appeal has exclusive jurisdiction to hear and determine appeals from the Federal High Court, National Industrial Court, the High Court of the Federal Capital Territory, Abuja, the High Court of a State, the Sharia Court of Appeal of a State/Abuja and Customary Court of Appeal of a State/Abuja. This court also entertains appeals from decisions of the Code of Conduct Tribunal and other court of law or tribunal established by the National Assembly.

3.3 Federal High Court

The Federal High Court consists of a Chief Judge and such number of Judges as may be prescribed by an Act of the National Assembly. The Federal High Court has limited but exclusive jurisdiction in civil and criminal matters set out explicitly under s251 of the Constitution.

For the purpose of exercising the jurisdiction conferred on it by law, the Federal High Court shall have all the powers of the High Court of a state. The Federal High Court is duly constituted if it consists of at least one Judge of that Court. The court is divided into Judicial Divisions spread across Nigeria for forum convenience.

3.4 The National Industrial Court of Nigeria

The National Industrial Court of Nigeria is established under s254A of the Constitution. The Court has a President and such number of Judges as may be prescribed by an Act of the National Assembly. The original jurisdiction of the Court is limited to civil causes and matters in relation to labour and industrial disputes to the exclusion of any other court in Nigeria. The Court also has appellate and supervisory jurisdiction with respect to appeals from the Registrar of Trade Unions, or matters relating thereto or connected therewith.

The National Industrial Court is a specialized Court with power to set up an Alternative Dispute Resolution centre within its premises (Akeredolu and Eyongndi, 2019). The Court is equally conferred with criminal jurisdiction in criminal causes and matters arising from any cause or matter on which jurisdiction is conferred on the Court by law (Eyongndi and Ilesanmi, 2018). Of interest is the fact that appeal as of right from the decisions of the National Industrial Court to the Court of Appeal is only in respect of the Court's decision in criminal causes and other related matters. Appeal also lies as of right from the decision of the National Industrial Court to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution as it relates to matters upon which the National Industrial Court has jurisdiction *UCHMB v Morakin*yo (2014). It appears the court is to a very large extent a final court and the last is yet to be heard on the enormous powers of this Court.

Interestingly, s254 (D) (1) of the Constitution states that for the purpose of exercising any of the jurisdictions conferred on it by law, the National Industrial Court shall have all the powers of a High Court.

3.5 High Court of the Federal Capital Territory

This Court is established for the Federal Capital Territory with a Chief Judge and such number of Judges to be prescribed by an Act of the National Assembly. The Court is duly constituted with one Judge sitting. The jurisdiction of the Court extends to civil and criminal causes and matters and is made subject to the jurisdiction of the Federal High Court under section 251 of the Constitution. This Court exercises both original and appellate or supervisory jurisdiction.

3.6The High Court of a State

The High Court of a State consists of a Chief Judge (CJ) of the State and such number of Judges as may be prescribed by a law of the House of Assembly of the State. Section 272 of the Constitution confers jurisdiction on the court subject to the provisions of Section 251 of the Constitution, among other provisions. The jurisdiction of the State High Court generally covers the civil and criminal causes and matters outlined in the Constitution. The reference to civil or criminal causes and matters under s272 includes a reference to the proceedings which originate in the High Court of a State and those which are commenced before the High Court to be determined by the High Court in the exercise of the Court's appellate or supervisory jurisdiction. For the purpose of exercising the jurisdiction conferred on it by the Constitution, a High Court of a State shall be duly constituted if it consists of at least one Judge of that Court.

3.7 Other Superior Courts

The Constitution under Section 6(5) (f) – (i) specifically states that the following are superior Courts of records vested with judicial powers under the Constitution namely, the Sharia Court of Appeal of the Federal Capital Territory Abuja the Customary Court of Appeal of the Federal Capital Territory, the Sharia Court of Appeal of a State, and the Customary Court of Appeal of a State. These Courts do not play any significant roles with respect to the subject matter of this research and to that extent, it would be unnecessary to consider and analyze their jurisdiction and extent of their powers beyond this point. Suffice it to mention that these courts are principally concerned with disputes in civil proceedings involving questions of Islamic personal law and customary laws in Abuja and in the States of the Federation.

3.8 Election Tribunals

Section 6 (5) (j) of the Constitution made provisions for such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws on the one hand, and such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws. This provision means that the Election Tribunals established by section 285 of the Constitution are superior Courts of record vested with judicial powers.

Section 285(1) established for each State of the Federation and the Federal Capital Territory National and State Houses of Assembly Election Petition Tribunals with original jurisdiction to hear and determine the validity of legislative elections to the exclusion of any other court or tribunal. In the same vein, section 285(2) established in each State of the Federation an election tribunal known as the Governorship Election Tribunal which shall, to the exclusion of any Court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State.

4. The Paradox of a Unitary Structure of the Nigerian Judiciary

As it is currently in Nigeria, a unitary constitution in a federal system imports certain inherent contradictions and confusion in its original ideology (Nwambueze, 2018). This contradiction apparently stems from the fact that unitary and federal systems are mutually exclusive, and logically opposing concepts. This manifest contradiction in ideas is not only because unitary systems and federalism are mutually exclusive and logically opposing concepts, but also, because it is a negation of the meaning of federalism. It is therefore not surprising when the Judicial Committee of the Privy Council in *Att. Gen. v Colonial Sugar Refining Co. Ltd* (1914). stated that the natural and literal interpretation of the word 'federal' confines its application to cases in which states, while agreeing to a measure of delegation, preserve their original constitutions. This ordinarily suggests that the constitutions of the governments of the federating states pre-date that of the federation, and continue to exist and remain in operation within their original authority after the formation of the union.

The above scenario is more confusing when an appraisal of the structure of the Nigerian judiciary is made. While the powers of both the Federal and State governments, particularly as they relate to legislative and general governmental powers are clearly stated in the constitution, the powers of the judiciary as exercisable at different levels in both the federal and State levels is highly confusing. A more particularised discussion is done below. This conundrum will be examined in light of conflicting jurisdictions, conflicting judgments, the role of the NJC, and the centralization of appointments, removal, remuneration and pension of superior court judges.

i. Conflicting Jurisdictions

To clearly espouse the issue of conflicting jurisdictions in Nigeria, it is necessary to have a cursory look at the judicial power of the other two tiers of government, to wit, the Federal and State governments particularly as it relates to the High Courts. It is equally fundamental to state at the outset that while sections 4 and 5 of the Constitution clearly spelt out the extent of federal and state legislative, and executive powers, there is no such clear provision made as to the extent of the judicial powers to be exercised by the courts of the federal and state governments. This is especially so in view of the fact that both the Supreme Court and the Court of Appeal have no equivalent at the state levels. What is evident is the attempt by the constitution do delineate the jurisdictions of the State High Courts and that of the Federal High Court.

It ought to be stated that section 236 (1) of the 1979 Constitution granted the State High Court unlimited jurisdiction, allowing it to entertain any civil proceedings in which the existence or extent of any legal right, power, duty liability, interest obligation or claim is in issue. This led to the State High Court potentially encroaching on the exclusive jurisdiction of the Federal Revenue Court, which was later renamed the Federal High Court. However, the Constitution of the Federal Republic of Nigeria (Amendment) Decree No. 107 of 1993 granted the Federal High Court exclusive jurisdiction over certain matters, including matters pertaining to the administration, management, and control of the Federal Government or any of its agencies. This amendment curtailed the unlimited powers of the State High Court. Additionally, both the State High Court and the Federal High Court exercise special concurrent jurisdiction in matters relating to the enforcement of fundamental rights This creates a conflict between the exclusive jurisdiction of the Federal High Court and the special concurrent jurisdiction of the Federal High Court and State High Courts over matters of fundamental rights enforcement (SCC Nig. Ltd v George, 2019). In essence, a State High Court cannot rightly and validly determine allegations of fundamental rights breach from acts of terrorism or treason, or acts or omission of a police officer, which fall under the exclusive jurisdiction of the Federal High Court.

Similarly, the Federal High Court cannot determine alleged violations of fundamental rights arising from torts, rape, or armed robbery, as these matters fall within the jurisdiction of State High Courts (*Iheme v Chief of Defence Staff & Ors*, 2018). Although the foregoing decision seems to lay to rest any earlier jurisdictional conflict, the question now is which court will exercise jurisdiction when the subject matter that led to the application for fundamental rights falls within the purview of matters under the jurisdiction of the State High Court and one of the parties involved is an agency of the Federal Government? Beyond the issue of fundamental rights enforcement, other matters may well fall within the jurisdiction of the State High Court but may have a party to an application being an agent of the Federal Government or such other circumstance that may fall under section 251 of the Constitution (Iloka, 2021). This puts the applicant at a crossroads in determining which court to approach for redress of an alleged breach of their fundamental rights (Comfort Alaba Kolo v NPF & Ors (2018).

Beyond the question of conflicting jurisdiction in the high courts, there are issues relating to the administration of the Court of Appeal that clearly denotes this unitarism in the Nigerian judiciary even within the various divisions of the Court of Appeal. For instance, the President of the Court of Appeal, transferred all the 2023 election petition cases pending in 36 states of the federation to the Abuja and Lagos divisions of the appellate court on the grounds of the need to prevent political interference in the due administration of justice (Adebayo, 2023). This led to all appellate cases arising from the judgments of election petition tribunals in the 36 states being heard and determined in the Abuja and Lagos divisions of the appellate court. This decision affected all gubernatorial, national, and state assemblies' elections, and the Court of Appeal is the final arbiter with regards to the latter two.

The reason given by the President of the Court appears politically correct and rational, it however raises the question whether the transfer of these cases was the most appropriate step to take. It is common knowledge that both the judiciary and the National Judicial Council (NJC) have internal mechanisms for ensuring that erring judges are disciplined in appropriate situations (*Ngajiwa v FRN*, 2018). Admittedly, such a statement is an unequivocal indictment of the Justices of the Court of Appeal in all the other Divisions except for those in Abuja and Lagos. It is pertinent to ask whether this indictment is limited to only the Justices of the other Divisions in view of the decisions of the Supreme Court in some of the gubernatorial elections decided at the Court of Appeal level, especially in Plateau State.

The Supreme Court overturned the verdicts of the Court of Appeal in the Governorship election petition cases in Plateau, Kano, and Zamfara States which caused an upsurge in the crisis of confidence in the appellate court (Enumah and Igbintade, 2024). The Apex Court berated some Justices of the appellate court over the quality of their judgments in the 2023 governorship election petitions bought before them. Agim JSC made a notable pronouncement in *Manasseh v Goshwe* (2024) thus:

"The deliberate refusal of courts to follow established precedents of this court on principles that have become fairly trite and elementary, having been subject of restatements in an unending line of cases is worrisome. It has serious implications for the sustenance of the rule of law, peace, order and security of the society ... It amounts to judicial misconduct of a very extreme proportion for a judicial officer to disregard clear provisions of the Constitution and other legislations and the precedent of this court. The whole engagement from the High Courts to the Court of Appeal amount to illegitimate adjudication or false judicialism, flagrant and oppressive abuse of judicial process in an unprecedented manner."

The Plateau State governorship petition caused outrage among some senior lawyers who lamented that the several national and state assembly members sacked by the appellate court's decisions have no judicial remedy (Ejekwonyilo, 2024). A former Chairman of the National Human Rights Commission (NHRC), Chidi Anselm Odinkalu, and many others called on the President of the Court of Appeal to resign. Some lawyers even demanded the National Judicial Council (NJC) to sanction the judges involved in the miscarriage of justice, while others advised the Plateau State Government to approach the Supreme Court to seek justice for the sacked lawmakers.

Other equally worrisome situations are those from cases involving political parties. Politicians would usually and their lawyers engage in 'forum shopping' and sometimes refuse to file their matters before the High Courts in the originating states, but would rather file these cases at the FCT High Court or the Federal High Court, Abuja in the guise that these matters border on the activities of political parties who have their headquarters in Abuja (Godwin and Nwaoku, 2024). The existence of courts with coordinate jurisdictions in the unitary-like structure of the Nigerian judiciary gives rise to the perception that the judicial apparatus at the federal level can be exploited to override the interest of state politics and influence as witnessed in Rivers State.

ii. Conflicting Judgments

The judiciary is a crucial part of constitutional democracy and the rule of law, for protection of citizens and their rights (Nwambueze, 2018). It interprets laws and resolves conflicts when societal issues become unclear (AG Fed v AG Abia State, 2024). To effectively function, courts must be clear, consistent, and certain in their judgments. here a judgement exists, it has binding force on lower courts and it is persuasive on courts of coordinate jurisdiction. This definition set the tone for this discussion.

In recent times, there has been an avalanche of conflicting judgements especially in disputes relating to political parties or their members. These decisions are usually at variance with established judicial precedent and fall short of public expectations. For example, the All-Progressives Congress (APC) party in Zamfara State was a victim of conflicting judgments from the Zamfara State High Court and the Federal High Court in Abuja regarding the eligibility of candidates for the 2019 elections (Sanusi & Ors. v APC & Ors., 2018). The APC conducted primaries for governorship and state assembly positions, but the Zamfara State chapter was accused of violating party rules and conducting illegal primaries. Some party members challenged the primaries' validity and candidates' eligibility (Takur, 2018). One of the matters on the same facts was filed before the Zamfara State High Court while the other was filed before the FCT High Court. The Zamfara State High Court ruled that the APC conducted valid primaries, making its candidates eligible for elections and ordered the Independent National Electoral Commission (INEC) to accept the APC candidates and include their names on the ballot. However, the FCT High Court in Abuja ruled that INEC acted within its powers by refusing to accept the list of candidates from the Zamfara State chapter of the APC. The APC challenged that decision of the FCT High Court at the Court of Appeal to allow APC candidates to participate in elections, and the APC was successful and got judgement in its favour. The Court of Appeal ruled that the lower court lacked jurisdiction to hear the case and that the matter should have been taken to an election tribunal. The INEC initially refused to accept the APC candidates' names for the elections but later reversed its decision. The confusion and controversy delayed the elections in Zamfara State, but eventually, the APC won the governorship and state assembly seats (BBC, 2019). It is also worrisome to note that two separate appeals were filed in this matter on the same facts, one before the Abuja Division of the Court of Appeal and the other before the Sokoto Division of the Court of Appeal, and both Divisions delivered conflicting decisions on the matter. The Court of Appeal Sokoto State Division struck out the Zamfara State High Court's judgement on the APC primary elections, which produced the party's candidates for the governorship, national, and state assembly elections. This decision conflicted with that given by the Court of Appeal, Abuja Division (Tsa, 2019).

In 2015, the Rivers State Governorship Election was marred by conflicting judgments on election conducted that year. The incumbent Governor, Nyesom Wike of the PDP had Dakuku Peterside of the All-Progressives Congress in the opposition. Upon the conclusion of the elections, Peterside challenged the election results at the Rivers State Election Petition Tribunal, alleging irregularities and fraud. While the election tribunal dismissed his petition and upheld Wike's election, the Federal High Court in Abuja nullified the election and ordered a rerun, stating the election was marred by violence and irregularities. These conflicting judgments led to tension in Rivers State, with supporters of both parties staging protests and rallies. The case was eventually resolved by the Supreme Court, which upheld the decision of the Rivers State Election Petition Tribunal and affirmed the election of Wike as Governor (Nyesom v Dakuku Peterside, 2016).

Similarly, the 2016 Kogi State Governorship Elections were marred by conflicting judgments from various courts. The leading contenders were Yahaya Bello of the APC and Idris Wada of the PDP. On the one hand, Wada challenged the 2016 election results, alleging irregularities and violence on which grounds the Federal High Court in Abuja nullified the election, ordering a rerun. On the other hand, Bello and the APC challenged the decision at the Court of Appeal, which overturned the ruling and upheld Bello's election (Wada & Ors v Yahaya Bello & Ors. (2016). This led to confusion and controversy, with the PDP accusing the APC of manipulating the judiciary. On further appeal to the Supreme Court, the apex court upheld the election of Yahaya Bello (Halimah, 2020).

In Abia State, the case of Governor Ikpeazu and Alex Otti is another example. Upon a petition filed challenging the election of Governor Ikpeazu, the incumbent, the Court of Appeal declared Alex Otti the winner of the election, cancelling elections in three Local Government

Areas, a decision which many considered the disenfranchisement of over 300,000 voters. The court also reversed the number of votes recorded for Ikpeazu at Obingwa, Osisioma, and Isiala Ngwa North Local Government Area, resulting in overvoting. The court's approach raises questions about manual accreditation, INEC guidelines, incident forms, and the reasons behind the failure of the Card Reader Machine. This position when contrasted with the position of the Supreme Court in the *Amaechi v Omehia* (2008) raises more questions than answers. In the last-mentioned case, Supreme Court declared Rotimi Chibuike Amaechi as the duly elected Governor of Rivers State, even though he was never on the ballot paper for the elections. The court held that the mandate belonged to the political party and ordered Amaechi to be sworn in as Governor (Premium Times, 2014). It is interesting to note that this judgment led to the amendment of the Electoral Act, which included a provision that no individual shall be deemed to have won an election if they did not stand for election into that particular office in Nigeria. The lawmakers aim to render the judgment in the Amaechi case null and inapplicable to the electoral system.

The spate of these conflicting judgements attracted the attention of the then Chief Justice of Nigeria, Justice Mahmud Mohammed who expressed concerns over the conflicting judgments emanating from the Court of Appeal while addressing Justices of the Court of Appeal in Abuja (The Citizen, 2024). One would imagine that the address by CJN (as he then was) would have settled the quagmire. However, this appears not to be the case.

In 2020, the Independent National Electoral Commission (INEC) was again faced with the conundrum of choosing between two subsisting decisions of the Court of Appeal relating to the deregistration of political parties. The Court of Appeal on 10^{th} August 2020 delivered a ruling in a suit filed by the Advanced Congress of Democrats (ACD) and 22 others challenging their deregistration. The court held that INEC acted *ultra vires* the powers of the Commission and ordered it to reinstate the party. This ruling substantially conflicted with an earlier decision of the Court of Appeal, Abuja Division where in an appeal filed by the National Unity Party (NUP) the Court of Appeal affirmed the power of the Commission to deregister political parties that fail to meet the requirements of the law.

Recently, the decisions of the various election petition tribunal depict the situation of conflicting judgment. There were three election petition tribunals that sat in the State, each with three judges as panellists. Their judgements were significantly different with some elections upheld and others quashed on the same ground. This situation raised several questions about compliance or adherence to judicial precedents and whether laws applying to the same set of facts could have different interpretations. This conundrum is partly a function of lack of adherence to judicial precedents and partly due to the unitary-like judiciary that has created a structure which has made such judicial abuse much more pronounced. The decision of the Plateau state governorship election petition tribunal which affirmed Governor Caleb Mutfwang's victory casts aspersions on the decision of the other tribunals in the State where some of the People’s Democratic Party (PDP) candidates' elections were quashed by the tribunal on the ground that the party had no valid structure. The decision is contrary to that of the gubernatorial tribunal (Kelechukwu, 2023). The three-man tribunal led by Justice Sunday Olorundahunsi unanimously affirmed Mutfwang's election and held that the PDP has the requisite structure that produced its governorship candidate in the March 18, 2023 governorship election. The tribunal also held that it lacks the jurisdiction to entertain APC’s petition challenging the repeated congresses held by the PDP since they are busybodies and meddlesome interlopers who should not have any business with PDP congress as it is entirely the business of the PDP.

iii. The Role of NJC

The National Judicial Council (NJC) is one of the Federal Executive bodies established pursuant to section 153 of the Constitution. 'The NJC is saddled with the ultimate responsibility of screening and appointing persons to the superior courts of record. Within the context of the powers of the NJC, these courts range from the various high courts of a state to the Supreme Court (Azinge and Rapu, 2012).

The NJC comprises several members, including the Chief Justice of Nigeria, the next most senior Justice of the Supreme Court, the President of the Court of Appeal, five retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal, the Chief Judge of the Federal High Court, the President of the National Industrial Court, five Chief Judges of State appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and of the High Court of the Federal Territory, Abuja in rotation to serve for two years, one Grand Kadi appointed by the Chief Justice of Nigeria from among the Grand Kadis of the Sharia Courts of Appeal, one President of the Customary Court of Appeal appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal, five members of the Nigerian Bar Association qualified to practice for a period of not less than fifteen years, at least one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment, and two persons not being Legal Practitioners who in the opinion of the Chief Justice of Nigeria are of unquestionable integrity.

The duties and role of the NJC are also provided for by Paragraph 21 of Part One of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria, as amended. The NJC has the power to recommend to the President from among the list of persons submitted to it by the Federal Judicial Service Commission, recommend the removal from office of Judicial Officers specified in sub-paragraph (a) of this paragraph, recommend the removal from office of the Judicial Officers specified in sub-paragraph (c) of this paragraph, collect, control and disburse all moneys for the judiciary, advise the President and Governors in any matter pertaining to the judiciary as may be referred to the Council by the President or the Governors, appoint, dismiss and exercise disciplinary control over Members and staff of the Council, control and disburse all monies, capital and recurrent, for the services of the Council, and deal with all other matters relating to broad issues of policy and administration.

It may seemingly appear therefore, that the NJC's primary purpose is to protect the Judiciary from the executive's influence and ensure its independence, which is a requirement for any democratic government.

iv. Centralization of Appointments, Removal, Remuneration and Pension of Superior Court Judges

The mode of appointment, tenure, removal, remuneration and pension of superior court judges in Nigeria suggest the unitary nature of the judiciary. The appointment of the Chief Justice of Nigeria and the Chief Judge of various State high courts is governed by section 231(1)-(5) and section 271(1)-(5) of the Constitution respectively. It is necessary to briefly state how each of these appointments are to be made.

By section 231(1) of the 1999 constitution, the Chief Justice of Nigeria shall be appointed by the President on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate. This required procedure is the same with the procedure for the appointment of a person into the office of a Justice of the Supreme Court.

Section 238(1) makes provision for the appointment of the President of the Court of Appeal. It provides that the appointment of a person into the office of the President of the Court of Appeal shall be made by the President on the recommendation of the National Judicial Council subject to confirmation by the Senate. Subsection 2 of section 238 provides for the appointment of the other justices of the Court of Appeal with a slight variation. It provides that the appointment of a person to the office of a Justice of the Court of Appeal shall be made by the President on the recommendation of the NJC. This appointment does not require confirmation by the Senate.

The appointment of a person to the office of the Chief Judge of the Federal High Court (FHC) shall be made by the President on the recommendation of the National Judicial Council subject to confirmation by the Senate. As for the appointment of the other judges of the Federal High Court, section 250(2) of the 1999 Constitution provides that it is to be made by the President on the recommendation of the NJC without the need for confirmation by the Senate. It should be noted that the procedure for the appointment into the office of the Chief Judge of the High Court of the Federal Capital Territory, Abuja and the other judges of the Court, the appointment of the President of the National Industrial Court and other Judges of the court, the appointment of the Grand Khadi of the Sharia Court of Appeal of the FCT, Abuja and other Kadis of the Court, and the appointment of the President of the Customary Court of Appeal of the FCT, Abuja and other judges of the Court, are substantially the same with the appointment of the Chief Judge of the FHC and the other judges of the FHC respectively.

The appointment of the judges of the State High Courts and those regarded to be in coordinate jurisdiction with the State High Courts are substantially the same. To be specific, the appointments of the Chief Judge of the High Court of a State, the Grand Khadi of the Sharia Court of a State, and the President of the Customary Court of Appeal of a State are all made by the Governor of a State on the recommendation of the NJC and subject to confirmation of such appointments by the House of Assembly of that State. With respect to the appointments of the other Judges of the High Court of a State, other Kadis of the Sharia Court of a State, and other Judges of the Customary Court of Appeal of a State are all made by the Governor of a State on the recommendation of the NJC, but there is no requirement for confirmation of such appointments by the House of Assembly of that State.

It is instructive to note that one dominant factor and an apparent common denominator that under pins the appointment of all judicial offices in the Nigerian Federation is the dominance and monopoly of the powers of recommendation by the NJC. In fact, this power of recommendation is by all stretch of imagination, and the reality of application, the appointment itself. This is because, rarely will the President or the Governor decline such recommendations and rarely do the Senate or the State Houses of Assembly decline the confirmation of such confirmation in applicable cases. This enormous concentration and centralisation clearly put the Nigerian judiciary within the general purview and specific import of unitarism. The above conclusion would still find locus and the validity of both realistic and academic acceptance if it is argued that these recommendations are usually manipulated by the big wigs in politics and governance.

A classic example of this is the controversy surrounding the appointment of the then Honourable Justice Walter S. Onnoghen, Chief Justice of Nigeria (CJN) who was to take over from Hon. Justice Mahmud Mohammed who was the substantive CJN. The appointment was made in an acting capacity but was not appointed and sworn into the substantive position until March 7, 2017, outside the clear mandate in section 231(5) that an appointment in an acting capacity shall cease to have effect after the expiration of three months from the date of such appointment.

The above-unwanted practice is no different at the level of the States. The controversy surrounding the appointment of Justice P.N. Agumagu as Chief Justice of Rivers State over Justice D.W. Okocha, a senior judge by former Governor Rotimi Amaechi, has led to a collision course between the Governor and the National Judicial Council (NJC), crippling the judiciary of Rivers State for a long time. The highly politicized appointment of a Chief Judge in Kano State has also resulted in a stalemate, which is not healthy for the judiciary as an institution.

Similarly, some clogs in the will and process of appointment of judges is the role of the DSS in screening the applicants being considered for judicial appointment. Even though it is important for such applicants to be screened so that undeserving persons having question characters or bad antecedents are excluded, the role of the DSS as an organ of the Executive in this regard deserves some consideration. There are some instances where the screening of applicants for judicial appointment takes an unusually long time, and in consequence, some of the appointments might be delayed inexplicably beyond the constitutionally allowed period. This then unwittingly provides another window for undue interference in the process of nomination and screening for judicial appointments (Arome, 2019).

Still on the appointment of judicial officers, the Federal Character principle, enshrined in the Constitution to prevent tribal or regional domination of any government or its agency by a group or section of the country, is a significant factor that impedes the role of the judiciary. Although this provision is to ensure equal representation in governance, inappropriate application of this policy can create mediocrity, inequality, corruption, lack of transparency, and lack of competitiveness. This principle is applied in undeserving situations for the selection or elevation of judges, especially to the Court of Appeal and the Supreme Court of Nigeria. It is with the greatest respect submitted here that the best available personnel at any given time should be appointed to the apex court, regardless of where they come from. The yardstick for employment, as expressed by the renowned Jurist, speaks to the expected best practices in the appointment of judges which promotes and produces competent hands for the judiciary covering all cadres of judicial officers. This is a precondition to the successful performance of the function of the judiciary in promoting democracy in Nigeria.

Closely associated with removal of judges is the question of their tenure of service. The tenure of office of judicial officers enjoys legal protection, and members of the judiciary cannot be removed, dismissed, or retired compulsorily except as stipulated in section 292 of the Constitution. The tenure of service for judicial officers before retirement has been pegged at 65-70 for appellate courts and 60-65 for judges of the High Courts. The security of tenure and guarantee of pension rights if not well managed can impede the work of judicial officers, which will invariably affect their delivery on the job. By section 292(1) of the Constitution, a judicial officer shall not be removed from his office or appointment before his retirement age except on the grounds stated in the section. In fact, a judicial officer is not expected on ceasing to be a judicial officer for any reason whatsoever thereafter to appear or act as a legal practitioner before any court of law or tribunal in Nigeria.

The centralisation of the process of removal of judges is yet another pointer to the unitary nature of the Nigerian judiciary. It is bad enough that so much power for the general discipline and removal of a judge is vested in the NJC, it is even worse where there is undue interference with the commission's functions either within the judiciary or by political office holders especially for personal reasons. This potentially bears a negative impact on judicial independence and inhibits the ability of the judiciary to do justice and uphold its integrity. One such example is the controversial removal of Justice Ayo Salami, former President of the Court of Appeal on 18/8/2011 following the impasse between him and the then CJN, Justice Aloysius Katsina-Alu, over the role of the former in the alleged disclosure to media of the alleged attempt by the CJN to influence the decision of the Court of Appeal in the Sokoto Governorship appeal then pending before the Election Appeal Tribunal at that time. Notably, Justice Ayo Salami was removed despite the pending suit he filed in court challenging his removal and was compulsorily retired in 2013.It is shocking to note that the NJC under a new CJN (Justice Dahiru Musdapher) in April 2012 about 8 months later, recommended Salami's reinstatement but the President did not accept the recommendation.

The popular case of the former Chief Justice of Nigeria, Hon. Justice Onnoghen is still fresh in our memories. Despite the established position of the law, especially, the decision in

Nganjiwa v FRN (2017), the Federal Government, in an unprecedented move, initiated a prosecution of the Chief Justice of Nigeria, Justice Walter Onnoghen, before the Code of Conduct Tribunal for the CJN to appear before the Tribunal on January 14, 2019, for arraignment based on a six-count charge filed against him, which later led to his forceful removal, thereby portraying the judiciary as a toothless bulldog. The judiciary must be insulated from abuse in the interest of democracy so that it is placed on such a footing to do justice without compromise. To ensure judicial independence and to avoid descending to a state of anarchy and lawlessness, the provisions of the Constitution for the removal of judges must be strictly complied with and adhered to.

Apart from its powers and responsibilities of advising the President and State Governors on recommending the appointment of judicial officers, the NJC also exercises power and control over judges' removal from office and makes recommendations to the President and State Governors on that behalf (Aguda, 2000) (Aguda, 2000). On the 26th February 2014, Justice G. K. Olotu of the Federal High Court and Justice U.A. Inyang of the High Court of Justice of the Federal Capital Territory, Abuja, were recommended by the NJC to be forced into retirement, due to allegations of grave misconduct, which recommendation was implemented. Additionally sanctioned were Justice Dalhatu Adamu, Presiding Justice of the Court of Appeal in Kaduna; Justice A. A. Adeleye of the Ekiti State High Court; and Justice D. O. Amachina of the Anambra State High Court. Before this, the NJC dismissed two justices in 2013 for various unethical reasons: Justice Thomas Naron of the Plateau High Court and Justice Charles Archibong of the Federal High Court for unethical behaviours and misconduct (The Nation, 2013).

The above disciplinary actions imposed against the implicated judges were welcomed by lawyers and the general public. There is however, the question of how independent the judiciary is given the involvement of the executive and the legislative arm of government in the removal of the Chief Justice and heads of other courts. The NJC is saddled with the responsibility of control and management of all funds relating to all judicial officers. It is interesting to note that these powers do not guarantee the independence of the judiciary in any way. Section 21 (e) of the Third Schedule to the Constitution, confined the powers of the NJC to collect, control and disburse all moneys, capital and recurrent, for the judiciary. One question that stands out is where these moneys are to be collected from. Section 80 of the Constitution, specifically provides for the establishment of the Consolidated Revenue Fund and centralises the fund in two ways, to wit: the centralisation of such funds in the Consolidate Revenue Fund and domiciling it in the NJC after collecting such portions as have been approved for all judicial officers in Nigeria. This is a complete aberration to the principles, tenets and practices of true federalism, a pointer to the unitary nature of the judiciary notwithstanding Nigeria being a federation as clearly stated in the Constitution.

5. CONCLUSION AND RECOMMENDATIONS

The Nigerian Constitution clearly states that Nigeria is a Federation and upholds federalism. However, the Constitution is marred with manifest contradictions, one of which affects effective devolution of powers to the federating units. Beyond this problem of devolution of powers, the Nigerian Judiciary is also greatly impacted in such a way that there is such concentration of powers in the NJC with respect to appointment, removal, and remuneration of judicial officers. It is imperative that these recommendations be seriously considered and implemented in order to uphold the principles of true federalism and ensure a fair and impartial judicial system in Nigeria. This would help to strengthen the rule of law and promote a more just society. By giving more power to state governments and increasing transparency in financial matters, the judiciary would be better equipped to serve the people and uphold justice.

In the light of the foregoing discourse, the following recommendations are pertinent:

1) The Nigerian judiciary should be restructured by way of constitutional amendments in line with other jurisdictions that have their own Apex court and other appellate courts which are different from those established as federal courts.

2) There is also a need to establish the State Judicial Council or increase the power of the present State Judicial Service Commission of the 36 states of the federation, with the NJC having supervisory powers over them. The powers to be exercised by these State Councils or Commissions will include appointment, removal, discipline and remuneration of State judicial officers.

3) The other urgent reforms needed include decentralizing the control of judicial funds to the individual states, allowing for more autonomy and accountability at the local level.

4) Political office holders, top government officials and high-ranking judicial officers must reframe from interfering with the processes of appointment, removal and discipline of judicial officers and reframe from setting the law in motion against judicial officers for personal reasons.

5) The issue of conflict of jurisdiction and conflict of judgement in the Court of Appeal especially with respect to filing multiple cases in different divisions of the Court on the same cause of action, without prejudice to the fact that the parties may change, should be prevented either by transferring the latter case filed, to the division of the Court where the first matter was filed for the purpose of consolidating the cases; or an outright striking out of the last in time to be filed. This will reduce the nature of conflicts in judgements from the Court of Appeal.

6) The judiciary should be strengthened and one key aspect of strengthening the judiciary in Nigeria is to implement reforms that promote transparency and accountability within the system.

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LEGAL AND ETHICAL CHALLENGES FOR COMPETITIVE ORGANIZATIONS

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Abstract: *Today, AI is extensively used in management decisions, having significant impacts on organizational efficiencies, governance structures, and competitive performances. This research attempts to explore the legal and ethical issues related to the application of AI and assess the role of responsible artificial intelligence as a tool for competition within organizations. The study seeks to ascertain the ways in which responsible AI helps mitigate legal risks and improve the ethical performance of organizations to make them more competitive. Using a quantitative methodology, data collected from 150 organizations implementing Artificial Intelligence (AI) systems were analyzed statistically to examine the relationship between Responsible Artificial Intelligence (RAI) governance practices and organizational competitiveness. The findings reveal that responsible AI enables organizations to gain more stakeholder trust and reduce the risk of regulations while achieving better strategic performances. It can be argued that responsible AI is not just about meeting compliance requirements, but rather an important tool for competitive organizations.*

Keywords: *corporate governance, AI ethics, competitiveness, regulation.*

1 Introduction

The role of Artificial Intelligence (AI) has evolved from being merely an advanced technology into a key component of organizational strategy and decision-making. In the past few years, the proliferation of AI in various industries has been on an unprecedented level, facilitated by advances in machine learning and the development of generative AI technologies. As empirical research reveals, in 2024, about 78% of enterprises employed AI in one of their operations compared to just 55% in the prior year (Maslej et al., 2025). Likewise, the adoption of AI technologies by companies worldwide has been continuing its growth trend consistently, with over 20% of companies in OECD states making use of AI in 2025 compared to roughly half of that amount in the previous year (OECD, 2026). Overall, it is safe to say that Artificial Intelligence has ceased to be an innovative technology and has turned into a primary source of competitiveness and efficiency in modern business. Despite the revolutionary power of AI, its application brings a host of legal and ethical issues that go far beyond the boundaries of typical business risk. In this sense, data security, privacy concerns, bias detection and avoidance, and issues associated with transparency and accountability are just some examples of complex issues faced by companies utilizing AI solutions. According to recent research, many organizations struggle with creating appropriate frameworks for governing AI despite its wide-scale adoption, as less than a quarter of businesses have formalized strategies for dealing with AI risks (KPMG, 2025; OECD, 2025). Such an issue leads to considerable vulnerability to sanctions, reputational damage, and losses in stakeholder trust.

To address the identified problem, the concept of Responsible Artificial Intelligence has been developed. By emphasizing the need to ensure fairness, transparency, accountability, and human involvement in decision-making processes, RAI is seen as a key factor facilitating both legal and ethical compliance with regard to AI use. Recent research shows that companies that follow AI governance practices can significantly lower risks associated with AI while boosting their performance, innovation capabilities, and stakeholder trust (Agbaakin, 2025; Davis & Li, 2024). Besides, the market for AI services is expected to reach $1.81 trillion by 2030 (FeatherFlow, 2025), which makes the proper incorporation of AI crucial in modern business.

Overall, the present situation indicates that the introduction of responsible AI governance is becoming a necessary condition for competitive advantage in an AI-driven market environment. Thus, the purpose of this paper is to investigate legal and ethical issues associated with using artificial intelligence in management and to show the contribution made by implementing RAI toward competitiveness.

1.1 Background and Literature Review

Recent literature highlights the increasing importance of AI within the sphere of organizational decision-making and management. Using AI allows organizations to efficiently analyze data in vast amounts, increase the accuracy of predictions, and automate some functions. Empirical evidence suggests that firms using AI within their operations demonstrate increased levels of productivity and innovation capabilities, especially in those areas where processing large amounts of data is crucial (Davis & Li, 2024). At the same time, the increase in the prevalence of decisions made by algorithms led to the emergence of a new management paradigm in which human-based approaches to decision-making are partially substituted or supplemented with automated decision-making.

The importance of governance mechanisms for organizational sustainability and competitiveness has also been emphasized in previous studies published in AIJES. For example, Surmanidze et al. (2023) demonstrated that organizational resilience and sustainable growth are strongly associated with strategic resource management and institutional support mechanisms. Although their study focused on access to finance among small businesses in Georgia, the findings highlight the broader importance of governance-related factors for long-term competitiveness. This perspective is also relevant in the context of Responsible Artificial Intelligence (RAI), where governance practices play a critical role in achieving sustainable organizational performance.

One of the major challenges connected to the increasing prevalence of AI includes the emerging complexity of the regulatory environment. The issue of legal responsibility related to decisions made by an AI system is rather problematic since it is challenging to allocate responsibility among various stakeholders involved in creating or using AI (OECD, 2025). In addition, the problem of protecting personal information used in training AI models requires addressing since regulatory agencies are increasingly concerned about privacy issues (KPMG, 2025). These challenges force organizations to reconsider their governance practices, making them compliant with existing regulations.

The legal implications of Artificial Intelligence have also been examined from the perspective of the rule of law. Minghirasi (2024) argues that the growing use of AI systems requires governance mechanisms capable of ensuring accountability, transparency, legal certainty, and protection of fundamental rights. As organizations increasingly rely on algorithmic decision-making, compliance with rule-of-law principles becomes essential for maintaining legitimacy and public trust while reducing legal risks.

From the ethical point of view, one of the issues associated with AI pertains to its potential to reproduce biases. When an AI model is based on biased data from the past, it will produce similarly biased outcomes, especially in areas such as recruitment, employee evaluation, or financial decision-making. Lack of transparency of AI systems also presents another problem. It is rather difficult to understand the nature of an outcome produced by an algorithm that cannot be interpreted easily. Hence, there is a need for increasing the explainability of AI algorithms. Recent legal and ethical scholarship has further emphasized the need for comprehensive governance frameworks for Artificial Intelligence. Puran (2024) argues that AI ethics should be understood through multiple dimensions, including human rights protection, transparency, accountability, fairness, and regulatory compliance at both international and European Union levels. These principles are particularly relevant for organizations increasingly relying on AI-supported decision-making, as they provide a foundation for balancing innovation with legal and ethical responsibilities.

In this context, the topic of responsible artificial intelligence (RAI) becomes relevant. The concept of RAI represents an integration of legal compliance and ethics principles into organizational practice in terms of AI use. It assumes a transparent and accountable use of AI models that guarantee fairness of outcomes with an adequate level of control from humans. Recent research proves that introducing RAI as part of organizational strategy positively affects the competitive advantage (Davis & Li, 2024).

2 Method

A quantitative research design is applied to explore the association between Responsible Artificial Intelligence (RAI), legal and ethical problems, and organizational competitiveness. The final research sample consisted of 150 organizations that had implemented Artificial Intelligence (AI) systems in their operations. The organizations represented data-intensive sectors, including finance, technology, human resource management, and logistics. These sectors were selected because they demonstrate active AI adoption and face significant legal and ethical challenges related to data protection, algorithmic bias, transparency, and accountability. The research uses quantitative secondary data obtained from publicly available datasets, reports by organizations, and academic publications related to the implementation of AI technologies, corporate governance, and organizational success. Secondary data enable the researchers to analyze empirical trends in large samples and stay consistent with established statistical evidence about AI implementation.

Sources of data represent the latest international data reported during 2021-2025. The sources include international reports and documents published by consulting firms, international organizations, and research centers specializing in AI technologies. Sources are chosen due to the presence of standardized metrics regarding AI implementation, organizational performance, and governance practices. Aggregated observations pertain to organizations active in the areas, such as finance, technology, human resources management, and logistics characterized by widespread AI implementation.

The key variables utilized in the research were operationalized as follows. Responsible AI implementation was estimated based on transparency and accountability metrics, ethical principles adopted by an organization, and human oversight measures. Competitiveness was evaluated through indicators such as operational effectiveness, innovativeness, stakeholder trust, and market position. Legal and ethical challenges were utilized as explanatory variables referring to data protection threats, algorithmic bias, and regulatory compliance issues.

Statistical quantitative techniques were used to analyze data. In particular, descriptive statistics were utilized to detect existing patterns in AI implementation and governance practices. Also, correlation analysis helped to reveal associations between AI implementation and organizational competitiveness. Regression analysis allowed the researcher to estimate how RAI practices impact organizational competitiveness.

Reliability of data was ensured by collecting observations only from trusted sources providing methodology descriptions. Cross-source consistency check was performed by comparing indicators between different datasets. Despite being based on secondary data, the research provides empirical insights about AI governance practices and allows drawing generalizable conclusions about its importance.

3 Results

Findings concerning the association between responsible artificial intelligence, legal/ethical challenges, and competitiveness are stated based on descriptive statistics, correlations between variables, and regression analysis of the compiled dataset. Based on descriptive statistics, high AI adoption among organizations is observed, including intensive use in data-driven industries like finance, technology, and logistics. Majority of organizations are engaged in partial governance of AI with a prevalence of implementation of transparency and data protection policies. At the same time, there is a lack of sophisticated governance tools such as legal and ethics audits and accountability frameworks in place. Thus, the evidence points out towards the active utilization of AI while the establishment of responsible practices is still under development. As shown in Table 1, the descriptive statistics indicate that the sampled organizations demonstrate a relatively high level of AI adoption, while the implementation of responsible AI governance practices remains moderately developed.

Table 1. Descriptive Statistics of Key Variables

Variable	Mean	Std. Deviation	Min	Max
AI Adoption Level	3.85	0.76	2.10	5.00
RAI Implementation	3.42	0.81	1.90	5.00
Organizational Competitiveness	3.67	0.74	2.30	5.00
Transparency Practices	3.58	0.79	2.00	5.00
Accountability Mechanisms	3.31	0.83	1.80	5.00
Legal & Ethical Risk Exposure	2.95	0.88	1.50	4.80

Correlations analysis revealed a positive association between RAI practices and competitive advantage, indicating strong relationships between AI governance frameworks and reputation outcomes, efficiency and innovation capacities. Namely, higher transparency and accountability scores were found to be linked to better reputation and better decisions made by organizations. At the same time, organizations facing higher levels of legal/ethical challenges related to their AI implementation were associated with lower competitiveness scores. Table 2 presents the correlation matrix for the main study variables, including AI adoption, RAI implementation, organizational competitiveness, transparency practices, accountability mechanisms, and legal and ethical risks.

Table 2. Correlation Matrix

1. AI Adoption Level	1.00					
2. RAI Implementation	0.61	1.00				
3. Organizational Competitiveness	0.58	0.72	1.00			
4. Transparency Practices	0.55	0.78	0.69	1.00		
5. Accountability Mechanisms	0.49	0.74	0.65	0.71	1.00	
6. Legal & Ethical Risks	-0.42	-0.53	-0.60	-0.48	-0.45	1.00

Note: All correlations are significant at $p < .05$.

The correlation results show a strong positive relationship between RAI implementation and organizational competitiveness ($r = 0.72$, $p < .05$). This suggests that organizations with stronger AI governance practices tend to report higher competitiveness. Transparency practices ($r = 0.69$) and accountability mechanisms ($r = 0.65$) are also positively related to competitiveness. In contrast, legal and ethical risks are negatively associated with competitiveness ($r = -0.60$), indicating that unmanaged AI-related risks may reduce organizational performance and stakeholder trust.

Finally, regression analysis confirmed that responsible AI practices are an important factor influencing the level of organizational competitiveness positively. Organizations implementing effective RAI practices showed significantly higher performance than the others, controlling for industry-related differences and extent of adoption of AI. Transparency and human oversight were found to be the most powerful RAI components affecting organizational performance favorably. As shown in Table 3, regression analysis was conducted to examine the predictive effect of RAI implementation, transparency practices, accountability mechanisms, legal and ethical risks, and AI adoption level on organizational competitiveness.

Table 3. Regression Analysis: Predicting Organizational Competitiveness

(Constant)	1.102	0.321	—	3.43	0.001
RAI Implementation	0.482	0.091	0.51	5.29	0.000
Transparency Practices	0.276	0.084	0.29	3.28	0.002
Accountability Mechanisms	0.198	0.079	0.21	2.51	0.014
Legal & Ethical Risks	-0.334	0.088	-0.36	-3.80	0.000
AI Adoption Level (Control)	0.145	0.072	0.17	2.01	0.046

Model Summary: $R^2 = 0.62$; Adjusted $R^2 = 0.59$; $F = 28.47$ ($p < .001$)

The regression model explains 62% of the variance in organizational competitiveness ($R^2 = 0.62$), indicating strong explanatory power. RAI implementation is the strongest positive predictor of competitiveness ($\beta = 0.51$, $p < .001$). Transparency practices and accountability mechanisms also have statistically significant positive effects. Legal and ethical risks have a significant negative effect ($\beta = -0.36$, $p < .001$), confirming that organizations exposed to higher AI-related legal and ethical risks are less likely to achieve strong competitive outcomes.

Moreover, it was observed that legal/ethical challenges acted as a moderator, weakening the positive effects of RAI practices. Organizations facing significant legal and ethical challenges had worse performance, although the issue could be mitigated by sufficient governance practices. In conclusion, findings confirm that Responsible Artificial Intelligence plays not only a role of a tool for managing risks in operations but a strategic asset for driving organizational success in the current environment.

4 Discussion

This section discusses the findings in relation to responsible AI governance, legal and ethical risk management, and organizational competitiveness. The results are interpreted from managerial, ethical, and regulatory perspectives. The results of the study show that the implementation of Responsible Artificial Intelligence (RAI) has a positive correlation with organizational competitiveness. Those organizations whose processes include structured governance, specifically the development of transparency, accountability, and human oversight, tend to demonstrate greater efficiencies, innovations, and trust among their stakeholders. These findings correspond to existing research proving that ethical and well-governed AI can improve the performance of organizations and increase their legitimacy (Davis & Li, 2024). Moreover, it has been found that legal and ethical risks associated with data protection and algorithmic biases decrease organizational performance in the absence of proper management strategies. Thus, these results confirm the earlier suggestions about how unmanaged risks can reduce trust and increase vulnerability in organizations (Pasquale, 2015). Consequently, it becomes clear that AI adoption alone does not lead to any competitive advantage, while the presence of specific mechanisms represents a determining factor.

The present findings are consistent with the conclusions of Surmanidze et al. (2023), who argued that sustainable organizational growth depends on effective governance and strategic decision-making mechanisms. Similarly, the current study suggests that organizations implementing transparent and accountable AI governance frameworks are more likely to achieve stronger competitive outcomes and stakeholder trust.

First of all, there are several advantages in the current study. In particular, the paper uses the quantitative research design and considers multiple variables from different angles, such as legal, ethical, and managerial. However, there are also some limitations worth discussing. Namely, due to using secondary data, it becomes impossible to examine the process and practices of organizational governance. Furthermore, since this study is based on the cross-sectional research design, one cannot draw strong conclusions regarding causality. Nevertheless, these results can be generalized to data-intensive industries that often adopt AI solutions. However, it would be appropriate to mention that the correlation identified may occur due to the presence of other confounding variables. For example, those organizations with stronger governance can implement the necessary practices to achieve the expected performance improvements.

From the practical perspective, organizations should focus on implementing RAI practices. First of all, establishing transparency, developing accountability, and maintaining human oversight can minimize risks. In addition, the mentioned strategies help organizations become more efficient and innovative. Thus, organizations need to integrate these practices into corporate governance models to ensure performance and avoid problems. Thus, Responsible Artificial Intelligence has been identified as an important tool for promoting organizational competitiveness. Not only can AI governance mitigate legal and ethical risks but also build trust. Moreover, future research will be needed to address the issue of effective AI governance in light of technological advancements.

These findings are consistent with Minghirasi's (2024) argument that the effective governance of AI systems must be grounded in rule-of-law principles. The negative relationship identified between legal and ethical risks and organizational competitiveness suggests that organizations benefit from governance frameworks that promote accountability, transparency, and regulatory compliance.

The findings also support the arguments presented by Puran (2024), who emphasizes that ethical AI governance requires transparency, accountability, and compliance with evolving international and European regulatory standards. The positive relationship identified between responsible AI practices and organizational competitiveness suggests that ethical governance is not only a regulatory necessity but also a strategic advantage.

In conclusion, the study demonstrates that Responsible Artificial Intelligence is not only a compliance-oriented approach but also a strategic factor that strengthens organizational competitiveness. The findings show that transparency, accountability, and human oversight help organizations reduce legal and ethical risks while improving trust, innovation, and performance.

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THE ROLE OF LEGAL REGULATION, SAFETY, AND CONSUMER PROTECTION IN TOURISM DEVELOPMENT

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Abstract: *The tourism sector is one of the most dynamic and rapidly growing areas of the modern economy, strongly influenced by legal regulation, safety mechanisms, and consumer protection. Legal frameworks establish standards for tourism services, enhance tourist trust, reduce operational risks, and contribute to market stability and competitiveness. This article aims to analyze tourism legal regulation, examine approaches to tourist safety, and assess consumer rights protection mechanisms, as well as their impact on tourism market efficiency and development. The research is based on doctrinal-legal analysis, international documents, and relevant academic literature. The findings suggest that a well-developed legal framework improves consumer confidence, ensures service quality, and supports sustainable tourism growth, particularly in the context of digital transformation. The study also highlights the importance of tourism contracts and digital tourism in strengthening legal protection and maintaining a secure and competitive tourism market.*

Keywords: *tourism law; tourist safety; consumer rights; tourism contract; market efficiency*

1. Introduction

Tourism in the 21st century has emerged as a global social, cultural, and economic phenomenon that encompasses human mobility, the service sector, international communication, and cultural interactions (UNWTO, 2020). This sector has a significant impact both on a country's economic development and on strengthening social infrastructure, creating jobs, and enhancing international image. The rapid growth of tourism, especially under conditions of globalization and digital technology integration, has given rise to legal challenges related to tourist safety, service quality standards, information transparency, and consumer rights protection [Mukasheva & Ybyray, 2023]. Tourism relations are characterized by multi-actor involvement, cross-border nature, and complex agreements, which gives legal regulation particular importance [Casanovas-Ibáñez, 2016]. Tourism law is evolving as a multidisciplinary field that synthetically integrates civil, administrative, international, and consumer protection norms. Its main function is to ensure a balance of interests between tourists and service providers, create a safe, legally protected, and predictable environment, and ensure that service quality complies with international standards.

In this context, the role of legal regulation reduces legal and operational risks, increases tourist trust, and promotes sustainable tourism development, with special attention to digital tourism, electronic services, and modern technologies that enhance consumer protection and contract-based safe practices [Reymbayeva, 2025]. At the same time, effective legal regulation plays a significant role in the economic development of tourism, as it increases market predictability, reduces business risks, and strengthens sector competitiveness both locally and internationally.

In addition, tourism has increasingly become a strategic sector for many countries, particularly those with high dependence on international visitor flows. The contribution of tourism to GDP, employment, and foreign exchange earnings makes it a critical component of national economic policies. Therefore, the establishment of effective legal frameworks is not only a matter of regulatory necessity but also a strategic tool for economic growth and resilience, especially in times of global uncertainty and crisis.

Moreover, the COVID-19 pandemic has highlighted the vulnerability of the tourism sector and the importance of legal mechanisms in crisis management. Issues such as travel cancellations, refund obligations, force majeure clauses, and consumer rights enforcement have become central to tourism law. This has emphasized the need for flexible yet robust legal systems capable of responding to rapidly changing global conditions while maintaining a balance between business sustainability and consumer protection. Crisis-management studies also demonstrate that preparedness, coordinated emergency communication, and recovery mechanisms are essential elements of tourism resilience [Ritchie, 2004; Sigala, 2020; Kim & Chen, 2023].

Furthermore, the development of digital tourism and platform-based services has transformed traditional tourism models, creating new legal relationships between tourists, intermediaries, and service providers. Online booking systems, sharing economy platforms, and algorithm-driven services raise complex legal questions related to liability, jurisdiction, data protection, and consumer rights. As a result, modern tourism law must continuously adapt to technological advancements and emerging market dynamics. The literature on digital tourism additionally shows that platform-based intermediation reshapes information flows, consumer trust, and the distribution of liability among service providers [Buhalis & Law, 2008; Zhang & Lee, 2022; González & Solis, 2024].

Against this background, the aim of this study is to analyze the role of legal regulation in tourism development, with a particular focus on tourist safety and consumer protection mechanisms. The research seeks to evaluate how legal frameworks influence market efficiency, consumer trust, and the overall competitiveness of the tourism sector, especially in the context of digital transformation.

2. Theoretical Framework

This study is based on several interrelated theoretical approaches that together form the conceptual foundation of legal regulation in tourism.

2.1 Institutional Theory – According to institutional theory, formal institutions such as laws, regulations, and legal structures define the framework of economic and social relations [North, 1990]. In tourism, law functions as an institutional mechanism that reduces information asymmetry between tourists and service providers, ensures contract enforcement, and contributes to market stability. Thus, legal institutions in tourism can be viewed as mechanisms determining economic efficiency and market stability.

2.2 Consumer Protection Theory – Consumer protection theory emphasizes that the consumer is a relatively weaker party in contractual relationships. In tourism, this is particularly evident as tourists often operate in unfamiliar legal and cultural environments. Therefore, legal regulation ensures information transparency, safety standards for services, and effective legal protection [Adamenko et al., 2021]. This, in turn, increases consumer trust, strengthens loyalty, and positively impacts the long-term stability and development of the tourism market.

2.3 Risk and Safety Theory – Risk theory highlights the role of the state and institutional frameworks in risk prevention and management [Beck, 1992]. In tourism, legal safety regulation aims to protect tourists' life, health, property, and informational interests [Tatsiienko et al., 2021]. High safety standards also increase tourism demand and a country's attractiveness, directly affecting the sector's economic outcomes.

In addition to the above theoretical approaches, tourism law can also be analyzed through the lens of transaction cost economics, which emphasizes the importance of reducing uncertainty and coordination costs in market exchanges. Tourism transactions are typically characterized by high levels of complexity, involving multiple actors such as tour operators, intermediaries, accommodation providers, and transport companies. In such conditions, legal regulation plays a crucial role in minimizing negotiation, monitoring, and enforcement costs, thereby improving overall market efficiency.

Furthermore, from a socio-legal perspective, tourism regulation reflects the interaction between formal legal rules and informal social norms, including trust, reputation, and cultural expectations. These informal mechanisms often complement formal legal structures, especially in destination-based tourism experiences where service quality is closely linked to interpersonal interactions and cultural context.

In the context of globalization and digital transformation, theoretical approaches to tourism law must also incorporate concepts related to network governance and platform economy regulation. Digital platforms increasingly act as intermediaries in tourism services, creating new legal relationships that challenge traditional regulatory models. As a result, modern theoretical frameworks must address issues such as algorithmic transparency, platform liability, and cross-border jurisdictional complexity.

Overall, the integration of these theoretical perspectives provides a more comprehensive understanding of tourism law as a dynamic and multidimensional field that operates at the intersection of law, economics, and technology.

2.4 Digital Platform and Trust-Based Regulation – The literature on e-tourism underlines that ICTs, online reputation systems, and sharing-economy platforms have changed the structure of tourism markets. In this context, consumer trust, platform transparency, intermediary liability, and fair access to remedies become central elements of legal analysis [Buhalis & Law, 2008; Guttentag, 2015; Zhang & Lee, 2022; González & Solis, 2024].

2.5 Crisis Governance and Resilience – Crisis-management scholarship in tourism emphasizes that safety regulation must combine preventive planning, emergency response, transparent risk communication, refund and repatriation mechanisms, and institutional coordination. This is particularly important after global disruptions, where tourist confidence depends on visible legal guarantees and effective enforcement [Ritchie, 2004; Sigala, 2020; Kim & Chen, 2023].

3. Research Methodology

This study employs a qualitative research approach, primarily based on doctrinal legal analysis, comparative analysis, and secondary data review. The choice of methodology is determined by the nature of the research topic, which focuses on legal regulation, institutional frameworks, and consumer protection mechanisms in tourism.

The doctrinal legal method is used as the core analytical tool, allowing the examination and interpretation of existing legal norms, including international legal instruments, European Union directives, and national legislation of Georgia. This method enables a systematic understanding of how legal provisions regulate tourism relations, ensure safety, and protect consumer rights.

In addition, the study applies a comparative legal approach, particularly in analyzing the alignment between Georgian tourism legislation and international standards, such as the Directive (EU) 2015/2302 on package travel and linked travel arrangements. This comparison helps to identify strengths, gaps, and opportunities for further legal harmonization.

The research also relies on secondary data analysis, including academic literature, policy documents, and reports from international organizations such as UNWTO. This approach supports the theoretical framework and provides a broader context for evaluating the effectiveness of legal regulation in tourism.

Furthermore, elements of analytical and interpretative methods are used to assess the relationship between legal regulation, tourist safety, and market efficiency. The study evaluates how legal norms influence consumer trust, service quality, and the overall competitiveness of the tourism sector.

The methodological framework of the study ensures a comprehensive and interdisciplinary analysis of tourism law, combining legal theory with practical implications in both traditional and digital tourism environments.

4. Legal Regulation of Tourism

Legal regulation of tourism is carried out through a combination of international and national norms. At the international level, a significant role is played by the World Tourism Organization (UNWTO, 2020), while at the national level regulation is implemented through special laws, civil codes, and administrative regulations [Mukasheva & Ybyray, 2023].

Legal regulation of tourism is carried out through a combination of international and national norms; however, at the current stage, particular importance is attached to the fact that in Georgian law, the tourism sector is already regulated by a special legislative framework. According to the Law of Georgia on Tourism, tourism legislation consists of the Constitution of Georgia, international treaties, this law, and other legislative and subordinate normative acts. It is also important that the rights granted to tourists by law are imperative in nature: contractual agreements or statements that directly or indirectly deny or restrict the rights provided under Articles 14–26 of the law are not permitted. Therefore, tourism law should not be viewed solely as a private-law contractual regime; it simultaneously includes elements of civil, administrative, consumer protection, and sector-specific regulation, while the general contractual rules of the Civil Code of Georgia apply subsidiarily to this special framework [Law of Georgia "On Tourism": Art. 1, Paragraph 2; Art. 13, Paragraphs 4–5; Art. 14].

In addition, the legal regulation of tourism should be understood as a dynamic system that continuously adapts to economic globalization, technological development, and changing consumer behavior. In particular, the expansion of cross-border tourism flows and the integration of digital platforms have increased the need for harmonized legal standards that ensure legal certainty across jurisdictions. This harmonization is essential for reducing regulatory fragmentation and improving the predictability of tourism transactions at the international level.

Furthermore, an important aspect of tourism regulation is the growing influence of European legal standards, which increasingly shape national tourism legislation in many countries. The European Union model emphasizes consumer protection, transparency, and strict liability of tour operators, which serves as a benchmark for national reforms. In this context, alignment with EU standards contributes to strengthening legal certainty and enhancing the competitiveness of tourism destinations.

Another significant dimension of tourism regulation is the role of preventive legal mechanisms. Modern tourism law does not only address disputes after they arise but also aims to prevent legal conflicts through pre-contractual information obligations, licensing requirements, and standardization of service quality. These preventive mechanisms reduce the likelihood of disputes and increase overall market efficiency.

At the same time, effective tourism regulation requires coordination between different branches of law, including civil law, administrative law, tax law, and consumer protection law. This interdisciplinary nature of tourism law reflects the complexity of tourism relations and the need for a comprehensive legal approach that ensures both economic efficiency and legal protection.

5. Tourist Safety as a Legal Obligation

Safety includes physical safety, health protection, transport safety, and information security mechanisms. Legal regulation obliges service providers to ensure minimum safety standards and inform tourists about potential risks [Tatsiienko et al., 2021]. Tourist safety in modern tourism law is not limited to physical safety; it also includes legal guarantees related to information, organization, and repatriation during travel. The Law of Georgia on Tourism imposes an obligation on the tour operator to assist tourists without delay in case of difficulties during travel, including providing information on local healthcare services, relevant authorities, and consular assistance, facilitating communication, and helping to find alternative tourism services. If the package includes transportation and the service cannot be performed as agreed, the tour operator must ensure repatriation of the tourist at no additional cost. In cases of unavoidable and extraordinary circumstances, the law provides for coverage of accommodation costs of an equivalent category for up to 3 nights per tourist; this limitation does not apply to persons with reduced mobility, pregnant women, minors traveling unaccompanied, and persons requiring specific medical assistance, provided that the tour operator was informed in advance of their special needs [Law of Georgia “On Tourism”: Article 22, Paragraphs 10–12; Article 25].

In addition, tourist safety should be understood in a broader sense that includes not only physical protection but also financial security and legal certainty. Financial protection mechanisms, such as insolvency guarantees and refund obligations, play a crucial role in ensuring that tourists are not exposed to economic losses due to service provider failure. This is particularly important in package travel arrangements, where multiple service components are bundled together.

Moreover, information safety has become a central component of modern tourism regulation. Tourists must be provided with accurate, timely, and transparent information regarding risks, service conditions, and emergency procedures. Failure to provide such information can significantly increase vulnerability and reduce trust in tourism services. Post-pandemic safety governance literature further confirms that transparent health protocols, institutional coordination, and reliable crisis communication increase destination credibility and tourist demand [Ritchie, 2004; Sigala, 2020; Kim & Chen, 2023].

6. Consumer Rights in Tourism

Consumer protection includes reliable information about services, non-alteration of service conditions or appropriate compensation, and the right to claim damages [Adamenko et al., 2021]. Consumer rights in tourism should be understood as the tourist’s right to receive complete, accurate, and understandable information, access non-discriminatory services, and have effective legal protection mechanisms. According to the Law of Georgia on the Protection of Consumer Rights, discrimination against consumers in access to or provision of publicly offered goods or services is prohibited, and before concluding a contract, the trader is obliged to provide the consumer, in the state language, with clear and understandable complete and accurate information about the essential characteristics of the service, the identity of the trader, and the price. Under the same law, unfair standard contractual terms that harm the consumer are void, including those that unjustifiably restrict or exclude the consumer’s right to bring claims in case of non-performance or improper performance by the trader. In addition, unfair commercial practices are prohibited. From the perspective of institutional enforcement mechanisms, the consumer has the right to file a complaint with the Competition and Consumer Agency of Georgia or the relevant competent authority; this does not deprive them of the right to apply to a court, arbitration, or mediation. The agency may require the trader to restore the violated right or cease prohibited actions, and in case of non-compliance may impose a fine not exceeding 2% of the annual turnover of the previous financial year and not less than 600

GEL [Law of Georgia "On Protection of Consumer Rights": Article 3; Article 5; Articles 21–24; Article 28; Article 29; Articles 33–34]. Such institutional protection of consumer rights contributes to fair competition, improved service quality, and the efficient functioning of the tourism market.

In addition, consumer protection in tourism is increasingly influenced by digital transformation and platform-based service delivery. Online intermediaries, review systems, and algorithmic ranking mechanisms significantly affect consumer decision-making processes. Therefore, ensuring transparency in digital environments has become a key regulatory challenge for modern tourism law. Accordingly, legal scholarship on digital tourism stresses that consumer confidence depends on clear information duties, review-system reliability, and enforceable remedies against both direct providers and platform intermediaries [Zhang & Lee, 2022; González & Solis, 2024].

Furthermore, the effectiveness of consumer rights protection depends not only on legal provisions but also on institutional capacity and enforcement efficiency. Weak enforcement mechanisms may undermine even well-designed legal frameworks, reducing consumer trust and market stability.

7. Tourism Contract

The tourism contract is the primary legal instrument for realizing consumer rights, especially in crisis or pandemic situations [Casanovas-Ibáñez, 2016]. It concentrates pre-contractual information, price, performance, modification, and liability regimes. According to the Law of Georgia on Tourism, before concluding the contract, the tour operator or other relevant trader must provide standardized pre-contractual information about the specific package, including travel characteristics, destination, duration, transport features, accommodation category, meals, additional services, and, where applicable, whether the trip is adapted for persons with disabilities. The contract must be concluded in writing in Georgian and may also be drawn up in another language understood by the tourist. The tour operator is obliged to provide the tourist with an insurance policy or bank guarantee ensuring reimbursement in case of non-performance of the package due to insolvency. Price increases are allowed only in legally defined cases; if the increase exceeds 8% or if essential contractual characteristics change, the tourist has the right to terminate the contract without paying a termination fee. In cases of unavoidable and extraordinary circumstances, the tourist may terminate the contract before the start of the package without any fee and request a full refund. Importantly, the tour operator remains ultimately responsible for non-performance or improper performance of the contract, regardless of whether the services are performed directly or through another provider. This approach aligns substantively with the standards established by the EU Package Travel Directive [Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements]. Such regulation of tourism contracts also reduces transactional uncertainty and increases market reliability, which is essential for the stable development of the tourism sector. Contemporary platform-tourism literature further stresses that tourism contracts should address algorithmic intermediation, platform responsibility, automated recommendations, and the allocation of liability when services are organized through digital intermediaries [Silva & Duarte, 2025].

8. Digital Tourism and Legal Challenges

Online booking, platform economy, and digital intermediaries create new legal challenges such as allocation of responsibility, protection of personal data, and enforcement of consumer rights [Reymbayeva, 2025]. In digital tourism, legal challenges are particularly evident in remote contracts, online booking, platform intermediation, and personal data processing.

In recent years, the rapid expansion of digital technologies has fundamentally transformed the structure of the tourism industry. Traditional direct service provision has increasingly been replaced by platform-based ecosystems, where tourists interact with multiple service providers through a single digital interface. This transformation has significantly increased efficiency and accessibility; however, it has also introduced complex legal uncertainties regarding liability distribution among actors within the digital value chain. E-tourism research has long shown that ICTs restructure tourism distribution channels, while sharing-economy platforms such as short-term accommodation marketplaces create new regulatory questions concerning service quality, consumer information, and market fairness [Buhalis & Law, 2008; Guttentag, 2015].

According to the Law of Georgia on the Protection of Consumer Rights, before concluding a distance contract, the trader must provide additional information about price, extra costs, communication means, and other essential conditions; and if the contract is concluded electronically, the trader must ensure that the consumer clearly understands that placing an order creates an obligation to pay; otherwise, such obligation does not arise. At the same time, unfair commercial practices are prohibited in online environments.

In addition, the enforcement of consumer rights in digital environments presents practical challenges, particularly in cases involving cross-border transactions, foreign-based platforms, and intermediary service providers. In such cases, jurisdictional issues and the identification of the responsible party often complicate the effective protection of consumer interests. Therefore, legal clarity regarding the role and liability of digital intermediaries is becoming increasingly important.

The Law of Georgia on Personal Data Protection grants the tourist the right to receive information about data processing, access their data, obtain copies free of charge, and not be subject solely to automated decision-making, including profiling, that produces legal or similarly significant effects, except in cases provided by law. The data subject also has the right to withdraw consent at any time, in which case data processing must cease and/or data must be deleted or destroyed within no later than 10 working days unless another legal basis exists. Processing of data for direct marketing purposes is allowed only with consent and must cease within no later than 7 working days upon request. Additionally, the law requires airlines, airports, and entities processing large volumes of data or conducting systematic and large-scale monitoring to appoint a data protection officer, further emphasizing compliance in the digital tourism sector.

Moreover, data protection in tourism is not only a legal obligation but also a key element of consumer trust and destination competitiveness. Tourists are increasingly sensitive to how their personal data is collected, stored, and processed, especially in relation to online bookings, mobile applications, and loyalty programs. Any violation of data security can significantly damage the reputation of tourism providers and reduce market confidence.

Effective implementation of digital regulations is especially important in the platform economy, where consumer trust and data protection are key competitive advantages.

Finally, digital tourism regulation requires continuous adaptation of legal frameworks in response to technological innovation, including artificial intelligence, big data analytics, and algorithm-based recommendation systems. These technologies, while improving service personalization, also raise new legal and ethical questions that must be addressed through updated regulatory mechanisms. For this reason, legal regulation of digital tourism should integrate consumer protection, data protection, and competition-law perspectives in order to respond to algorithmic ranking, automated profiling, and platform dependency [Silva & Duarte, 2025].

9. Discussion

The findings of this study clearly demonstrate that the effectiveness of legal regulation, safety mechanisms, and consumer protection in tourism represents one of the key prerequisites for the sustainable development of the sector. Based on the theoretical and normative analysis, it can be argued that the legal framework not only regulates relationships but also performs an important economic function by increasing market predictability and reducing risks.

From the perspective of institutional theory, legal norms function as mechanisms that reduce information asymmetry between tourists and service providers. This is particularly important in tourism, where consumers often operate in unfamiliar environments and rely heavily on the reliability of the information provided. Consequently, the quality of legal regulation directly affects consumer trust and, ultimately, tourism demand.

According to consumer protection theory, the tourist represents a relatively weaker party in contractual relationships, a condition that is further intensified in the context of digital tourism. Online platforms, distance contracts, and algorithmic decision-making create new risks, including incomplete information, unclear allocation of responsibility, and challenges related to data protection. In this context, the effectiveness of legal mechanisms determines not only the protection of individual consumers but also the overall quality and efficiency of market functioning.

Within the framework of risk and safety theory, the study confirms that high safety standards increase the attractiveness of a tourist destination. Legal obligations related to the protection of tourists' life, health, and property, as well as assistance in crisis situations, play a significant role in shaping a country's tourism image.

Particular attention should be paid to the alignment of Georgian legislation with international standards. The study shows that the national legal framework is largely harmonized with European Union requirements, especially in the regulation of package travel. However, the rapid development of digital tourism requires further regulatory improvements, particularly in areas such as platform responsibility, personal data protection, and consumer information transparency. In addition, comparative literature on platform tourism indicates that harmonization should increasingly include online intermediaries, digital contract transparency, and protection against opaque algorithmic practices [González & Solis, 2024; Silva & Duarte, 2025].

Thus, the discussion highlights that legal regulation in tourism should be viewed not only as a normative instrument but also as an economic and strategic factor that determines the competitiveness, sustainability, and long-term development of the sector.

10. Conclusion

Tourism and law are closely interconnected and complex fields, where the quality of legal regulation plays a crucial role in ensuring tourist safety and protecting consumer rights [Mukasheva & Ybyray, 2023; UNWTO, 2020]. At the same time, an effective legal framework creates the basis for the stable functioning and economic development of the tourism sector.

The research shows that practical measures such as clear regulation of tourism contracts, implementation of minimum safety standards, and ensuring information transparency significantly reduce legal and operational risks [Adamenko et al., 2021; Tatsiienko et al., 2021]. These measures also increase market reliability, improve service quality, and contribute to strengthening the competitiveness of the tourism industry.

In addition, it should be noted that the real protection of tourists' rights is not limited to the existence of normative guarantees; effective enforcement mechanisms are also necessary. In this regard, it is important that tourists can send notifications, requests, and complaints related to package performance to the travel agency through which the package was purchased, and the agency is obliged to forward them to the tour operator without delay. At the same time, the consumer retains the right to apply to the Competition and Consumer Agency of Georgia, the relevant regulatory authority, a court, arbitration, or mediation, thereby establishing a multi-level legal protection system in tourism. Such multi-layered mechanisms increase consumer trust and ensure the efficient functioning of the market.

In the context of digital tourism, compliance with legislation increases consumer trust in online platforms and positively affects economic outcomes in tourism [Reymbayeva, 2025]. Accordingly, legal regulation can be considered not only as a normative instrument but also as a key factor in economic development, market stability, and sector competitiveness.

Moreover, the findings of this study suggest that tourism governance is increasingly shifting from traditional state-centered regulation toward more complex multi-level regulatory systems. These systems involve not only national authorities but also international organizations, private sector actors, and digital platform providers. Such a multi-actor governance structure requires continuous adaptation of legal frameworks in order to maintain coherence, accountability, and effectiveness in tourism regulation.

Furthermore, the increasing digitalization of tourism services highlights the need for stronger integration between consumer protection law, data protection law, and competition law. The convergence of these legal domains ensures a more comprehensive protection mechanism for tourists, particularly in relation to online bookings, platform intermediaries, and automated decision-making systems.

From a policy perspective, sustainable tourism development cannot be achieved without balancing economic growth with legal certainty and consumer protection. Therefore, future legal reforms should prioritize not only regulatory compliance but also accessibility, enforcement efficiency, and adaptability to technological innovation.

Finally, it can be concluded that tourism law is evolving into a dynamic and interdisciplinary field that plays a central role in shaping sustainable, safe, and competitive tourism markets in the globalized economy.

Recommendations:

- Regular updating of national legislation in accordance with the needs of digital tourism;
- Strengthening monitoring and control mechanisms for safety standards; Increasing consumer awareness through online platforms;
- Developing clear, fair, and universal forms of tourism contracts for crisis management situations;
- Enhancing inter-institutional cooperation between tourism authorities, consumer protection bodies, and digital platform regulators to ensure more effective enforcement of tourism law.

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INSTITUTIONAL MECHANISMS OF LEGAL PROTECTION AGAINST ANTI-COMPETITIVE PRACTICES IN ROMANIA IN THE CONTEXT OF EUROPEAN COMPETITION LAW

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***Abstract**: This study examines the institutional mechanisms of legal protection against anti-competitive practices existing under Romanian law, analysed in relation to the requirements of European Union competition law. The paper starts from the normative framework established by Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and by Regulation (EC) No 1/2003, in order to examine how these provisions have been transposed and adapted into domestic law through Competition Law No 21/1996 and the subsequent normative acts. Particular attention is given to the legal status, independence, and powers of the Romanian Competition Council, the national authority responsible for enforcing antitrust legislation, as well as to the impact of Directive (EU) 2019/1 (the „ECN+ Directive") on the institutional consolidation of that authority. The study further examines the typology of anti-competitive practices – anti-competitive agreements and abuse of dominance – the mechanisms for their detection and sanctioning, and recent case-law developments of the Court of Justice of the European Union, including the judgments delivered on 18 December 2025 in the joined cases concerning abuse of a dominant position. The conclusions of the study highlight both the progress achieved in the institutional alignment of Romania with European standards and the vulnerabilities that persist, in particular regarding the guarantees of independence of the national competition authority and the effectiveness of damages actions for harm caused by anti-competitive practices.*

***Keywords**: European competition law, Competition Council, anti-competitive practices, abuse of dominant position, ECN+ Directive, institutional independence, private enforcement.*

1. Introduction

Undistorted competition constitutes one of the fundamental pillars of the European Union's internal market, enshrined in Protocol No 27 annexed to the Treaties, according to which a system ensuring that competition is not distorted forms an integral part of the internal market (European Parliament, 2024). This policy choice is not merely theoretical; it translates into an extensively developed body of substantive and institutional rules designed to prevent and sanction conduct by undertakings that restricts, prevents, or distorts the competitive process – anti-competitive agreements, abuse of a dominant position, and non-compliant economic concentrations.

Romania, as a Member State of the European Union since 2007, has committed to ensuring the effective application of these rules at national level, both through the direct reception of primary and secondary EU law and through the adaptation of domestic legislation – primarily Competition Law No 21/1996 – to European requirements. A central role in this process belongs to the Competition Council, the autonomous administrative authority vested with powers to investigate, control, and sanction anti-competitive practices, and also entrusted with monitoring State aid and controlling economic concentrations.

This study aims to provide a systematic analysis of the institutional mechanisms through which legal protection against anti-competitive practices is achieved in Romania, examining the interaction between domestic law and European Union law, the recent evolution of the legislative framework – in particular the transposition of Directive (EU) 2019/1 through Government Emergency Ordinance No 108/2023 – as well as the recent case law of the Court of Justice of the European Union (CJEU), relevant for the interpretation of Articles 101 and 102 TFEU. Legal scholarship has extensively examined the main anti-competitive practices affecting the formation of an undistorted competitive environment (Vidican, 2022), the economic effects of cartel agreements on consumers and on the economy as a whole (Vidican & Hepeș, 2022), as well as the evolution of the European Union's competition policy as an instrument for regulating the internal market (Vidican, 2019), aspects that provide a useful conceptual framework for the institutional analysis proposed below. The central question addressed here is whether the formal transposition of European institutional independence standards – achieved in Romania through Government Emergency Ordinance No 108/2023 – has translated into genuine functional independence of the Competition Council, or whether, on the contrary, a gap persists between the letter of the law and institutional practice, a gap identified by comparative scholarship in other Central and Eastern European states (Piszcz & Grynfogel, 2022; Cseres, 2019). This study combines doctrinal analysis of domestic and EU legal norms with a critical, comparative perspective intended to situate the Romanian experience within a broader European context.

2. The normative framework of competition law: from European Union law to domestic law

2.1. Articles 101 and 102 TFEU and Regulation (EC) No 1/2003

European Union competition law, as regards the conduct of undertakings, is structured around two central provisions of the TFEU. Article 101 TFEU prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices which have as their object or effect the prevention, restriction, or distortion of competition within the internal market, in particular by fixing prices, limiting production, sharing markets, or applying dissimilar conditions to equivalent transactions. Article 102 TFEU, in turn, prohibits any abuse by one or more undertakings of a dominant position held within the internal market or in a substantial part of it, in so far as it may affect trade between Member States (European Parliament, 2024).

The enforcement of these two provisions was fundamentally transformed by Regulation (EC) No 1/2003, which introduced a system of decentralised enforcement of competition rules, allowing national competition authorities and national courts to apply Articles 101 and 102 TFEU directly, in parallel with domestic competition law. This decentralisation was accompanied by the creation of the European Competition Network (ECN), a cooperation structure between the European Commission and the national competition authorities, designed to ensure the coherent application of European competition law across the entire territory of the Union (European Commission, cited in European Parliament, 2024).

Romanian legal scholarship highlighted, even prior to accession, the need to harmonise domestic law with the Community acquis in the field of competition, emphasising that free competition constitutes an essential condition of the transition to a market economy (Băcanu, cited in Vidican, 2022). At the same time, classical doctrine defined commercial competition law as the body of legal rules governing the relations between competitors on a given market, aimed at ensuring fair economic rivalry (Căpățână, 1998), a definition that remains relevant for understanding the rationale underlying State – and, subsequently, Union – intervention in this field.

2.2. Competition Law No 21/1996 and its legislative evolution

At domestic level, the protection of competition is primarily ensured by Competition Law No 21/1996, as republished, whose declared purpose is the protection, maintenance, and stimulation of competition and of a normal competitive environment, with a view to promoting consumer interests (Competition Law No 21/1996, Article 1). The law broadly reproduces the architecture of Articles 101 and 102 TFEU: Article 5 prohibits anti-competitive agreements, while Article 6 prohibits the abuse by one or more undertakings of a dominant position held on the Romanian market or in a substantial part of it.

Competition Law has undergone numerous amendments over time, the most recent major transformation being driven by the need to transpose Directive (EU) 2019/1, carried out through Government Emergency Ordinance No 108/2023, published in the Official Gazette No 1100 of 6 December 2023. According to official statements of the competition authority, the normative act aimed to strengthen the institution's independence in the decision-making process, to enhance the effectiveness of investigative tools and of the leniency programme, and to facilitate cooperation with the other competition authorities within the European Union (CECCAR Business Magazine, n.d.). Moreover, Emergency Ordinance No 108/2023 extended the powers of the Competition Council, entrusting it with additional responsibilities deriving from the application of the Regulation on foreign subsidies distorting the internal market and the Digital Markets Act.

Romanian commercial law scholarship has consistently emphasised the public-policy character of competition rules, Article 5 of the law setting out, by way of example, the categories of agreements considered unlawful by their very object (Coman, 2011; Didea, 2009). It has also been noted that the sanction of absolute nullity applicable to anti-competitive agreements applies irrespective of the form – express or tacit, public or secret – in which the agreement is expressed, and irrespective of the name or legal nature of the instrument through which it is embodied (Vidican, 2022).

3. The Competition Council – the national competition authority

3.1. Legal status and institutional organisation

The Competition Council is the autonomous administrative authority with legal personality responsible for enforcing and monitoring compliance with Competition Law No 21/1996, as well as for the national application of Articles 101 and 102 TFEU. The independence of this institution from the Government and from other central public administration authorities constitutes a structural condition for the objective and impartial exercise of its powers, an aspect consistently emphasised both in legal scholarship and in institutional practice (JURIDICE.ro, 2026a).

The powers of the Competition Council can broadly be grouped into four categories: investigating anti-competitive practices (agreements and abuses of dominance), controlling economic concentrations that exceed the value thresholds set by law, monitoring State aid granted at central, regional, and local level, and institutional cooperation, both within the European Competition Network and with international organisations such as the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (JURIDICE.ro, 2026a).

3.2. Directive (EU) 2019/1 (the „ECN+ Directive") and its transposition into Romanian law

Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (the „ECN+ Directive") constitutes, alongside Regulation No 1/2003, the second major normative pillar of the decentralised enforcement of Union competition law. According to recital (1) of the directive, Member States must ensure that national competition authorities have the guarantees of independence, the resources, and the law enforcement and fine-imposing powers necessary to effectively apply Articles 101 and 102 TFEU (Directive (EU) 2019/1, 2019).

A key element of the directive is set out in Article 4(3), which guarantees that the decision-makers within national competition authorities cannot be removed from office, during their term of mandate, unless they no longer fulfil the conditions required for the performance of their duties, as laid down in advance by domestic law, or if they have been found guilty of serious misconduct under national procedures. The rationale of this provision is to protect the members of the competition authority's leadership against politically motivated dismissals that could compromise the independent exercise of law-enforcement functions (Directive (EU) 2019/1, 2019, Article 4(3)).

The transposition of this directive into Romanian law was carried out late and in stages. Romania initially communicated only a partial transposition, prompting the European Commission to initiate, in 2023, an infringement procedure (Capital.ro, 2023). The actual transposition was carried out through Government Emergency Ordinance No 108/2023, a normative act which strengthened the inspection powers of the authority – including the right of competition inspectors to access any information held by the investigated undertakings, regardless of the medium on which it is stored – and established a revised method of organising and operating the plenum of the Competition Council, composed of 11 members appointed by decision of Parliament (GEO No 108/2023, 2023).

Romania's delay was not an isolated phenomenon. The European Commission's report on the transposition of the ECN+ Directive, adopted on 29 November 2024, confirmed that a significant number of Member States encountered similar difficulties, some completing transposition only years after the February 2021 deadline (European Commission, 2024). Comparative studies devoted to this phenomenon have shown that the mere formal transposition of the independence guarantees set out in Article 4 of the directive does not, in every case, amount to genuine functional independence of the national authority, the latter depending on a multitude of structural factors – the administrative and political culture of the state, the actual stability of mandates, and the degree of transparency of appointment and dismissal procedures (Piszcz & Grynfogel, 2022). A comparative analysis of the French and Polish models of transposition, for instance, reveals a significant contrast: whereas the French competition authority (Autorité de la concurrence) enjoys solid organic independence, confirmed by the case law of the French Council of State, the Polish authority remains, in many respects, dependent on the prime minister, who appoints and may dismiss it without significant limitations (Piszcz & Grynfogel, 2022). A similar conclusion was reached with regard to Hungary, where the leading study on the transposition of the directive showed that it risks remaining a dead letter in the absence of genuine institutional capacity and of a constitutional context that genuinely supports the independence of the competition authority (Cseres, 2019).

It is worth noting that the legislative process of institutional reform of the Competition Council was not without controversy. The European Commission drew attention, through an official communication, to the risk that the initially proposed method of wholesale renewal of the mandates of the plenum members could contravene the independence guarantee provided for in Article 4(3) of the ECN+ Directive, insofar as it would have allowed for the collective removal of the authority's leadership without the conditions established by the directive being met (Financial Intelligence, 2022). This episode clearly illustrates the structural tension between European requirements of institutional independence and the dynamics of the domestic legislative process, an aspect to which we return in Section 7 of this paper.

3.3. Extended powers: foreign subsidies, digital markets, and State aid

The 2023 legislative reform significantly extended the range of powers of the Competition Council, entrusting it with tasks deriving from the application of Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market, as well as from Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (the Digital Markets Act – DMA) (GEO No 108/2023, 2023). The mechanism for screening foreign direct investment was also strengthened, by extending the powers of the Committee for the Screening of Foreign Direct Investment and ensuring equal treatment between investments originating from within and outside the European Union.

With regard to the digital market, the Competition Council adopted, as early as 2021, a strategy dedicated to digital markets, as an institutional response to the specific challenges of online competition – network effects, ,,first-mover" advantages, and the tendency towards quasi-monopolistic positions generated by ,,winner-takes-all" dynamics (Competition Council, 2021). These economic phenomena have been extensively analysed in legal scholarship, which has highlighted how network effects can rapidly lead to the consolidation of dominant positions and to the erection of substantial barriers to entry for potential competitors (Vidican & Hepeș, 2023; Ezrachi & Stucke, 2017). The Romanian authority has also acted in this direction on the enforcement side, imposing, for instance, a fine of EUR 6.7 million on the operator of a major e-commerce platform for practices incompatible with competition legislation (Competition Council, 2020).

4. Typology of anti-competitive practices and institutional mechanisms of detection

4.1. Anti-competitive agreements

Anti-competitive agreements, regulated by Article 5 of the Competition Law and Article 101 TFEU, cover any agreement, decision by an association of undertakings, or concerted practice which has as its object or effect the restriction, prevention, or distortion of competition. Romanian legal scholarship has emphasised that, for an agreement to be classified as anti-competitive, its legal form is irrelevant – the agreement may be express or tacit, formalised through a written contract, or resulting from consistent parallel conduct among competing undertakings (Cărpenaru, 2007; Vidican, 2022).

The most serious form of anti-competitive agreement is the cartel, defined in legal scholarship as a form of cooperation between competitors aimed at eliminating the uncertainty inherent to any competitive market, through price fixing, market allocation, or output limitation, with the goal of obtaining profits higher than those which would result from the normal interplay of supply and demand (Vidican, 2022, citing the International Competition Network). Given the severity of their economic effects, cartel-type conduct is sanctioned regardless of the size of the undertakings involved or of the nature or purpose pursued, such conduct being characterised as illegal, unjustified, and unfair by its very nature (International Competition Network, cited in Vidican, 2022). The economic effects of such agreements on consumers are substantial: cartels lead to higher prices, a reduced quantity and quality of supply, and diminished innovation, without generating any economic or social benefit capable of justifying the resulting loss of welfare (Vidican & Hepeș, 2022).

The Competition Law nonetheless establishes a de minimis rule: under Article 8 of the law, an anti-competitive agreement is considered to be of minor importance – and therefore falls outside the scope of the prohibition – where the combined market share held by the parties does not exceed 10% on any of the relevant markets concerned, when the agreement is concluded between competitors, or 15% where the agreement is concluded between undertakings that are not competitors (Competition Law No 21/1996, Article 8). This rule reflects the domestic transposition of the European Commission's de minimis notice and is intended to concentrate the investigative resources of the authority on agreements with a significant economic impact.

4.2. Abuse of a dominant position

Abuse of a dominant position, regulated by Article 6 of the Competition Law and Article 102 TFEU, presupposes the prior existence of a dominant position on the relevant market – defined, according to the settled case law of the CJEU, as a position of economic strength enjoyed by an undertaking which enables it to behave to an appreciable extent independently of its competitors, customers, and, ultimately, consumers (European Parliament, 2024). Holding a dominant position is not, in itself, unlawful; on the contrary, undertakings in such a position are permitted to compete on the merits. What the law sanctions is the abusive exploitation of that position, through conduct such as predatory pricing, excessive pricing, tying, or unjustified refusal to deal (European Parliament, 2024).

Recent CJEU case law has brought significant clarifications regarding the evidentiary standard applicable to establishing an abuse of a dominant position. Thus, in its judgment of 18 December 2025 in Case C-161/24 (OSA), the Court held that a competition authority discharges its burden of proof when it demonstrates that the conduct of a dominant undertaking is capable of harming an effective competitive structure, without being required additionally to demonstrate the existence of direct harm to consumers (JURIDICE.ro, 2025a). The case concerned the method used by a copyright collecting society to calculate royalties charged to hotel establishments, the Court finding that failure to take into account the occupancy rate of rooms when setting royalties may contribute to a finding of abuse in the form of unfair pricing, insofar as objective, verifiable, and cost-reasonable methods exist for integrating that economic indicator (Taxe pentru Muzică, 2025).

On the same day, the Court ruled on two joined cases – C-245/24 and C-260/24, both concerning the Lukoil group in Bulgaria – relating to margin-squeeze practices and to refusal of access to an essential infrastructure. In Case C-260/24, the Court clarified the criteria applicable to defining the relevant product market where the impugned conduct consists of pricing practices generating a margin squeeze, holding that only products presenting a sufficient degree of substitutability from the demand side may be included in the same relevant market (JURIDICE.ro, 2025b). In Case C-245/24, the Court specified the conditions for applying the Bronner case law on refusal of access to an essential infrastructure, holding that these conditions remain applicable even where the infrastructure in question was initially developed by public authorities and subsequently transferred to a dominant undertaking, provided that the transfer took place under competitive conditions and that the undertaking enjoys full decision-making autonomy over access to the infrastructure (JURIDICE.ro, 2025c).

Another relevant judgment, although delivered somewhat earlier, remains Case C-333/21 (European Superleague Company), in which the Court held, on 21 December 2023, that the rules adopted by FIFA and UEFA, which make the creation of a new inter-club football competition within the Union subject to their prior authorisation, constitute an abuse of a dominant position, insofar as those associations fail to demonstrate, through convincing arguments and evidence, that the conditions for a possible exemption are satisfied (JURIDICE.ro, 2023). This judgment is relevant to Romanian competition law insofar as it confirms the Court's functional approach to the notion of undertaking and to the limits of sectoral self-regulation, aspects with direct applicability in other regulated fields as well, including, as noted in legal scholarship, that of the liberal professions (Vidican, 2019).

4.3. The leniency programme and ex officio investigation

The detection of cartels – the most serious and, at the same time, the most difficult to detect form of anti-competitive practice, given their secret nature – relies essentially on the leniency programme, a mechanism offering immunity from, or a reduction of, fines to undertakings that denounce their participation in an anti-competitive agreement and cooperate with the investigating authority. The ECN+ Directive sought precisely to harmonise the conditions for granting leniency across Member States, so that an undertaking applying for leniency could have confidence in comparable treatment regardless of the national authority seized (Directive (EU) 2019/1, 2019). GEO No 108/2023 sought, in this regard, to enhance the effectiveness of investigative tools and of the national leniency programme (CECCAR Business Magazine, n.d.).

Beyond the leniency programme, the Competition Council has ex officio investigative powers, including unannounced inspections at the premises of suspected undertakings, and the power to order interim measures where there are sound indications of an infringement and a risk of serious and irreparable harm to competition. The exercise of these powers must, however, be reconciled with the procedural guarantees of investigated undertakings, including the right not to contribute to one's own incrimination (nemo tenetur se ipsum accusare), a principle recognised both by the European Court of Human Rights (Saunders v. the United Kingdom, 1996) and by the CJEU (Limburgse Vinyl Maatschappij and Others v. Commission, Joined Cases C-238/99 P and Others, 2002), as emphasised by recent reform projects concerning Romania's competition legislative framework (State of Competition, n.d.).

5. Damages actions for anti-competitive practices (private enforcement)

Alongside the public enforcement of competition law, carried out by the Competition Council and the European Commission, European Union law has strengthened, through Directive 2014/104/EU, the private dimension of competition law enforcement, namely the right of persons harmed by anti-competitive agreements or abuses of dominance to obtain full compensation for the damage suffered. The directive settled at normative level essential aspects concerning the burden of proof of the unlawful conduct and the components of recoverable harm, but left Member States a significant margin of discretion regarding the methodology for quantifying damages, the only useful instrument developed at Union level in this respect being the European Commission's Practical Guide on quantifying harm resulting from infringements of Articles 101 and 102 TFEU, which accompanied Communication 2013/C 167/07 (JURIDICE.ro, 2026b).

Romanian legal scholarship has highlighted the practical difficulties associated with proving harm in antitrust actions, emphasising the need to construct a counterfactual scenario – the hypothetical situation in which the infringement had not occurred – in order to properly estimate the damage. In the case of practices such as price fixing or resale price maintenance systems, part of the harm naturally results from the very existence of the overcharge paid by the victim of the practice; the issue becomes more complex, however, where the victim is not the final consumer but an intermediary who was, in turn, able to pass the overcharge further down the distribution chain (the „passing-on defence”), a scenario in which failing to admit this defence would result in unjust enrichment of the claimant (JURIDICE.ro, 2026b).

Despite the transposition of Directive 2014/104/EU into domestic law, the practice of Romanian courts regarding damages actions for anti-competitive practices remains, compared with other European jurisdictions, relatively limited in volume, which indicates the persistence of practical barriers – the high cost of economic expert opinions, the difficulty of proving causation, and the lengthy duration of the preliminary administrative proceedings before the Competition Council, the completion of which through a final decision typically constitutes the prerequisite for a subsequent „follow-on” action.

6. Institutional vulnerabilities: the independence of the Competition Council and pressures on the decision-making process

Although the formal normative framework places the Competition Council in the category of autonomous administrative authorities, the effective exercise of institutional independence remains a recurring challenge, exposed both to internal political pressures and, at times, to the legislature's temptation to intervene in the authority's leadership structure outside the procedural guarantees imposed by European law. The 2022 episode, in which the European Commission warned Romania about the risk that the proposed amendment to the Competition Law might allow for the collective dismissal of the members of the Competition Council's plenum without meeting the strict conditions set out in Article 4(3) of the ECN+ Directive, illustrates precisely this structural vulnerability (Financial Intelligence, 2022).

More recent institutional reform projects relating to the activity of the Competition Council identify two main directions of action: on the one hand, genuine institutional consolidation, in line with the requirements of the ECN+ Directive concerning the material, logistical, and human resources necessary for functioning at European standards; on the other hand, the modernisation and rebalancing of Competition Law No 21/1996, with an emphasis on strengthening the procedural rights of investigated undertakings, in line with the case law of the European Court of Human Rights and of the CJEU (State of Competition, n.d.). An emerging institutional consensus can thus be observed, according to which a truly effective competition authority is not only one that firmly sanctions anti-competitive practices, but also one that exercises its prerogatives within fair, transparent, and predictable procedures (State of Competition, n.d.). These developments confirm, at a structural level, a broader observation made in legal scholarship regarding independent regulatory authorities in Central and Eastern European states: formal independence, enshrined by law, does not in itself guarantee functional independence, the latter depending decisively on the stability of leadership mandates, the predictability of institutional funding, and the absence of ad hoc political interference in individual decision-making (Vidican, 2019).

Comparison with other states in the region confirms and nuances this observation. The Romanian model – a collegial plenum of 11 members appointed by decision of Parliament – is, in institutional form, closer to the French model than to the monocratic Polish or Hungarian model, in which the leadership of the authority is entrusted to a single person, appointed and removable by the prime minister (Piszcz & Grynfogel, 2022; Cseres, 2019). This structural difference is not without relevance: scholarship has shown that the shift from single-headed management to a collegial body strengthens, as a general rule, the independent functioning of the authority, since its policy orientation no longer depends on the views of a single individual (Piszcz & Grynfogel, 2022). Nevertheless, the structural advantage of collegiality can be undermined in practice if the appointment mechanism, and in particular the dismissal mechanism, of plenum members remains insufficiently protected against ad hoc interference – precisely the risk flagged by the European Commission with regard to the 2022 Romanian legislative proposals. In other words, the collegial institutional form is a necessary but not a sufficient condition for functional independence, an observation confirmed by the French experience itself, where the non-renewal, in 2021, of the mandate of the President of the Autorité de la concurrence, although consistent with the letter of the law, raised legitimate questions in scholarship about the real limits of independence, even within an institutional system regarded as exemplary at the European level (Piszcz & Grynfogel, 2022).

7. Institutional cooperation within the European Competition Network

The coherent application of competition law across the internal market presupposes a robust mechanism of cooperation between the European Commission and the national competition authorities of the Member States. The European Competition Network (ECN) constitutes the principal institutional forum through which the exchange of information – including confidential information obtained during investigations – is carried out, together with the coordination of parallel investigations and the allocation of cases among the competent authorities, based on criteria such as the effect of the practice on the market and the capacity of the best-placed authority to act (European Parliament, 2024).

Romanian legal scholarship has extensively analysed the legal status of the Competition Council and its powers from the perspective of cooperation with the Union's authorities, emphasising that the organisational structure of the authority enables it to investigate, control, and sanction anti-competitive practices, to monitor State aid, and to cooperate actively with its European counterparts, thereby ensuring a fair competitive environment in the internal market (JURIDICE.ro, 2026a). The mutual assistance mechanism, introduced by the ECN+ Directive, also allows for the cross-border enforcement of sanctioning decisions and information requests, thereby strengthening the capacity for effective enforcement of competition law, including against undertakings that have no physical presence in the Member State whose rules have been infringed (Directive (EU) 2019/1, 2019). The active participation of the Competition Council in the working groups of the ECN, of the OECD, and of the International Competition Network is identified, in recent institutional reform projects, as a strategic priority for the coming period, alongside the development of consolidated bilateral relations with the competition authorities of other Member States (State of Competition, n.d.). This orientation is all the more relevant given that contemporary economic phenomena – the digitalisation of markets, multi-sided platforms, and pricing algorithms – have, by their very nature, a cross-border dimension that exceeds the capacity for unilateral action of any single national authority (Geradin & Lianos, 2020; Vidican & Hepeș, 2023).

8. Conclusions

The analysis carried out in this paper confirms that legal protection against anti-competitive practices in Romania has been significantly strengthened over the past two decades, through a continuous process of aligning the domestic normative and institutional framework with the standards of European Union law. The transposition of the ECN+ Directive through Government Emergency Ordinance No 108/2023 represented an important step towards strengthening the independence, resources, and investigative powers of the Competition Council, while the extension of its powers to fields such as the control of foreign subsidies and the enforcement of the Digital Markets Act demonstrates the institution's capacity to adapt to the challenges of the contemporary economy.

At the same time, the study has identified significant structural vulnerabilities, in particular regarding the effective guarantees of independence of the Competition Council's leadership from potential political interference, as revealed by the European Commission's reaction to the 2022 legislative proposals. Moreover, the mechanism of damages actions for anti-competitive practices remains underdeveloped relative to its theoretical potential, which limits, in practice, the private dimension of competition law enforcement and, consequently, the effective access to justice of undertakings and consumers harmed.

Based on these findings, the following recommendations can be formulated: (a) explicitly establishing, at the level of organic law, objective and transparent criteria for the appointment and removal of the members of the Competition Council's plenum, going beyond the mere formal transposition of Article 4(3) of the ECN+ Directive, so that the independence guarantee operates effectively rather than merely declaratively; (b) simplifying and accelerating the preliminary administrative proceedings before the Competition Council, particularly in less complex cases, in order to reduce the time required to obtain a final decision capable of supporting a subsequent „follow-on” action; (c) developing a national methodological guide for quantifying antitrust harm, adapted to the particularities of the Romanian market, complementing the European Commission's Practical Guide; and (c) developing specialised institutional capacity for the economic analysis of digital markets, given the increasing complexity of anti-competitive practices generated by algorithms and by the network effects specific to these markets.

Comparison with the French, Polish, and Hungarian experiences confirms that Romania currently occupies an intermediate position: the collegial institutional form of the Competition Council is, structurally, capable of supporting solid functional independence, but the absence of additional guarantees beyond the minimal transposition of Article 4 of the ECN+ Directive maintains a structural risk similar to that identified in other states in the region (Piszcz & Grynfogel, 2022; Cseres, 2019). This finding suggests that assessing the degree of independence of a national competition authority cannot be limited to a formal analysis of normative compatibility with EU law, but must incorporate an empirical and comparative dimension, sensitive to actual institutional practice.

In conclusion, the institutional architecture of legal protection against anti-competitive practices in Romania broadly reflects the European model of decentralised enforcement of competition law; however, its practical effectiveness remains conditional upon the genuine strengthening of institutional independence, the acceleration of procedures, and the development of a mature case-law culture in the field of damages actions. The analysis presented here naturally has limitations inherent to any study of this kind: the absence of systematic empirical data on the internal decision-making practice of the Competition Council and the relatively recent nature of the 2023 legislative reform make a definitive assessment of its impact on the authority's functional independence difficult. Future research could examine, on an empirical basis, the extent to which the normative guarantees introduced by GEO No 108/2023 are reflected in the actual practice of appointing, operating, and, where applicable, dismissing plenum members, as well as the evolution of domestic case law in the field of damages actions – aspects which will undoubtedly continue to form the subject of future research in this dynamic area of law.

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LEGAL LIMITS OF ARTIFICIAL INTELLIGENCE IN EMPLOYEE MONITORING AND TASK ALLOCATION UNDER LABOUR LAW

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Abstract: *The use of artificial intelligence (AI) in work management is increasingly extending to employee monitoring and the allocation of work tasks. This paper examines whether AI may be lawfully used to monitor employees in the performance of their work and what the legal and ethical limits of such practices are. The aim of the paper is to analyse the compatibility of AI-based monitoring systems with the fundamental principles of labour law and personal data protection. Through a normative legal analysis and from the perspective of organisational management, the paper examines the relevant regulatory frameworks and key legal standards governing employee monitoring. The main finding is that AI may support organisational efficiency and managerial decision-making; however, it cannot replace human oversight nor transfer legal responsibility from the employer. Monitoring based on AI must therefore remain transparent, proportionate, and subject to genuine human oversight.*
Keywords: *AI, employee monitoring, labour law, managerial authority, organization of work*

1 Introduction

The digitalisation of work processes and the development of rtificial intelligence (AI) are significantly transforming the organisation of work in contemporary organisations. Technological systems based on the analysis of large datasets and algorithmic models are no longer used merely as support tools for business processes, but increasingly also as instruments for managing employees' work. In the literature, such practices are commonly described as algorithmic management, whereby digital systems participate in the allocation of work tasks, the monitoring of work performance, and the evaluation of employees' productivity (Aloisi & De Stefano, 2022). De Stefano similarly refers to these developments as management-by-algorithm, in which algorithms are involved in organising work and monitoring workers' performance (De Stefano, 2019). These systems may significantly affect the organisation of the labour process and the efficiency of managerial decision-making, while simultaneously raising numerous legal questions concerning the limits of employer supervision over employees and the protection of their fundamental rights. Scholars have also pointed out that the increasing use of AI-based systems in workplace management may lead to more continuous and data-driven forms of employee monitoring, which can intensify existing tensions between managerial control and the protection of workers' rights (Aloisi & Gramano, 2019).This paper focuses in particular on the Slovenian legal framework, while taking into account relevant European and international legal developments.Digital technologies can thus assume certain functions traditionally associated with managerial supervision, such as the allocation of work tasks and the monitoring of employees' performance (cf. De Stefano, 2019). In recent years, the international context has seen an increasing use of automated systems for recruitment, screening and selecting candidates, monitoring employees, disciplinary decision-making, and even termination of employment relationships, which may further strengthen the employer's position in relation to the employee (Kim, 2024). More broadly, it has been noted in the literature that AI-based systems are increasingly used to support managerial functions such as task allocation and performance monitoring within employment relationships (De Stefano & Wouters, 2022).

Such developments raise important questions for labour law and the regulation of digital work. The use of AI in work management raises the issue of whether technological systems may assume functions that have traditionally belonged to the employer or management, particularly in relation to the supervision of employees' work and the allocation of tasks. At the same time, the question arises to what extent such forms of monitoring are compatible with the fundamental principles of labour law, the protection of personal data, and the protection of workers' dignity.

This paper proceeds from the thesis that AI can support the organisation of work and managerial decision-making; however, it cannot replace human oversight nor transfer legal responsibility from the employer to a technological system.

1.1 Digitalisation of Work

At the level of the European Union, the issue of the digitalisation of work and the use of digital technologies in employment relationships is increasingly addressed in legislative and policy documents. An important step in this field is represented by Directive (EU) 2024/2831 on improving working conditions in platform work, which primarily regulates the position of workers on digital labour platforms and also addresses issues of automated decision-making and algorithmic management.

The Directive already notes in its introductory provisions that automated monitoring systems and automated decision-making systems driven by algorithms are increasingly replacing functions that managerial staff traditionally perform in companies, such as assigning tasks, determining remuneration for individual tasks and work schedules, issuing instructions, evaluating completed work, providing incentives, or imposing sanctions. Digital labour platforms in particular rely on such algorithmic systems as a standard method of organising and managing platform work through their digital infrastructure (recital 8). The Directive also highlights the broader impact of digitalisation on the world of work, noting that algorithm-based technologies enable new forms of work organisation while simultaneously potentially leading to increased levels of worker surveillance, opacity in decision-making processes, and imbalances of power within employment relationships (recital 4).

According to the Directive, automated monitoring systems are defined as systems used to monitor, supervise, or evaluate—by electronic means or with the support of electronic means—the work performance of persons performing platform work or activities carried out in the work environment, including through the collection of personal data (Article 2(1)(h)). Automated decision-making systems, in turn, refer to systems used to take or support decisions by electronic means that significantly affect persons performing platform work, including their working conditions. This includes, in particular, decisions affecting their recruitment, access to work tasks and their organisation, their earnings—including price-setting for individual tasks—their safety and health, their working time, their access to training, their career progression or equivalent opportunities, and their contractual status, including the restriction, suspension, or closure of their account (Article 2(1)(i)).

An important policy instrument in this field is also the European Social Partners' Framework Agreement on Digitalisation, adopted at the EU level in 2020. The agreement was concluded by European cross-sectoral social partners and applies across the entire EU and European Economic Area (EEA). It covers all workers and employers in both the public and private sectors and across all economic activities, including activities carried out through online platforms where an employment relationship exists as defined under national law.

The agreement emphasises that digitalisation is transforming the organisation of work and requires adjustments to work processes, while at the same time taking into account both the interests of workers and the employer's managerial prerogative to organise work. The social partners further recognise that many organisations have already introduced various digital tools and procedures, which makes it necessary to regularly assess their effects on working conditions as well as on occupational health and safety (European Social Partners, 2020).

1.2 Research Objective

The objective of this paper is to examine whether AI may be lawfully used for the supervision of employees and the allocation of work tasks within the framework of an employment relationship. The paper analyses the compatibility of the use of AI-based systems in work management with the fundamental principles of labour law, particularly from the perspective of the employer's managerial prerogative to organise work, the protection of workers' fundamental rights, and the rules governing the protection of personal data.

The paper is based on a normative legal analysis of relevant European and national legal sources regulating employee monitoring and the use of automated systems in the workplace. Particular attention is also devoted to the question of the employer's liability for decisions based on AI-based systems.

2 AI and Employee Monitoring in the Employment Relationship

2.1 Employer Authority and Organization of Work

Employee supervision constitutes one of the fundamental elements of the employment relationship. According to the first paragraph of Article 4 of the Employment Relationships Act (ZDR-1), an employment relationship is defined as a relationship in which the worker voluntarily enters the organised work process of the employer and, within that process, performs work for remuneration personally and continuously, in accordance with the employer's instructions and under the employer's supervision.

A defining characteristic of the employment relationship—and the key distinguishing element separating it from other forms of work, such as independent work, self-employment, or civil law contractual arrangements in which work may also be performed—is the worker's subordination and economic dependence (Kresal, in Senčur Peček et al., 2024).

Work performed in accordance with the employer's instructions reflects the principle of subordination or the worker's obligation to comply with the employer's directions (Proposal for the Employment Relationships Act, legislative materials, 17 October 2012, EPA 728-VI, p. 123). In practice, this principle is closely linked with the general duty of conscientious performance of work, laid down in Article 33 of the ZDR-1. Under this provision, employees are required to perform their work diligently within the scope of the job for which they concluded the employment contract, and to do so at the time and place designated for the performance of work, while taking into account the organisation of work and business operations of the employer.

If an employee fails to comply with the employer's instructions, this may constitute a breach of the employee's work obligations. Case law has consistently recognised several situations as constituting such breaches, which frequently overlap with the failure to follow the employer's instructions. Examples includeleaving the workplace before the end of working hours without prior notification and approval from a superior (Judgment of the Higher Labour and Social Court (VDSS) Pdp 46/2025, 12 February 2025), unjustified absence from work and failure to inform the employer of the reasons for such absence (Judgments of the Higher Labour and Social Court (VDSS) Pdp 327/2024, 18 September 2024, and Pdp 267/2024, 7 August 2024), absence from work for two days without approved leave (Judgment of the Higher

Labour and Social Court (VDSS) Pdp 402/2024, 6 November 2024), undertaking a business trip without prior authorisation from a superior (Judgment of the Higher Labour and Social Court (VDSS) Pdp 410/2024, 23 October 2024), performing work in a manner that fulfils the elements of a criminal offence (Judgments of the Higher Labour and Social Court (VDSS) Pdp 178/2024, 5 June 2024 (in this case a police officer falsified official documents), and Pdp 20/2017, 18 May 2017), violating the employer's internal rules (Judgment of the Higher Labour and Social Court (VDSS) Pdp 93/2024, 17 April 2024. In this case, the court held that the employee's conduct also constituted a breach of Articles 34 and 37 of the Employment Relationships Act) andperforming work for a third party (e.g., through self-employment) during working hours (Judgment of the Higher Labour and Social Court (VDSS) Pdp 576/2023, 21 February 2024).

Nevertheless, it must be emphasised that the worker's subordination to the employer is not unlimited. The employee is obliged to comply only with those instructions and requirements of the employer that are directly related to the fulfilment of contractual and other obligations arising from the employment relationship (Article 34(1) ZDR-1). Furthermore, an employee may refuse to perform work if compliance with the employer's instruction would result in unlawful conduct or omission (Article 34(2) ZDR-1).

The refusal of work is also possible under the Occupational Health and Safety Act (ZVZD-1). Under this Act, an employee has the right to refuse work if they have not been adequately informed of all risks and hazards associated with the work and of the safety measures adopted, or if they have not received the necessary training for safe and healthy work, or if the employer has failed to provide the mandatory medical examination. Employees also have the right to refuse work where there is an immediate danger to their life or health due to the absence of prescribed safety measures, and they may require the employer to eliminate the danger. If the employer fails to do so, the employee may request the intervention of the labour inspectorate and inform the workers' council or the workers' safety representative (Article 52 ZVZD-1). In cases of serious and imminent danger to life or health, the ZVZD-1 also grants employees the right to take appropriate measures themselves, in accordance with their knowledge and the technical means available to them. In situations of unavoidable danger, employees may even leave the dangerous workplace, work process, or working environment. In both cases, the employee is not liable for any resulting damage unless the damage was caused intentionally or through gross negligence (Article 53 ZVZD-1).

Judicial practice has long been consistent in holding that employers enjoy a broad degree of autonomy in organising work and business operations. This issue most frequently arises in the context of ordinary termination of employment contracts for business reasons. In such cases, courts do not assess the appropriateness or efficiency of the employer's business decisions; rather, they review only the legality of their implementation (See, for example, the decision of the Supreme Court of the Republic of Slovenia (VSRS) VIII Ips 251/2015, 5 April 2016; the judgments VIII Ips 132/2013, 2 September 2013, and VIII Ips 314/2015, 9 February 2016; as well as the judgment of the Higher Labour and Social Court (VDSS) Pdp 242/2020, 3 September 2020).

2.2 AI in Workplace Management

AI is increasingly used in contemporary organisations as a tool for organising and supervising employees' work. Such systems may automatically allocate work tasks, monitor employee performance, and detect potential breaches of work obligations. In practice, this means that digital systems can analyse data relating to the time required to perform tasks, employee performance, or the use of work equipment, and on that basis provide recommendations to management or automatically trigger certain work management processes.

However, the use of AI in the workplace is not legally unrestricted. At the level of the European Union, a comprehensive regulatory framework for AI was introduced in 2024 through the Artificial Intelligence Act, which establishes specific rules for the deployment of AI-based systems, particularly those classified as high-risk AI-based systems. Systems used in employment relationships for the monitoring or evaluation of employees may fall within this category.

The Regulation imposes several obligations on organisations that deploy or use such systems. One particularly important obligation concerns the duty to inform workers. Pursuant to Article 26(7) of Regulation (EU) 2024/1689, employers must inform workers' representatives or the workers concerned before deploying a high-risk AI-based system in the workplace.

This obligation is further specified in Slovenian legislation. The Act Implementing the EU Artificial Intelligence Regulation (ZIUDHPUI) provides for administrative offence sanctions in cases of non-compliance with these obligations. According to Article 31(1)(9) of the Act, a legal entity acting as a deployer of a high-risk AI-based system may be fined between EUR 25,000 and EUR 250,000 if it fails to inform workers' representatives or the workers concerned about the use of such a system. Higher fines are provided for large companies, ranging from EUR 100,000 to EUR 450,000. The Act also provides sanctions for sole traders, responsible persons within legal entities, and individuals.

Such regulation indicates that the legislator perceives the use of AI in the workplace as a potential risk to workers' rights and therefore introduces specific obligations concerning transparency and responsible use of these technologies.

In practice, AI-based systems may also enable more effective detection of breaches of work obligations by analysing large volumes of data relating to work processes and employee conduct.

In such an environment, AI may significantly transform the way employee supervision is carried out. While supervision in traditional organisational structures was typically limited to direct managerial oversight or occasional performance reviews, digital systems enable continuous monitoring of various aspects of the work process. This may lead to substantially more intensive forms of supervision and a greater asymmetry of power between employers and employees. For these reasons, legal theory and legislation increasingly address the question of where the limits of permissible employee monitoring lie and to what extent AI may participate in the management of the work process. These questions are particularly important from the perspective of the protection of workers' rights, as the ultimate responsibility for the organisation of work and the supervision of employees must remain with the employer even in a digitalised working environment.

2.3 Legal Limits of AI Monitoring

In light of the risks described above, the question of the legal limits of employee monitoring in a digital work environment is becoming increasingly significant. One of the primary legal issues arises in relation to the processing of employees' personal data, as AI-based systems typically rely on extensive analysis of data concerning work performance, employee behaviour, or other aspects of their work activities.

In this context, it is first necessary to consider the rules governing the protection of personal data, in particular the **General Data Protection Regulation (GDPR)**. The Regulation establishes fundamental principles for the processing of personal data, including lawfulness, proportionality, purpose limitation, and data minimisation. In the context of employment relationships, this means that any form of employee monitoring must be justified by a legitimate interest of the employer and must be limited to what is strictly necessary for the organisation of the work process.

A particular feature of digital monitoring lies in the fact that AI-based systems may enable continuous and highly detailed monitoring of employees' work activities. Such monitoring may significantly exceed traditional forms of managerial supervision, which were generally limited to direct oversight of work or occasional performance evaluations. Legal scholarship has emphasised that systems of algorithmic management may facilitate more intensive monitoring of workers and increase control over their work, thereby raising concerns regarding the protection of privacy, the balance of power within the employment relationship, and the broader protection of workers' rights (De Stefano, 2019; Aloisi & De Stefano, 2022).

In this context, it is also important to emphasise that AI cannot assume legal responsibility for decisions taken within the employment relationship. Although algorithmic systems may support the organisation of work or the monitoring of employee performance, the ultimate responsibility for the legality of such decisions remains with the employer. For this reason, contemporary regulatory approaches increasingly emphasise the need to ensure human oversight over automated decision-making systems.

The growing importance of regulating algorithmic management has also been highlighted by the European Parliament, which in December 2025 called on the European Commission to prepare a legislative proposal addressing the use of algorithmic systems in European workplaces. In its proposal, the Parliament emphasised that automated monitoring and decision-making systems in the workplace must be used in a transparent, fair, and secure manner, while ensuring genuine human oversight over decisions affecting workers' rights. If a worker believes that their rights have been infringed by a decision made by an AI-based system, they must have the right to request a review of that decision, and the system concerned may be modified or discontinued (European Parliament, 2025).

The proposal further explicitly stresses that algorithmic systems must not independently take key decisions within employment relationships, such as hiring, termination of employment, or other significant decisions affecting an individual's employment status. According to the proposal, workers must be informed about how such systems affect their working conditions, which data they process, and how human oversight is ensured (European Parliament, 2025).

In addition, the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (CETS No. 225, 2024) represents an emerging international standard, emphasising the need to ensure that AI systems are used in a manner consistent with human rights, the rule of law, and democratic values (Council of Europe, 2024).These developments indicate that AI may significantly influence the organisation of work and the supervision of employees. Nevertheless, the use of algorithmic systems does not alter the fundamental legal structure of the employment relationship. The employer remains the holder of the managerial prerogative to organise work and simultaneously bears legal responsibility for the lawfulness of decisions affecting workers. AI therefore cannot act as an autonomous decision-maker but rather as a technological tool supporting managerial functions. Consequently, even in a digitalised working environment, employers must ensure that the use of such systems complies with the principles of proportionality, transparency, and the protection of workers' fundamental rights.

3 Discussion and Conclusion

The development of AI and its increasingly frequent use in the management of work processes are significantly transforming traditional forms of work organisation in contemporary organisations. Through the analysis of large volumes of data, AI-based systems may support decision-making processes, optimise the allocation of work tasks, and enable more detailed monitoring of employee performance. Such technologies may therefore contribute to greater organisational efficiency and to the rationalisation of work management.

At the same time, however, the use of AI in the workplace raises numerous legal and ethical questions. In particular, systems that enable continuous monitoring of employees' work activities or automated decision-making may lead to more intensive forms of worker surveillance and increase the asymmetry of power between employers and employees. In addition, risks may arise in connection with the opacity of algorithmic decision-making, potential discrimination, and interference with the rights to privacy and dignity at work.

These developments indicate that AI in the workplace does not merely represent a technological innovation but also raises important questions regarding the balance between managerial authority and the protection of workers' rights. Algorithmic management may strengthen organisational efficiency while simultaneously increasing the risk of opaque forms of monitoring and decision-making. For this reason, the role of labour law is becoming increasingly important in establishing legal mechanisms that ensure transparency, accountability, and genuine human oversight over the use of AI in the workplace.

The analysis of the legal framework demonstrates that AI cannot replace the employer's legal responsibility for the organisation of work and the supervision of employees. Even in situations where algorithmic systems participate in the allocation of work tasks or the monitoring of work performance, the employer remains responsible for the legality of the decisions taken. The use of AI-based systems must therefore comply with the fundamental principles of labour law, the rules governing the protection of personal data, and the broader standards of protection of workers' fundamental rights.

At the level of the European Union, the growing importance of these issues is increasingly reflected in legislative developments. The Artificial Intelligence Act and Directive (EU) 2024/2831 on improving working conditions in platform work emphasise the need for transparent, responsible, and supervised use of algorithmic systems in the workplace. Particular attention is given to ensuring human oversight over automated decision-making systems and to protecting workers' rights in a digitalised working environment.

From a practical perspective, employers should ensure that AI-based systems used for monitoring and task allocation are designed in a transparent and legally compliant manner. This includes clearly informing employees, limiting the scope of monitoring to what is necessary, and ensuring meaningful human oversight over automated decisions. Future legal developments will likely further strengthen requirements related to accountability and transparency in AI-based management systems.

On the basis of the analysis conducted, it may be concluded that AI can serve as an important supportive tool in the organisation of work, but it cannot assume the role of an autonomous decision-maker within the employment relationship. The key challenge for future regulation will therefore be to ensure an appropriate balance between technological development, organisational efficiency, and the effective protection of workers' rights. In this context, ensuring genuine human oversight over AI-based systems remain a fundamental condition for their lawful and responsible use in employment relationships.

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COMMUNICATION CHALLENGES AND STRATEGIC GOVERNANCE OF CONTEMPORARY DIASPORAS: THE CASE OF AZERBAIJAN

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Abstract: *Frequent migration processes in the modern world can be attributed to one of the key consequences of contemporary societal development. On the one hand, traditional drivers of migration include the collapse of existing political and economic structures, the emergence of new independent states, ongoing conflicts and wars, as well as socio-economic inequality between regions. On the other hand, the rapid development of communication and transport systems, expansion of information and communication technologies, and increasing global integration have significantly facilitated the mobility of individuals and the formation of transnational communities. Thus, modern diasporas have become increasingly visible as important actors within global social, political, and communication systems. In different states, ethnonational groups utilize socio-cultural self-organization as a mechanism for maintaining identity and influence across borders. This process has contributed to the growing significance of diasporas in international relations and global communication networks. A comprehensive response to these developments requires a rethinking of the role of transnational spaces and diaspora structures within contemporary global governance frameworks. The article examines communication challenges in contemporary diaspora systems, emphasizing that effective diaspora governance requires a systematic and conceptually grounded approach that integrates institutional, technological, and transnational dimensions of communication.*

Keywords: *Diaspora, migration processes, communication strategies, globalization, transnational networks, national interests.*

1. Introduction

The formation of a new world order constitutes one of the defining transformations of the twenty-first century, reshaping political, economic, and social relations across all levels of public life. Within this evolving context, international migration has intensified in both scale and complexity, driven by a combination of structural and systemic factors. These include the collapse or transformation of state structures, emergence of new independent states, armed conflicts, and persistent socio-economic inequalities between regions, as well as the accelerating development of communication technologies and transport systems that expand mobility options and reduce the significance of geographic distance (Castles, de Haas & Miller, 2020; IOM, 2022). In parallel with these dynamics, diasporas have become increasingly visible and influential actors in global affairs. Contemporary diasporic formations are no longer limited to traditional patterns of displacement but are embedded within transnational networks shaped by digital communication, social media platforms, and global connectivity.

As Vertovec (2009) argues, diaspora communities today function as “social formations” characterized by multi-sited identities and sustained cross-border engagement. This transformation has been further amplified by digital technologies, which enable rapid information exchange, collective mobilisation, and continuous interaction with countries of origin (Brinkerhoff, 2009; Diminescu, 2008).

In the current era, territorial boundaries and state-centric limitations have become increasingly fluid. Technological advancement and scientific progress have reduced the relevance of physical distance in shaping life trajectories, contributing to what Appadurai (1996) conceptualizes as "global cultural flows." In this context, cosmopolitan orientations are no longer purely theoretical but have become embedded in everyday practices of mobility, communication, and identity formation. The expansion of global economic interdependence, transnational corporations, and labour mobility further reinforces migration processes and the formation of diaspora communities as enduring transnational actors (Bauböck, 2010).

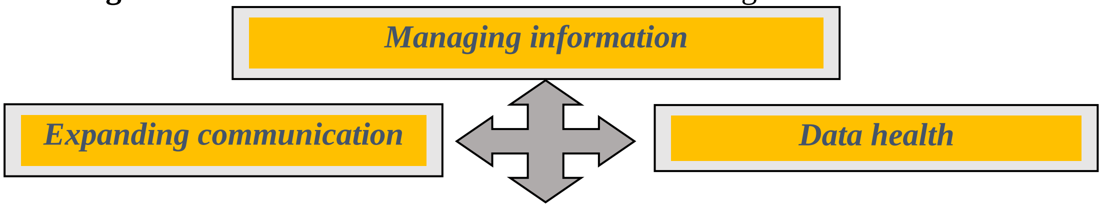
Diasporas play a dual role in contemporary international relations. On the one hand, they sustain cultural identity, language, and heritage among migrant populations; on the other hand, they serve as intermediaries linking home and host states through remittances, knowledge transfer, advocacy, and informal diplomacy. Gamlen (2019) highlights that many states now increasingly engage diasporas as strategic resources within foreign policy frameworks, particularly through institutionalized diaspora engagement policies and homeland outreach programs. In this sense, diasporas are not merely social communities but also political and economic actors embedded within state strategies. Despite the long historical existence of diaspora formations, scholarly attention to their communicative and organizational dimensions has expanded significantly only since the late twentieth century. Early diaspora communication relied on conventional channels such as postal services, telegraph systems, and later telephone and broadcast media. However, the emergence of satellite television and digital media significantly transformed the scale and speed of transnational connectivity. As Karim (2002) notes, digital communication has enabled diasporic groups to maintain near-instantaneous, interactive, and decentralized forms of engagement across borders, fundamentally reshaping the nature of diaspora connectivity.

Recent studies emphasize that diaspora communication is increasingly structured through digital platforms and networked media ecosystems, which facilitate both identity maintenance and political mobilization (Georgiou, 2006; Brinkerhoff, 2009). Social media environments in particular allow diasporas to construct collective narratives, respond to events in real time, and engage in advocacy processes directed both at homeland governments and international audiences. Within this broader global context, the Azerbaijani diaspora represents a significant case of institutionalized diaspora engagement shaped by state policy and transnational communication practices. Accordingly, there is a growing need to conceptualize and refine the coordination mechanisms governing diaspora-state relations, particularly in terms of communication strategy, institutional coherence, and digital infrastructure. Strengthening these mechanisms is essential for enhancing organizational effectiveness, improving public diplomacy capacities, and ensuring sustainable engagement with Azerbaijani communities abroad in line with contemporary global trends (Gamlen, 2019; Vertovec, 2009). Overall, the study of diasporas requires a systematic and interdisciplinary approach that integrates perspectives from migration studies, communication theory, and international relations. Such an approach allows for a more comprehensive understanding of how diasporas operate within global systems and how states can effectively engage them as strategic partners in an increasingly interconnected world.

2. Institutional, Digital, and Coordinative Dimensions of Diaspora Communication Mechanisms

It is advisable to group the phenomenon of Diaspora in the context of the globalization processes of the last few centuries. As discussed above, the main human migration patterns in the last few centuries have been defined by colonialism and trade relations. However, in recent decades, the transnational migration of people has grown exponentially apart from the expansion in the global movement of goods. The increased ease and speed of transportation have made long-distance travel a key feature of globalization. The most important of the current events is adaptation to the information and communication systems, interaction in the appropriate direction, and the development of a strategy for a systematic approach.

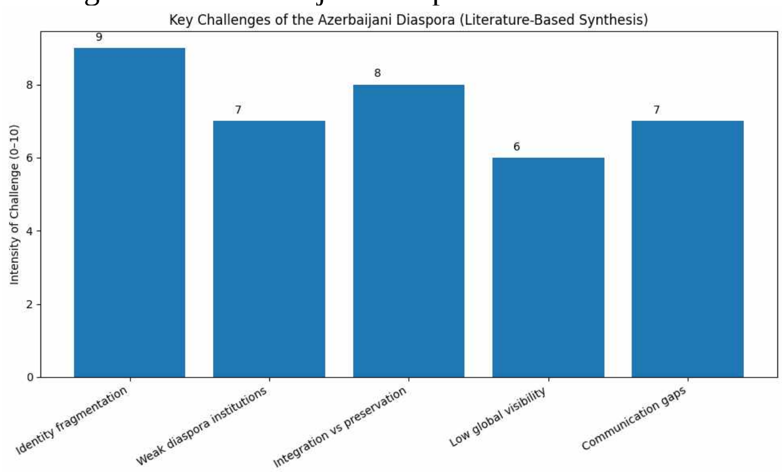
Figure 1. The main factors here reflect the following realities



The following three factors must be considered in order to effectively establish the communication mechanisms:

For raw materials from the first source, their processing, analysis, and approval in the relevant structural sections is a key component of coordinated communication governance. Effective diaspora communication requires institutional filtering and validation of information before dissemination, ensuring consistency and policy coherence across state structures (Gamlen, 2014; Pamment, 2014). To ensure effective dissemination of the communication strategy by the responsible official upon approval, standardized administrative communication channels are required, particularly in order to maintain credibility and avoid fragmented messaging in transnational environments (Nye, 2008). Enhanced use of existing global networks and the creation of new national and international platforms reflects the increasing importance of digital transnationalism in diaspora engagement. Contemporary diaspora studies emphasize that networked communication infrastructures enable sustained interaction between states and expatriate communities, strengthening both identity preservation and political engagement (Brinkerhoff, 2009; Vertovec, 2009). Such platforms also facilitate multidirectional communication flows rather than top-down dissemination models. To properly identify communication cycles, it is necessary to maximize the use of digital and social media infrastructures of diaspora organizations. This includes official websites, social media accounts, and personal digital profiles of diaspora representatives, which collectively function as tools of transnational connectivity and information exchange (Georgiou, 2013). The systematic evaluation of these communication channels allows states to map diaspora engagement potential and improve strategic outreach capacity. As highlighted in digital diaspora research, online platforms have become central to sustaining real-time interaction and organizational visibility across borders (Karim, 2002; Brinkerhoff, 2009; Aliquliyev, Şükürlü & Kazımova, 2009).

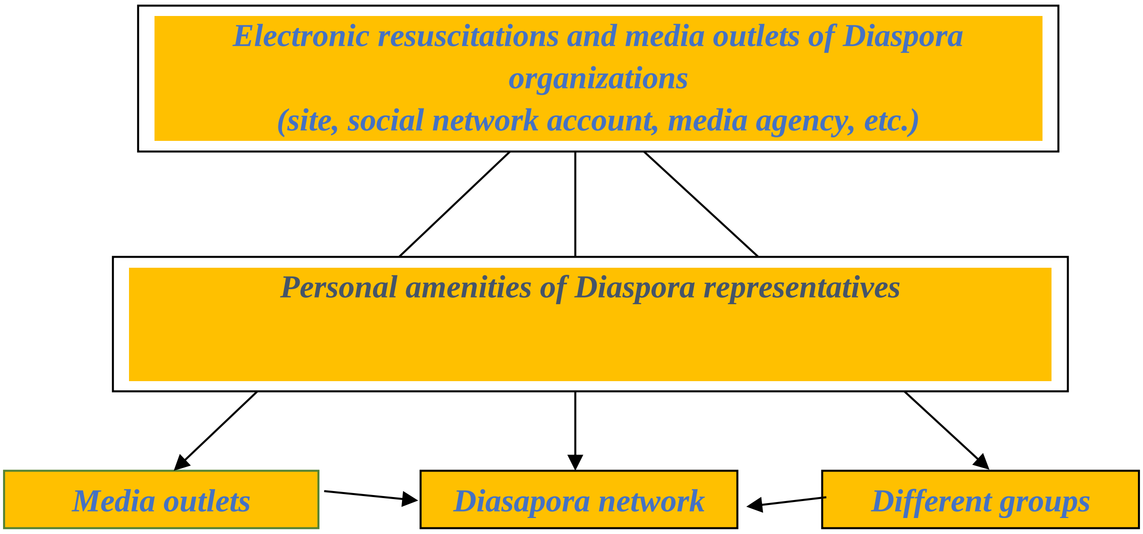
Figure 2. Key Challenges of the Azerbaijani Diaspora



The Azerbaijani diaspora faces several key challenges that affect its cohesion and global impact. A major issue is identity fragmentation, where individuals balance Azerbaijani heritage with host-country cultures, leading to multiple and sometimes conflicting identities. Institutional coordination is also weak, as diaspora organizations often lack strong networks and consistent engagement. Another challenge is the tension between integration into host societies and preserving national language and traditions, especially among younger generations. Additionally, the diaspora has limited global visibility and soft power influence compared to larger communities. Finally, communication gaps across countries hinder effective cooperation and long-term transnational networking among Azerbaijani communities abroad.

For the purpose of communication, it is necessary to set up activities according to the following figure 3.

Figure 3. The main factors here reflect the following realities:



The development of an effective communication strategy for diasporas is increasingly understood in the literature as a governance instrument rather than a purely technical tool. It reflects how states organize information flows, coordinate transnational actors, and construct long-term relationships with expatriate communities (Cohen, 2008; Faist, 2010). In this context, several interrelated components can be identified as central to contemporary diaspora communication governance. First, institutional establishment and the strengthening of legal and normative frameworks represent the foundational layer of any communication strategy. Without institutional clarity, diaspora engagement tends to remain fragmented and dependent on short-term initiatives. Comparative studies on diaspora governance show that states with well-developed institutional mechanisms are more effective in sustaining long-term engagement with their external communities (Gamlen, 2014). In the Azerbaijani context, the formalization of diaspora relations through state institutions reflects an attempt to consolidate policy direction and ensure regulatory coherence in communication practices.

Second, communication with diaspora communities increasingly requires operational flexibility and multi-level engagement. Diasporas are no longer passive recipients of state messaging but active transnational actors embedded in complex social networks (Vertovec, 1999). Therefore, communication strategies must facilitate continuous interaction not only with citizens abroad but also with diaspora organizations and friendly foreign communities. The expansion of such networks contributes to what Brinkerhoff (2009) describes as "engaged diasporas," where communication becomes reciprocal rather than unidirectional.

A further dimension concerns coordination mechanisms within state institutions. Centralized information management is often used to ensure consistency in messaging and policy coherence. Research in public diplomacy highlights that fragmented communication can weaken international credibility and reduce the effectiveness of state narratives (Pamment, 2014). In this regard, central coordination of diaspora-related information allows for more structured dissemination and reduces duplication or contradiction across institutions. At the same time, effective communication strategies must address the risks associated with information fragmentation and uncontrolled dissemination. In transnational communication environments, uncoordinated messaging can lead to distortion of information and weakening of institutional authority. This is particularly relevant in diaspora contexts, where multiple actors contribute to shaping national representation abroad (Adamson & Demetriou, 2007).

Media monitoring and analytical evaluation of information flows constitute another essential component. The rapid expansion of digital communication has increased both the speed and volatility of information circulation, making monitoring mechanisms necessary for institutional response. Studies on digital diaspora communication emphasize that states increasingly rely on media tracking systems to understand narrative dynamics and respond to emerging issues in real time (Georgiou, 2013). Closely linked to this is the issue of disinformation management. The global spread of misinformation has made reactive and preventive communication strategies essential. Effective diaspora governance therefore includes not only information dissemination but also the capacity to respond to false or misleading narratives. This aligns with broader trends in digital governance, where information integrity has become a core policy concern (Chadwick, 2013).

Another important aspect is the construction of a coherent and credible information environment aligned with national interests. Diaspora communication strategies often aim to ensure visibility and consistency of national narratives in international arenas. However, scholarly work emphasizes that credibility depends not only on message control but also on transparency and trust-building mechanisms (Nye, 2008). In this sense, communication strategies must balance strategic messaging with openness.

The development of centralized databases and structured information systems is also a key governance tool. Such systems allow for the systematic collection and classification of diaspora-related data, improving decision-making and policy implementation. From a governance perspective, this reflects the broader shift toward data-driven public administration (Kitchin, 2014). In Azerbaijan, efforts to digitize and centralize diaspora information can be interpreted within this global trend toward informational governance. Integration into global communication environments further requires the adoption of digital platforms and innovative communication tools. Digital infrastructures enable diasporas to maintain constant connectivity with both homeland institutions and global networks. Brinkerhoff (2009) argues that such digital engagement significantly enhances diaspora capacity for mobilization, knowledge exchange, and economic contribution. Finally, transparency and access to information remain essential principles of modern communication governance. Open communication strengthens institutional legitimacy and fosters trust between states, diasporas, and broader publics. Georgiou (2013) emphasizes that mediated visibility plays a key role in shaping diaspora identities and perceptions, making transparency a functional necessity rather than a normative preference. It seems that proper identification of communication strategy is among the key indicators of professionalism, transparency in governance, and honesty in the implementation of intellectual potential and policy on the part of each institution.

3. Development And Implementation of Communication Strategy In The Azerbaijani Diaspora

There has been an increase in the location and role of communication tools in the world, and in general, the improvement of the useful work rate in every field nowadays is directly dependent on the correct building of a strategy in this direction. The global process has not gone beyond the diaspora field, with the State Committee on Work with Diaspora (SCWD) taking advantage of local and international experience in its roles and functions, making communication strategy a priority, which nowadays serves to develop public policy on work with diaspora (State Committee on Work with Diaspora of the Republic of Azerbaijan).

The following clearly demonstrates the willingness and interest in the application of communications technologies and the ability to make this demand a reality:

- Improving unified communication management of the SCWD and its subordinate agencies (the Fund for Support to the Azerbaijani Diaspora) and fostering openness, compassion, and social control in the sphere of activity,
- Accelerating the process of forming an information society through the coordination work of the Azerbaijani diaspora,
- Establish a legal and regulatory framework for this field, establish a control mechanism in the management of communication systems, and improve existing procedures, as well as establish a "Single Analytical Information Center of the Azerbaijani Diaspora (ADVAIM)" in order to concentrate and analyze detailed information about the Azerbaijani diaspora and its representatives.
- Extending the communication network and forming an automated control system for fast sharing and easy access to information about the Azerbaijani diaspora,
- Implementing innovations and modern innovative projects in the field of communication technologies, etc.
- The optimal method of managing the communication system is as follows:

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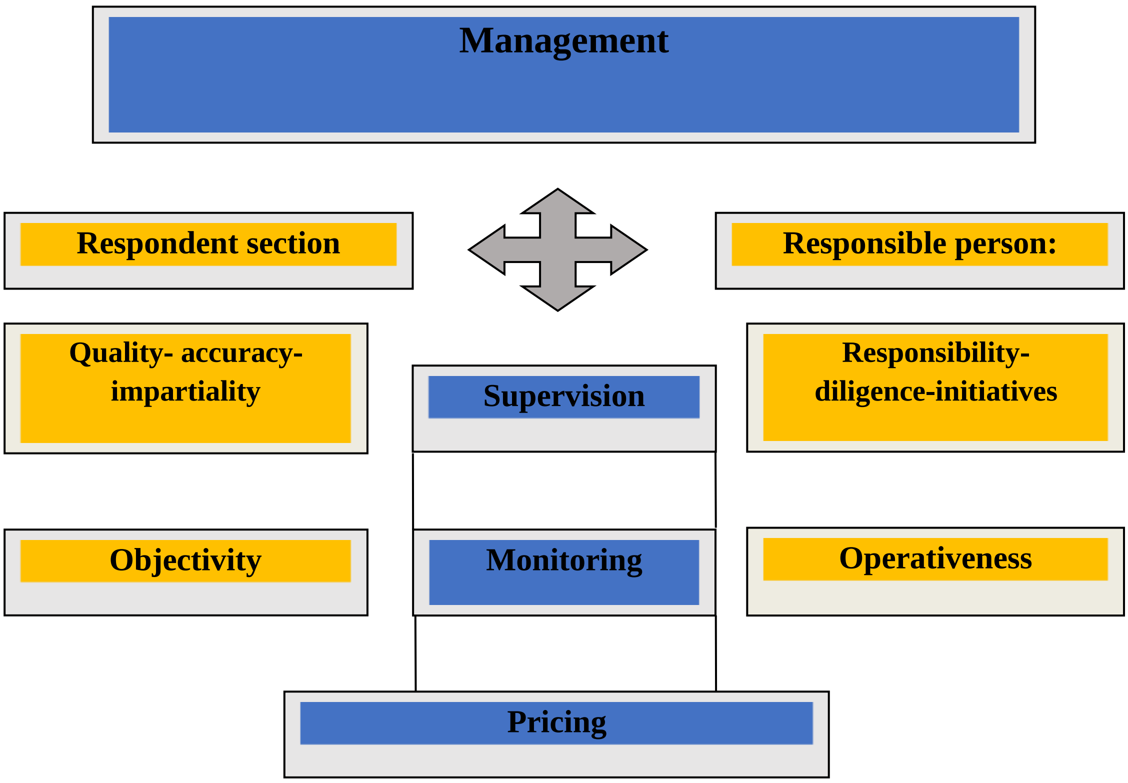


Key factors that characterize the current situation

To further accelerate the process of improving the existing means of communication and infrastructure, technical and software, information resources and services, and forming a legal-normative framework, including factors such as insufficient public relations of the Authority, retail, unprofessional, and low-quality information related to diaspora organizations and societies.

Factors that positively characterize the current situation:

- The media and public disclosure of the government agency coordinating this area, its electronic information resources, social networks, as well as its respective resources and media presence,
- The presence of different platforms and setups among young people.

Factors that negatively characterize the current situation:

- Unavailability of a functional mechanism and a single information bank for verification of the fundamental correctness of data, promotional and promotional materials in Diaspora,
- Failure to set up one central control.

4. Strategic Communication Governance of the Azerbaijani Diaspora: Objectives, Challenges, and Policy Priorities

The communication strategy for diaspora governance constitutes a central instrument of contemporary state policy, defining institutional priorities, coordination mechanisms, and long-term objectives for engagement with expatriate communities. In line with global diaspora governance trends, such strategies are no longer limited to administrative coordination but function as tools of public diplomacy, transnational communication management, and information security (Gamlen, 2014; Brinkerhoff, 2009). In the case of Azerbaijan, diaspora policy has increasingly been shaped by the need to strengthen state–diaspora relations, improve international representation, and ensure coherent communication across global Azerbaijani communities. The primary objective of the communication strategy is to enhance state–diaspora cooperation through structured, transparent, and continuous communication flows, thereby contributing to the formation of a resilient and informed information society (Vertovec, 2009). This objective reflects broader global practices in diaspora engagement, where states seek to transform diaspora communities into active partners in cultural diplomacy, economic development, and international advocacy (Nye, 2008; Bauböck, 2010)

The main tasks of the strategy can be analytically grouped into several interrelated governance dimensions.

First, the establishment of legal and institutional frameworks is fundamental for ensuring policy coherence and operational stability. Effective diaspora governance requires clearly defined regulatory structures that enable coordination between state bodies and diaspora organizations (Gamlen, 2014). In Azerbaijan, the institutional role of the State Committee on Work with Diaspora (SCWD) reflects this approach, aiming to centralize coordination and standardize communication practices across institutions.

Second, the development of modern information systems and digital infrastructure is essential for managing transnational communication flows. Contemporary diaspora engagement increasingly relies on digital platforms, which enable real-time interaction, information dissemination, and network formation across borders (Brinkerhoff, 2009; Georgiou, 2013). The creation of unified electronic information spaces and communication platforms is therefore not only a technical requirement but also a governance necessity in ensuring efficiency and accessibility. Third, transparency, accountability, and public access to information represent key principles of communication governance. Ensuring that diaspora-related information is accessible, reliable, and systematically managed contributes to institutional trust and reduces informational asymmetry between state structures and diaspora communities (Nye, 2008). This is particularly relevant in the Azerbaijani context, where diaspora communication is closely linked to national image-building and public diplomacy.

Fourth, the issue of misinformation and "fake news" has emerged as a significant challenge in diaspora communication environments. The rapid expansion of digital media has increased the vulnerability of transnational communication spaces to disinformation, requiring states to develop monitoring and response mechanisms (Chadwick, 2013). Effective diaspora governance therefore includes not only information dissemination but also the protection of informational integrity and narrative accuracy. Fifth, strengthening cooperation between state institutions and media organizations is increasingly recognized as a key factor in effective communication governance. Collaboration with institutions such as media development agencies and professional journalist training programs enhances the quality and credibility of diaspora-related information flows. This aligns with broader international trends in strategic communication and public diplomacy, where media partnerships play a central role in shaping external perceptions (Pamment, 2014). In the Azerbaijani case, several structural challenges continue to shape diaspora communication policy. These include fragmentation of information channels, uneven coordination among diaspora organizations, limited standardization of communication practices, and varying levels of digital capacity across different diaspora communities. Additionally, ensuring consistent messaging across geographically dispersed communities remains a persistent governance challenge, particularly in the context of rapidly evolving global information environments (Georgiou, 2013; Vertovec, 2009).

Despite these challenges, the Azerbaijani diaspora also presents significant strategic opportunities. These include strong transnational networks, increasing digital engagement among younger diaspora members, and expanding participation in cultural and economic initiatives linked to Azerbaijan. When effectively coordinated, these factors can enhance both soft power projection and international visibility of the country (Nye, 2008). The implementation of a structured communication strategy enables the development of a more transparent, coordinated, and adaptive diaspora governance system. It strengthens institutional capacity, improves information management, and facilitates integration of diaspora communities into broader national development and international communication frameworks.

5.The Place and Role of the Body in the Formation of the Information Society

The State Committee for Work with Diaspora of the Republic of Azerbaijan (SCWD) functions as a key institutional actor in the coordination and implementation of diaspora policy, particularly in the context of digital governance and information society development. Its mandate is formally grounded in state-level regulatory frameworks and presidential decrees that define diaspora engagement as a strategic direction of national policy (State Committee for Work with Diaspora of the Republic of Azerbaijan, official mandate; Presidential Decree on the establishment of diaspora-related institutions, 2008). From an analytical perspective, the SCWD's activities are structured around several interrelated domains. First, it contributes to the development and continuous improvement of the legal and institutional framework governing diaspora relations, ensuring alignment with evolving administrative and communication needs. Second, it facilitates coordination between state institutions and Azerbaijani communities abroad through centralized communication mechanisms and digital platforms, reflecting broader trends in e-governance and transnational public administration (SCWD official policy documents).

A significant aspect of its work is the integration of information and communication technologies into diaspora management. This includes the development of electronic databases and national information systems designed to consolidate diaspora-related data and enhance inter-agency coordination. Initiatives such as "Virtual Azerbaijan" and the "Electronic Data System of World Azerbaijanis" are intended to strengthen connectivity and institutional coherence within global Azerbaijani networks. Additionally, the SCWD places emphasis on the protection of the rights of Azerbaijanis living abroad, including the safeguarding of personal data and identity-related information, in line with international standards of information security and diaspora governance. The Committee's role reflects a shift toward digitally supported diaspora policy, combining administrative coordination, legal regulation, and technological infrastructure to enhance state–diaspora relations in a globalized communication environment (SCWD official reports and policy framework).

5.1. Basic Principles of Informing

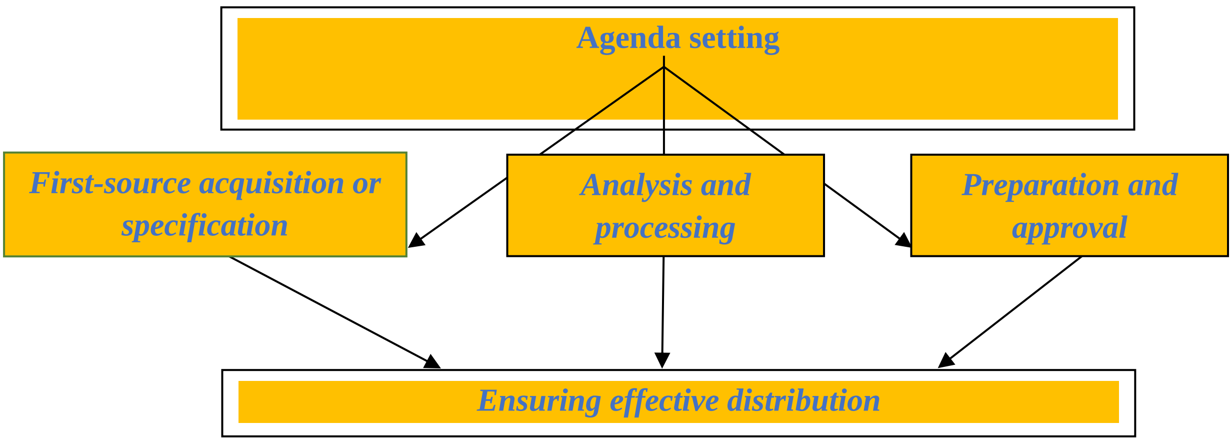
The strategy is very much unlike traditional concepts and programs created to date, and its scope includes public policy in the field of work with the diaspora, multidisciplinary activities of the Azerbaijani diaspora, and interaction with the media. The strategy and its implementation comply with the legislation of the Republic of Azerbaijan, serve to protect national interests, and take into account national legislation and international law.

The Strategy sets out the following basic principles to ensure the efficiency of implementing and developing information and communication technologies in the Republic of Azerbaijan and to create equal conditions for participation of all stakeholders in this process.

Identifying a specific person among the press leadership:

- Procedure for the preparation of detailed news, information, disclosures (Press Releases),
- Collecting and summarizing coherent information from the first source (from Committee leadership, relevant units, diaspora organizations, or representatives);
- Preparation of news about its activities in accordance with the direction given by the committee management,
- Processing the promotion department and translating it into public language, putting it into a press release, submitting it to the management for consent, and passing it to the PR manager,
- Organization of operational headquarters in case of force majeure, establishment of special conditions, and issuance of regular disclosures for the media,
- Study the position of direct management and respond to inquiries to ensure operational efficiency in an uncertain situation and to prevent disinformation that may arise from awareness.

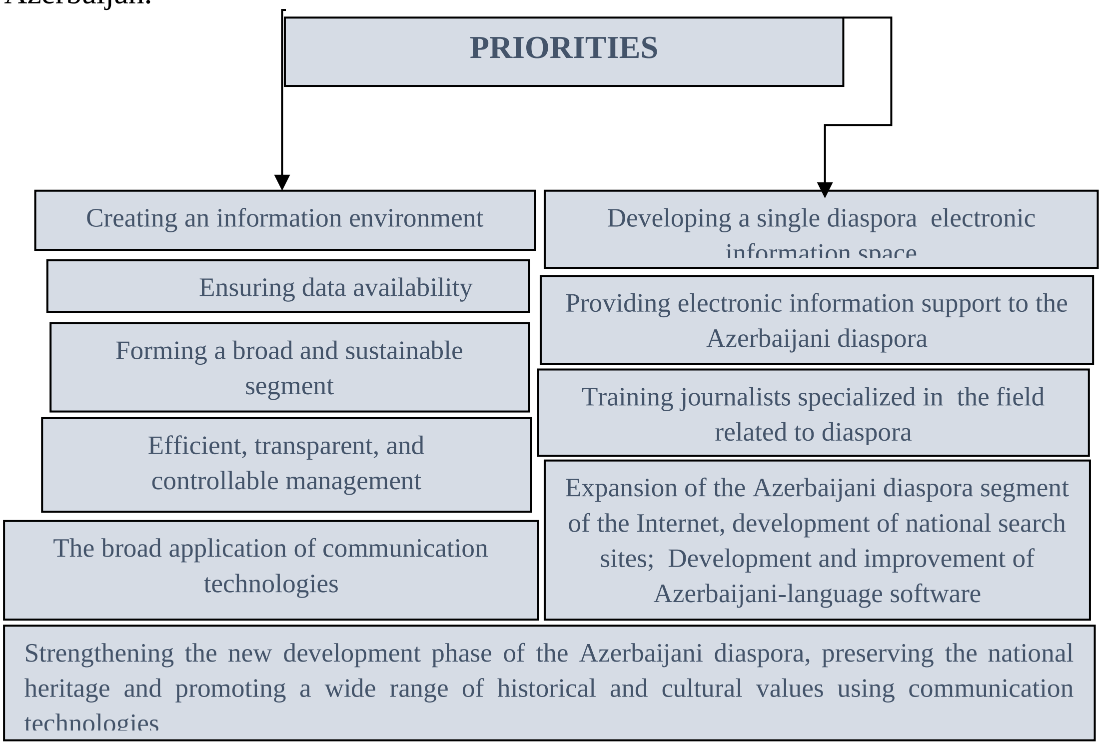
The key factors that are important for the communication strategy are:



Source: Karim, H. K. (2002). Diasporas and Their Communication Networks.

It is well known that the most natural resource in the diaspora is the protector of the ethnic gene pool. Diasporas, through their “platform of self-discipline and self-government,” maintain their national identity, live their language, traditions, and are dedicated to the future. And the transition from diaspora to lobbying is to have the opportunity to intervene in processes and solve problems, along with these factors. In the context of national security and secular development, it is vitally important not to exhaust, but rather to enrich, the ideology and strategy should be set according to the category SMART (Specificity – Measurable – Achievable - Relevance - Time-limited). For this purpose, the SCWD unveils a new vision in the field of proper communication management – the SMART approach:

Specificity – that is, activity that focuses on making information complete is adapted to the application of communication technologies that are of public interest, effective, and whole. Measurable – i.e., by indicating the source of the information, the entire process is carried out under obvious conditions, the basic rules and actions associated with the activity are communicated to the public by all means, public discussions are conducted, and the opinion of all parties is studied and considered. Achievable – public disclosure, all stakeholders are equally considered, the principle of justice is expected, without leaving the media to choose separately. Relevance - keeps the innovations of scientific and technical progress in mind, and the application of modern technologies is considered a priority. Time constraints – considering the rapid development of information and communication technologies, maximum operational efficiency is ensured. Informational action is carried out in phases, and priorities and outcomes are considered in the short term when developing programs and projects. Uniformity – this principle refers to a misspelling of materials in terms of style and purposefulness. The mechanism is constructed so that information is disseminated after the view of the person responsible for the information policy. Nationality – public policy is expected, protection of national interests, and promotion of “Azerbaijanism” ideology are preferred when preparing and publicizing news resources, and access to communications resources of the diaspora in Azerbaijan.



Source: Azerbaijani Diaspora, 2025

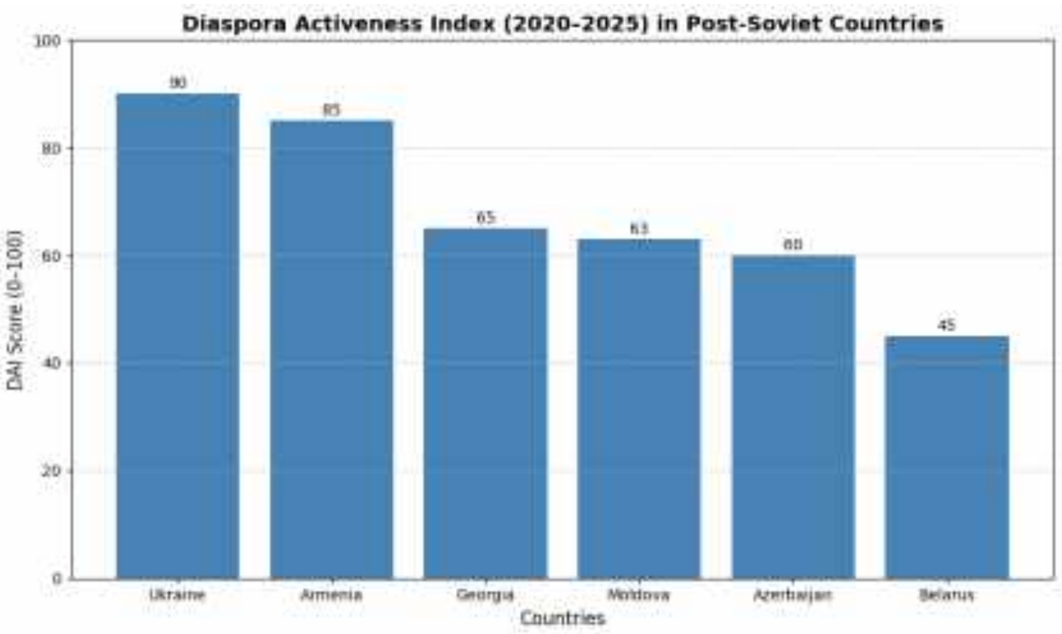
In the modern world, the boundaries between the development of science and technology and between states are increasingly transparent, even sometimes conventional. Distance is no longer an obstacle, and the globalization process is gaining new speed. The main outcomes of globalization are global division of labor, migration, and restraint of capital, labor, and production resources, delivery of economic, technological processes, and legislation to uniform standards, as well as approximation and integration of cultures of different countries. There is a big role for different diasporas in such integration.

At present, the concept of the diaspora itself does not have a clear and unambiguous definition, and many scientists interpret it in their own way. The cornerstone of this situation is that many scientific disciplines - history, ethnography, sociology, linguistics, cultural studies, and economics - seek to study the diaspora as a phenomenon. In this regard, we need to define in our work what we mean by “diaspora” in particular.

Given the SCWD legislation and the state line established, it is essential to create an environment that provides security in the field of communication. Since the strategy defines the main directions and content of the activity in conceptual terms, action plans for each direction – national ICT programs – are developed and implemented through concrete works, namely projects. The success of the strategy validation process depends directly on the proper organization of its management. This process is coordinated, regulated, and managed by governance structures that implement government policy in the use and development of information and communication technologies.

The activities of the participants in this process are coordinated by the Ministry of Foreign Affairs to ensure the implementation of a unified policy in relations with other state agencies and embassies of the Republic of Azerbaijan (Ministry of Foreign Affairs of the Republic of Azerbaijan, 2024). Permanent monitoring of the electronic situation in the country is carried out, and its evaluation is conducted to assess the effectiveness of the strategy and determine the level of progress achieved. The quality execution of the strategy and full achievement of its objectives require appropriate funding, which is covered by diaspora-related institutional budgets, particularly financial resources allocated to communication activities.

Figure 1. Diaspora Activiteness Index (2020-2025) in Post-Soviet Countries



Source: Developed by the author using synthesized data from OECD migration reports, IOM publications, and national diaspora institutions (2020–2025).

The figure 1 titled "Diaspora Activeness Index (2020–2025) in Post-Soviet Countries" illustrates comparative levels of diaspora engagement across six countries using a 0–100 scale. Ukraine records the highest Diaspora Activeness Index (DAI) at 90, indicating very strong diaspora engagement and sustained transnational activity. Armenia follows closely with a score of 85, also reflecting a highly active and well-organized diaspora network. In the mid-range, Georgia scores 65, and Moldova scores 63, showing moderate levels of diaspora involvement with potential for further institutional strengthening. Azerbaijan registers a score of 60, placing it slightly below these countries and suggesting a developing but not yet fully maximized diaspora engagement framework. Belarus has the lowest score at 45, indicating relatively limited diaspora activity compared to the other countries in the dataset. Overall, the chart highlights significant variation in diaspora engagement across post-Soviet states, with Ukraine and Armenia demonstrating the strongest performance, while Azerbaijan and Belarus show greater room for strategic development in diaspora mobilization and communication policies.

In the context of globalization, there is an increasing need to find new ways to collaborate, attract investment, and exchange experiences and technologies. The Jewish diaspora represents a prominent example of how transnational networks can significantly influence state development, demonstrating that diaspora policy remains highly relevant and increasingly important (Brinkerhoff, 2009; Vertovec, 2009). As a long-term and effective communication network model, this case offers valuable insights. The formation and development of the startup ecosystem in the Republic of Azerbaijan is also noteworthy, particularly with the establishment of the "Tech Diaspora," aimed at accelerating innovation and supporting entrepreneurial growth. The main goals of the Azerbaijan Tech Diaspora include developing the national startup ecosystem and strengthening connections among Azerbaijani professionals living abroad in technological and innovative sectors (State Agency for Public Service and Social Innovations, 2024).

Furthermore, within the framework of the "Strategy of socio-economic development of the Republic of Azerbaijan for 2022–2026," significant emphasis is placed on expanding the technological diaspora, attracting Azerbaijani professionals working in leading global tech hubs, and fostering collaboration through initiatives such as the Absheron Valley innovation space (President of the Republic of Azerbaijan, 2022).

Another important initiative is the "Cyber Diaspora Network," which aims to connect Azerbaijani cybersecurity professionals worldwide and strengthen their global cooperation network (Association of Cybersecurity Organizations of Azerbaijan, n.d.). According to Məmmədov (2016), the Azerbaijani diaspora possesses substantial intellectual and material potential, and the establishment of a strong diaspora media presence in Europe plays a crucial role in shaping international political discourse and promoting coordinated ideological and communication strategies. Diaspora organizations play a critical role in advocacy, awareness-raising, and communication, ensuring that the voices of affected populations are heard and that stakeholders remain accountable in humanitarian contexts. Particularly in times of crisis, effective diaspora engagement requires a multifaceted approach that integrates communication, coordination, technical exchange, emergency response, volunteering, and advocacy (Gamlen, 2014; Pamment, 2014).

Conclusion

In conclusion, the development of a comprehensive Communication Strategy for work with the Azerbaijani diaspora is a strategic necessity in the context of the rapidly evolving global information environment. Effective communication systems are now central to governance, public diplomacy, and the formation of international perception, making them essential for strengthening state–diaspora relations. For the Republic of Azerbaijan, such a strategy enables more coordinated, transparent, and technology-driven interaction with diaspora communities. It enhances the efficiency of information exchange, strengthens institutional cooperation, and ensures that diaspora engagement is aligned with national priorities and global communication standards. The implementation of this strategy will support the modernization of communication infrastructure, expand digital and media capabilities, and increase the active participation of Azerbaijanis abroad in socio-political and cultural initiatives. It will also contribute to more effective public diplomacy, improved international representation of Azerbaijan, and stronger dissemination of national narratives. Ultimately, a well-structured communication strategy will consolidate state efforts, diaspora networks, and media resources into a unified system, ensuring sustainable cooperation and reinforcing Azerbaijan's position in the global information space.

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AI-BASED SPATIAL ANALYSIS OF FOREST RESOURCES IN THE KARABAKH ECONOMIC REGION IN AZERBAIJAN

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Abstract: *The primary aim of this study is to assess the spatial distribution of forest resources in the Karabakh Economic Region using AI-assisted geospatial analysis and to evaluate the implications of identified spatial disparities for sustainable regional development and forest resource management. The paper investigates the spatial distribution of forest resources in the Karabakh Economic Region of Azerbaijan using AI-based geospatial analysis. The study highlights significant regional disparities in forest coverage, with the total forest area in the region amounting to 139,495.34 hectares, of which 34,616 hectares (24.82%) were directly studied. The overall forest coverage in the region is 13.96%, which is 1.46-2.46 percentage points higher than the national average. The analysis reveals that districts such as Aghdara (43.47%), Khojavand (25.79%), and Khojali (22.78%) have substantial forest resources, while districts like Aghjabadi, Aghdam, Barda, Fuzuli, and Tartar contribute only 2.5% of the region's total forest cover. These findings underline the need for targeted interventions to address the uneven distribution of forest resources, promoting balanced and sustainable development across the region. The study employs open-spatial data extracted via Overpass Turbo, combined with Artificial Intelligence (AI)-assisted spatial processing and Geographical Information Systems (GIS)-based area calculations. The study contributes to sustainability-oriented decision-making by demonstrating how open data and artificial intelligence can support balanced environmental and socio-economic development.*

Keywords: *AI-based geospatial analysis, forest resource management, Karabakh Economic Region, Spatial distribution, Sustainability and regional development*

1 Introduction

1.1 Background and Context

The Karabakh Economic Region, located in the western part of Azerbaijan, has faced significant ecological and socio-economic challenges due to the impact of conflict efforts. This region, which is rich in biodiversity and natural resources, has witnessed severe disturbances in its ecosystem, particularly in forest resources. Forests, which play a crucial role in maintaining ecological balance, supporting biodiversity, and providing livelihoods to local communities, have been adversely affected by land-use changes, deforestation, and other anthropogenic activities exacerbated by the conflict. The restoration and sustainable management of these forests have thus become a key focus in the region's recovery process.

In the context of Azerbaijan, forests represent not only an ecological asset but also a significant socio-economic resource. They provide essential ecosystem services, such as carbon sequestration, water regulation, and soil protection, all of which contribute to the sustainability of the region's agricultural systems and broader environmental health *(Ali et al., 2025)*. However, the uneven distribution of forest resources, often influenced by topography, historical land use patterns, and human activities, has created regional imbalances in forest coverage. Some districts benefit from a higher concentration of forest areas, while others suffer from degraded or fragmented landscapes. Addressing these disparities is essential for creating a more balanced and sustainable regional development strategy.

Geospatial analysis, particularly when combined with artificial intelligence (AI) techniques, offers a promising approach for tackling the complexities of forest resource management in this post-conflict context. AI-based spatial analysis can process large-scale open geospatial data, providing an efficient way to map and analyze the distribution of forest resources, assess their condition, and identify areas requiring restoration or protection (*Sayginer & Nurlu, 2025)*. These methods also offer the advantage of revealing spatial patterns that may not be easily identifiable through traditional approaches, making them invaluable tools for informed decision-making in environmental management.

The integration of AI-driven tools into spatial analysis is especially relevant in regions like Karabakh, where accurate data on forest cover may be scarce or fragmented. By leveraging open data sources, such as those provided by Overpass Turbo, and using advanced AI algorithms to analyse these data, researchers can gain insights into the spatial distribution of forest resources at both regional and district levels *(Overpass Turbo, 2026)*. This can help identify areas of ecological vulnerability, uncover patterns of forest loss or degradation, and guide the allocation of resources for reforestation and conservation efforts *(Bayramov & Pashayeva, 2024)*.

The use of geospatial tools in post-conflict recovery and regional planning can provide crucial support in ensuring that environmental management strategies align with broader goals of sustainable development *(Yadav, Verma, 2026)*. In Karabakh, this approach not only supports the restoration of the natural environment but also contributes to the social and economic resilience of the local communities. The findings of this study will highlight the role of AI-based spatial tools in promoting a balanced, data-driven approach to forest management, offering valuable lessons for similar post-conflict regions around the world.

1.2 Research Problem and Objectives

The Karabakh Economic Region, once rich in forest resources, has experienced significant ecological degradation, particularly due to the adverse effects of conflict and subsequent land-use changes. This degradation has resulted in substantial imbalances in the spatial distribution of forest resources, with certain districts having abundant forest cover while others face significant challenges related to deforestation and land fragmentation. These disparities not only hinder the region's environmental recovery but also threaten the sustainability of its socio-economic systems, including agriculture, local livelihoods, and biodiversity conservation efforts *(Shivaprakash et al., 2022)*.

The lack of comprehensive, high-resolution spatial data on forest distribution in Karabakh further complicates the task of managing and restoring these vital resources. While there have been efforts to restore forest cover in some areas, the absence of a detailed, data-driven understanding of forest resources at both regional and district levels has hampered effective planning and policy formulation. Traditional methods of forest monitoring, relying on limited field surveys and outdated data, fail to capture the dynamic nature of forest distribution and land-use changes in the region *(Alisoy, 2022)*.

This research seeks to address the critical gap in knowledge about the spatial distribution and sustainability of forest resources in the Karabakh Economic Region by employing AI-based geospatial analysis. By leveraging open geospatial data and advanced AI algorithms, this study aims to provide a detailed, spatially explicit analysis of forest cover in the region, identifying key patterns and imbalances that have emerged in the post-conflict context. The research also aims to assess the role of forest resources in supporting sustainable regional development, focusing on how disparities in forest coverage can influence local livelihoods, biodiversity conservation, and regional resilience. *(Giri et al., 2005)*

The objectives of this study are as follows:

- To assess the spatial distribution of forest resources across the Karabakh Economic Region and identify major patterns of forest cover at both regional and district levels.
- To evaluate the inter-district disparities in forest provision and examine the influence of topographical and land-use on the observed spatial distribution of forest resources.
- To analyze the implications of spatial inequalities in forest resources for sustainable environmental management and regional development in the post-conflict Karabakh region.
- To demonstrate the applicability of AI-assisted geospatial analysis methods mapping, monitoring, and evaluating forest resources in support of evidence-based regional planning.
- To formulate recommendations for sustainable forest resource management based on the identified spatial patterns and disparities.

By addressing these objectives, this research aims to contribute valuable insights into the restoration and sustainable management of forest resources in post-conflict regions, offering lessons that can be applied to similar contexts worldwide.

1.3 Research Questions

The primary aim of this study is to explore the spatial distribution of forest resources in the Karabakh Economic Region and the implications of these patterns for sustainable development. To achieve this, several research questions have been formulated to guide the investigation and ensure comprehensive analysis. These questions are designed to address both the ecological and socio-economic dimensions of forest resource management in the region, with a particular focus on the role of AI-based geospatial analysis. The key research questions are as follows:

1. *How are forest resources spatially distributed across the Karabakh Economic Region at regional and district levels?*

This question seeks to map the spatial distribution of forest resources at both the regional and district levels, identifying areas with high and low forest coverage. The analysis will help uncover patterns of forest fragmentation and concentration, providing insights into the overall state of forest resources in the region.

2. *What inter-district disparities exist in forest provision, and what topographical and land-use factors contribute to these differences?*

This question aims to identify and understand the differences in forest coverage between districts, considering factors such as topography, land-use patterns, and historical land management practices. It will explore why some districts have better access to forest resources than others and how these disparities affect regional development.

3. *What are the implications of spatial inequalities in forest resources for sustainable environmental management and regional development in post-conflict Karabakh region?*

This question focuses on the environmental factors that shape forest distribution, such as elevation, slopes, and land-use practices (e.g., agriculture, urbanization). Understanding these relationships will provide critical insights into the natural and anthropogenic drivers of forest imbalances in the Karabakh region.

4. *How can AI-assisted geospatial analysis support the assessment and monitoring of forest resources for evidence-based planning and management?*

This question evaluates the effectiveness of AI-driven spatial tools in forest monitoring and management. It will assess how these tools can contribute to more precise, evidence-based decision-making in forest restoration, conservation, and sustainable development planning. It will explore how forest resources can help restore ecological balance, support local livelihoods, and enhance socio-economic resilience in the post-conflict recovery phase (*Nagiyev & Bayramov, 2026)*.

5. *What are the implications of spatial imbalances in forest resources for the long-term sustainability and resilience of the Karabakh region?*

This question explores the broader implications of the identified disparities in forest distribution for the region's socio-economic development and environmental management. It will help to determine how these imbalances might influence future planning efforts and regional recovery initiatives.

2 Methods

2.1 Data Collection

The data collection for this study primarily focuses on acquiring open geospatial data to facilitate the analysis of forest resources in the Karabakh Economic Region. Due to challenges in obtaining traditional ground-based data, particularly in post-conflict areas, the study leverages publicly accessible datasets and remote sensing technologies. This ensures the use of current, reliable data for spatial analysis (*Belgiu & Drăguţ, 2016)*.

Open geospatial data was gathered using Overpass Turbo, a tool that queries OpenStreetMap (OSM) data. The data extracted includes information on land cover, forest areas, protected regions, and other relevant features such as the extent of forest cover, areas designated as protected (e.g., national parks or state reserves), and human-impacted land use patterns *(Liu, Xia, 2016)*. These datasets are valuable for analyzing forest distribution patterns and understanding human impacts on forest resources, particularly in regions affected by conflict.

Administrative boundaries data for the Karabakh Economic Region and its districts were sourced from publicly available datasets, providing the necessary geographic framework to analyses forest coverage and disparities at both the regional and district levels. This boundary data aligns with the local governance structures, which are crucial for making informed decisions on resource management.

Topographic data, including elevation, was sourced from global datasets such as Shuttle Radar Topography Mission (SRTM) data (*SRTM, 2026*). This was essential for understanding how physical features like elevation and slope influence forest distribution in the region. Such data helps determine areas that are conducive to forest growth, further aiding in the analysis of spatial patterns in forest coverage.

Land cover and land use data were also incorporated, sourced from global platforms like the European Space Agency's Copernicus Land Monitoring Service and the Global Land Cover database (*European Space Agency, 2026*). This data helps provide context for forest distribution, enabling the study to understand the broader landscape in which forests are located, including areas undergoing agricultural expansion or urbanization that could affect forest coverage *(Alisoy, 2022)*.

By integrating these diverse data sources, the study provides a comprehensive spatial analysis of forest resources in the Karabakh Economic Region. The combination of open data, AI-driven analysis, and satellite imagery allows for a thorough, evidence-based understanding of forest distribution patterns, offering valuable insights into sustainable forest management and post-conflict regional planning (*Wang et al., 2025, Wen et al., 2025)*.

2.2 Spatial Analysis and Calculations

The analytical framework of this study consisted of five consecutive stages: data preparation, spatial integration, forest identification and classification, quantitative spatial analysis, and cartographic interpretation.

In the first stage, all collected geospatial datasets were improved into the GIS environment (QGis). Administrative boundaries, forest polygons, land-use layers, and topographic datasets were transformed into a common coordinate reference system to ensure spatial compatibility and eliminate geometric inconsistencies. Data cleaning procedures were applied to remove duplicate records, incomplete polygons, and topological errors.

The second stage involved the integration of forest-cover information with administrative boundaries of the Karabakh Economic Region. Using GIS overlay operations, forest polygons were intersected with district boundaries, enabling the calculation of forest area indictors for each administrative unit. The procedure allowed the determination of both absolute forest area (ha) and relative forest coverage (%).

During the third stage, AI-assisted classification procedures were applied to support the identification of and categorization of forest resources. AI-supported pattern recognition and spatial clustering techniques were used to distinguish forest areas from other land-cover categories and to identify individual forest massifs. As a result, 81 forest areas were identified and classified according to their spatial characteristics and geographical location. The classification results were subsequently verified through GIS-based visual inspection and cross-referencing with available datasets.

The fourth stage focused on quantitative spatial analysis. Forest area was calculated for each identified forest massif and administrative district. Comparative indicators were generated to assess the proportion of forest resources within individual districts and across the entire Karabakh Economic Region. To evaluate territorial disparities, descriptive statistical measures and proportional distribution analysis were applied, allowing the identification of districts with high and low levels of forest provision.

The final stage involved cartographic visualization and spatial interpretation. The results were represented through thematic map and statistical table illustrating the geographical distribution of forest resources. Attention was given to identifying relationships between forest distribution and geographical conditions. The spatial patterns revealed by the analysis were subsequently interpreted in the context of sustainable forest management, environmental planning, and post-conflict regional development.

2.3 AI-Assisted Analytical Framework and Disclosure of AI Use

Artificial Intelligence (AI)-assisted analytical approaches were employed in this study to enhance the efficiency and accuracy of spatial data processing and classification. The research combined Geographic Information Systems (GIS) and AI-supported analytical techniques to identify and classify forest resources within the Karabakh Economic Region.

AI-based tools were used during several stages of the research process, including the processing of spatial datasets, identification of forest areas, classification of land-cover characteristics, and detection of spatial patterns. These procedures facilitate the analysis of large volumes of geospatial information and support the identification of inter-district disparities in forest resource distribution.

The role of AI in this study was limited to analytical support and data-processing assistance. AI tools were not used to make scientific judgements, formulate conclusions, or independently interpret research findings. To ensure academic transparency and research integrity, all final assessments, interpretations, calculations, cartographic outputs, and policy recommendations presented in this paper remain the sole responsibility of the author. The use of AI-assisted methods served exclusively as a supplementary analytical instrument intended to improve the efficiency, consistency, and reproducibility of the spatial analysis conducted within the study.

3 Results

3.1 Forest Coverage and Spatial Distribution

As a result of the AI-assisted spatial analysis, numerous forest areas of varying sizes were identified across the Karabakh Economic Region. The total number of identified forest areas across ten administrative units (nine districts and one city territory) amounts to 81. Information on their area and regional distribution is presented in Table 1.

Table 1. Distribution and Proportional Analysis of Forest Resources Across the Karabakh Economic Region

№	Administrative Unit (District / City)	Forest Name	Type of Forest Resource	Forest Area (ha)	Share of Forest Area, %			
					Within the studied forests of the administrative unit	Within the total forest areas of the administrative unit	Within the total area of the administrative unit	Within the total forests areas of the Karabakh Economic Region
1.	Khankandi city (Total Forest Areas: 321,45 ha)	Alchag	Forest	6,3	2,73	1,96	0,06	0,00
2.		Findigli (Hazelnut)		12,3	5,33	3,83	0,12	0,01
3.		Judur		8,1	3,51	2,52	0,08	0,01
4.		Khirmanli		103,0	44,67	32,04	1,03	0,07
5.		Yavarli		32,0	13,88	9,95	0,32	0,02
6.		Yeskhirman		10,1	4,38	3,14	0,10	0,01
7.		Afatli	Valley	25,5	11,06	7,93	0,26	0,02
8.		Girkhan		5,4	2,34	1,68	0,05	0,00
9.		Sajjahan		2,7	1,17	0,84	0,03	0,00
10.		Sayali		9,8	4,25	3,05	0,10	0,01
11.		Tut (Mulberry)		11,6	5,03	3,61	0,12	0,01
12.		Zadaganlar		1,2	0,52	0,37	0,01	0,00
13.		Tut (Mulberry)	Orchards	1,0	0,43	0,31	0,01	0,00
14.		Mirzahasan	Slope	1,6	0,69	0,50	0,02	0,00
Total by Administrative Unit				***230,6***	***100,00***	***71,74***	***2,31***	***0,23***
*	Aghjabadi district (Total Forest Areas: 485,3 ha)	n/a	–	0	0	0	0,28	0,35
Total by Administrative Unit				***0***	***0***	***0***	***0,28***	***0,35***
15.	Aghdam district (Total Forest Areas: 804,43 ha)	Soltanbud	Forest	571,0	100,00	70,98	0,52	0,41
Total by Administrative Unit				***571,0***	***100,0***	***70,98***	***0,52***	***0,58***
16.	Aghdara district	Aghbat	Forest	730,0	4,44	1,20	0,44	0,52
17.		Aghvang		136,0	0,83	0,22	0,08	0,10
18.		Amakomadara		719,0	4,38	1,19	0,43	0,52

19.	(Total Forest Areas: 60645,12 ha)	Barambat		3620,0	22,03	5,97	2,18	2,60
20.		Bayat		2800,0	17,04	4,62	1,69	2,01
21.		Daliklar		87,8	0,53	0,14	0,05	0,06
22.		Khalazan		298,0	1,81	0,49	0,18	0,21
23.		Khicik Gafgaz (Lesser Caucasus)		1260,0	7,67	2,08	0,76	0,90
24.		Oruk		6700,0	40,78	11,05	4,04	4,80
25.		Khazandara	Valley	78,8	0,48	0,13	0,05	0,06
Total by Administrative Unit				***16429,6***	***100,00***	***27,09***	***9,90***	***43,47***
*	Barda district (Total Forest Areas: 1103,64 ha)	n/a	–	0	0	0	1,16	0,79
Total by Administrative Unit				***0***	***0***	***0***	***1,16***	***0,79***
*	Fuzuli district (Total Forest Areas: 500,15 ha)	n/a	–	0	0	0	0,36	0,36
Total by Administrative Unit				***0***	***0***	***0***	***0,36***	***0,36***
26.	Khojaly district (Total Forest Areas: 31781,23 ha)	Arkhashan	Forest	5,6	0,04	0,02	0,01	0,00
27.		Baghlar		6,2	0,05	0,02	0,01	0,00
28.		Daghdoshu		131,0	1,01	0,41	0,14	0,09
29.		Daghlig (Mountainous)		5850,0	45,11	18,41	6,29	4,19
30.		Darili		77,5	0,60	0,24	0,08	0,06
31.		Goruglu		47,2	0,36	0,15	0,05	0,03
32.		Gushtshubaba		89,2	0,69	0,28	0,10	0,06
33.		Injadara		1920,0	14,81	6,04	2,06	1,38
34.		Kapanak (Butterfly)		40,3	0,31	0,13	0,04	0,03
35.		Khanzada		39,5	0,30	0,12	0,04	0,03
36.		Kheykhali		84,6	0,65	0,27	0,09	0,06
37.		Kohnadara		88,9	0,69	0,28	0,10	0,06
38.		Naragif		545,0	4,20	1,71	0,59	0,39
39.		Otgishlag		428,0	3,30	1,35	0,46	0,31
40.		Saribayli		72,2	0,56	0,23	0,08	0,05
41.		Tarifdash		2020,0	15,58	6,36	2,17	1,45
42.		Topkhana		164,0	1,26	0,52	0,18	0,12
43.		Tukhangaya		43,0	0,33	0,14	0,05	0,03
44.		Yal		32,0	0,25	0,10	0,03	0,02
45.		Aghaverdi	Valley	1,7	0,01	0,01	0,00	0,00
46.		Avazushaghi		15,5	0,12	0,05	0,02	0,01
47.		Behzad		126,0	0,97	0,40	0,14	0,09
48.		Dayirmandara		34,7	0,27	0,11	0,04	0,02
49.		Gamishdara		1,5	0,01	0,00	0,00	0,00
50.		Ganlidara		3,8	0,03	0,01	0,00	0,00
51.		Garaghatdara		16,3	0,13	0,05	0,02	0,01
52.		Garar		18,8	0,14	0,06	0,02	0,01
53.		Garayli		29,7	0,23	0,09	0,03	0,02
54.		Girkhlar		639,0	4,93	2,01	0,69	0,46
55.		Hajiyurdu		3,9	0,03	0,01	0,00	0,00
56.		Jajali		6,2	0,05	0,02	0,01	0,00
57.		Jayir		56,0	0,43	0,18	0,06	0,04
58.		Mohajara		4,7	0,04	0,01	0,01	0,00
59.		Rahbar		30,5	0,24	0,10	0,03	0,02
60.		Shostan		13,8	0,11	0,04	0,01	0,01
61.		Sutshular		11,7	0,09	0,04	0,01	0,01

62.		Umurlu		13,7	0,11	0,04	0,01	0,01
63.		Kusa	Slope	8,3	0,06	0,03	0,01	0,01
64.		Mikhtokan		239,0	1,84	0,75	0,26	0,17
65.		Boyurtkanlik (Blackberry plants)	Plantation	6,4	0,05	0,02	0,01	0,00
66.		Narlig (Pomegranate plants)		1,8	0,01	0,01	0,00	0,00
Total by Administrative Unit				***12967,2***	***100,00***	***40,80***	***13,94***	***22,78***
67.	Khojavand district (Total Forest Areas: 35974,4 ha)	Aghoghlan	Forest	26,3	0,87	0,07	0,02	0,02
68.		Ayiboghan		393,0	13,05	1,09	0,26	0,28
69.		Bala Gorug		2,8	0,09	0,01	0,00	0,00
70.		Daraakhulu		59,3	1,97	0,16	0,04	0,04
71.		Gulbaz		123,0	4,08	0,34	0,08	0,09
72.		Khan Arkhi		5,1	0,17	0,01	0,00	0,00
73.		Khirdapara		190,0	6,31	0,53	0,13	0,14
74.		Kondalan		290,0	9,63	0,81	0,19	0,21
75.		Soyugash Arkhi		153,0	5,08	0,43	0,10	0,11
76.		Yashilatir		35,7	1,19	0,10	0,02	0,03
77.		Zoghallig		74,6	2,48	0,21	0,05	0,05
78.		Haband	Valley	1640,0	54,46	4,56	1,09	1,18
79.		Vang		18,5	0,61	0,05	0,01	0,01
Total by Administrative Unit				***3011,3***	***100,00***	***8,37***	***1,99***	***25,79***
80.	Shusha district (Total Forest Areas: 7278,52 ha)	Maralgachan	Forest	1320,0	100,00	18,14	4,55	0,95
Total by Administrative Unit				***1320,0***	***100,00***	***18,14***	***4,55***	***5,22***
81.	Tartar district (Total Forest Areas: 601,1 ha)	Evoglu	Forest	86,3	100,00	14,36	0,21	0,06
Total by Administrative Unit				***86,3***	***100,00***	***14,36***	***0,21***	***0,43***
Total by Karabakh Economic Region				**34616,0**	**100,00**	***24,82***	**3,47**	***13,96***

Source: Compiled by the author based on AI-assisted geospatial analysis of Overpass-Turbo, OpenStreetMap spatial datasets, and GIS-based calculations conducted within the QGIS environment.

In addition to these identified areas, the study also revealed the presence of numerous unnamed and large-scale forest massifs within the research area, indicating that the actual forest coverage may be even more extensive than documented. As shown in Table 1, the total forest area calculated within the framework of this study in the Karabakh Economic Region is 139,495.34 ha. Of this, 34,616 ha (24.82%) are directly studied forests, which are primarily located in the districts of Aghdara, Khojali, and Khojavand. For each of these forests, data on area and forest type were determined and classified. The study found that the forest coverage in the Karabakh Economic Region constitutes 13.96%. This figure is 1.46-2.46 percentage points higher than the national average, but it remains insufficient for industrial use of forests. The districts of Aghjabadi, Aghdam, Barda, Fuzuli, and Tartar are the least endowed with forest resources. The total forest area in these districts is up to 3,500 hectares, accounting for only 2.5% of the overall regional forest cover. On the other hand, the districts rich in forest resources are Aghdara (43.47%), Khojavand (25.79%), and Khojali (22.78%).

3.2 Inter-District Disparities

The analysis of inter-district disparities in forest resources, as shown in Table 1, reveals significant differences in the distribution and proportion of forest cover across the Karabakh

Economic Region. Some districts, such as Khojavand and Aghdara, have a notably high proportion of forest area relative to their total territory. This is driven by the presence of extensive forests like Ayiboghan and Haband Valley, which make Khojavand a key district for ecological management and conservation. Similarly, Aghdara, with a forest coverage of 43.47%, houses some of the region's largest forest areas, such as Oruk and Barambat, positioning it as an important district for sustainable forest management and reforestation initiatives.

In contrast, Shusha, although home to significant forest areas like Maralgachan, contributes only 5.22% of the total forest cover in the region, highlighting a less extensive forest resource base. Districts like Tartar, with 0.43% of the total forest area, and Aghdam, with 0.58%, have limited forest coverage, indicating a clear need for intervention to address deforestation and enhance their forest resource base. Barda and Fuzuli, with minimal or absent forest areas, face the most significant deficits in forest resources and require urgent efforts for afforestation.

Additionally, Khojaly, although rich in forest resources overall, shows internal disparities with some areas like Arkhashan having very small forest areas compared to large expanses like Daghlig (Mountainous), indicating that even within relatively forest-rich districts, disparities exist. These findings underscore the need for targeted and balanced forest management strategies across the Karabakh Economic Region to address these disparities and promote sustainable environmental development throughout all districts.

3.3 Interpretation of Findings

The findings of this study, as illustrated by the spatial analysis of forest distribution in the Karabakh Economic Region, reveal both the extensive forest cover in some districts and the significant gaps in others. The high proportion of forest areas in districts like Aghdara and Khojavand reflects the potential for these areas to contribute significantly to regional ecological stability and biodiversity conservation. These districts, with their substantial forest areas, play a crucial role in supporting both local ecosystems and broader environmental health, providing a strong foundation for sustainable management initiatives. The forests in these districts are critical not only for conservation but also for supporting socio-economic activities such as tourism, agriculture, and carbon sequestration.

The findings are consistent with previous research highlighting the importance of topographical conditions in shaping forest distribution patterns. Alisoy (2022) demonstrated that forest landscapes in Azerbaijan are strongly influenced by elevation and terrain characteristics, while Giri et al. (2005) emphasized the relationship between land-cover dynamics and vegetation distribution. The present study confirms these observations within the Karabakh Economic Region. The results support broader understanding that mountainous environments provide more favorable conditions for forest preservation and expansion than lowland agricultural territories.

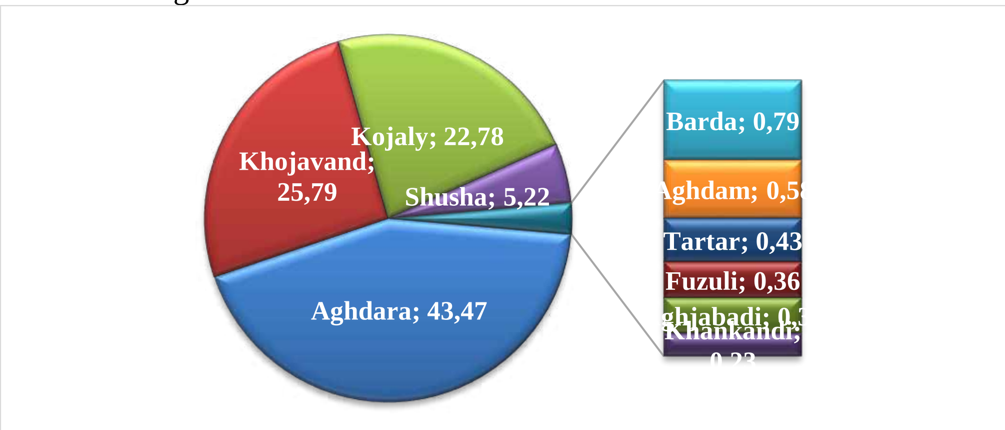
In fact, districts like Tartar, Aghdam, and Barda demonstrate much lower forest coverage, which poses challenges for regional sustainability. The scarcity of forest resources in these areas indicates potential ecological vulnerability, making them more susceptible to environmental degradation, soil erosion, and loss of biodiversity. The minimal forest cover in these districts also limits the ability to harness the ecosystem services that forests provide, such as regulating water cycles, preventing desertification, and offering habitats for wildlife. The disparities between districts highlight the need for targeted afforestation and reforestation efforts in these less forested areas to restore ecological balance and enhance resilience against climate change.

The substantial disparities identified between western mountainous districts and eastern lowland districts are also supported by findings in international literature. Studies by Lia and Xia (2016) and Belgiu and Drağut (2016) demonstrate that land-use patterns and environmental conditions are among the most significant determinants of forest distribution.

The presence of large, relatively unfragmented forest areas in districts like Aghdara and Khojavand underscores the importance of maintaining and expanding these areas through sustainable practices. These districts represent a unique opportunity to preserve and strengthen forest ecosystems, as they contribute significantly to the region's overall forest cover. However, it is equally crucial to address the deficits in forest resources in other districts. The limited forest cover in Tartar and Aghdam, for example, emphasizes the necessity of promoting reforestation and forest protection measures to prevent further environmental degradation and support sustainable development.

Figure 1 compares the distribution of forest areas across the administrative districts of the Karabakh Economic Region.

Figure 1. Distribution of forest areas across the administrative districts of the Karabakh Economic Region



Source: Data obtained from the research findings.

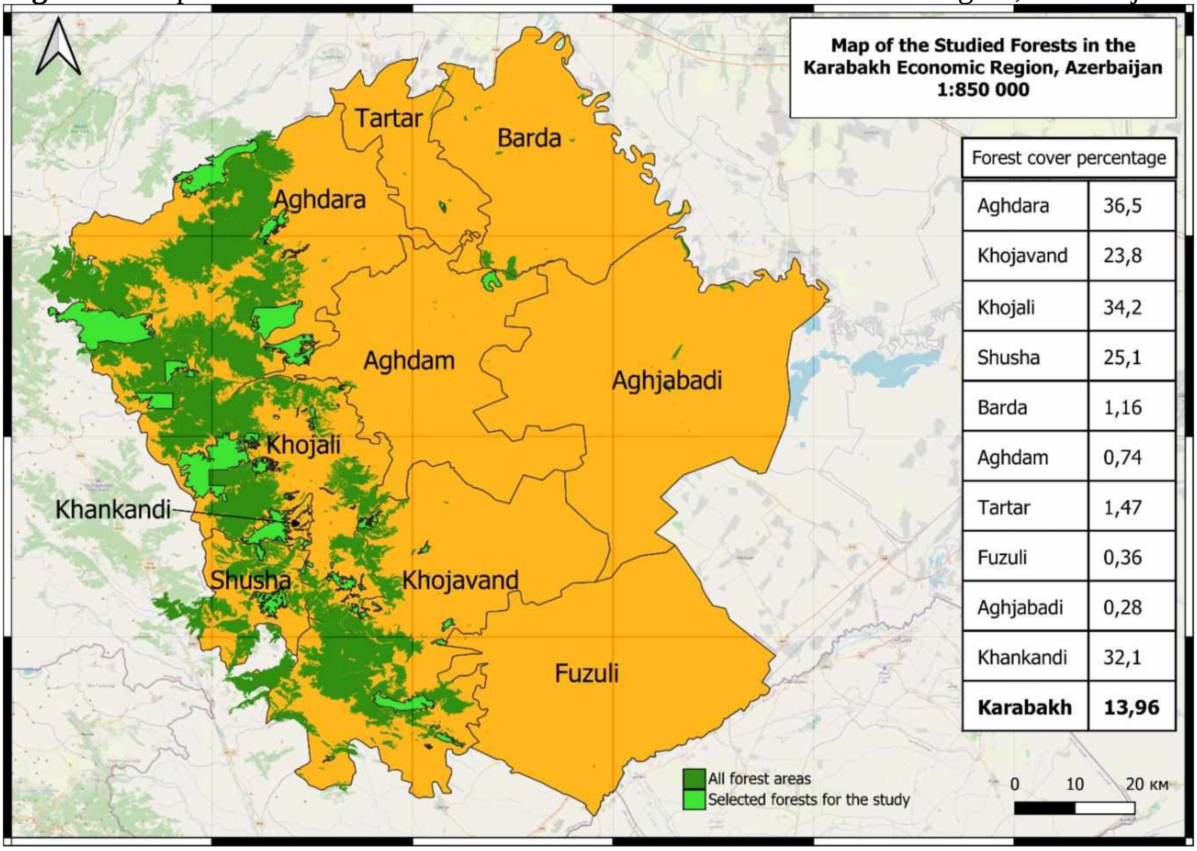
In summary, the findings suggest that while certain districts in the Karabakh Economic Region are well-endowed with forest resources, others face considerable challenges in maintaining adequate forest cover. These disparities provide a clear mandate for targeted policy interventions, including afforestation programs, improved forest management practices, and the promotion of sustainable land-use policies to ensure that all districts in the region benefit from the ecological, economic, and social advantages that forests provide. Addressing these inter-district disparities will be essential for fostering long-term environmental sustainability and promoting a more balanced approach to forest resource management across the region.

The findings also have broader implications for post-conflict recovery and territorial resilience in Karabakh. Nagiyev & Bayramov (2026) argue that sustainable reintegration and long-term regional recovery depend not only on socio-economic investments but also on the restoration of environmental assets and ecosystem functions. The results of the present study support this perspective by demonstrating that forest-rich districts possess stronger ecological foundations for sustainable development, while districts with limited forest resources may face additional challenges in achieving environmental stability and long-term resilience.

Consequently, reducing spatial inequalities in forest provision should be considered an important component of post-conflict regional development policy.

The map in Figure 2 illustrates the distribution of forest cover across the Karabakh Economic Region, highlighting the forest cover percentage for each administrative district.

Figure 2. Map of Forest Cover Distribution in the Karabakh Economic Region, Azerbaijan



Source: Source: Data obtained from the research findings.

The areas marked in green represent the forested regions, while the rest of the district is shown in orange. The greens represent all forest areas, while the light greens indicate the 81 forested areas selected for the study. Aghdara stands out with the highest forest cover at 36.5%, followed by Khojaly with 34.2%, and Shusha with 25.1%. Other districts such as Khojavand and Shusha have a relatively higher percentage compared to regions like Fuzuli and Aghjabadi, which have very low forest cover. The total forest cover for the entire Karabakh Economic Region is 13.96%. This data underlines significant regional disparities, with certain areas exhibiting substantial forest cover while others, particularly in the eastern districts, remain poorly forested. The map visually conveys these differences and highlights the need for targeted reforestation efforts in less forested areas.

4 Discussion

4.1 Discussion of Findings in Relation to Research Questions

The results of the AI-assisted spatial analysis reveal substantial differences in the distribution of forest resources across the Karabakh Economic Region and provide important insights into the environmental and developmental implications of these spatial patterns. The findings not only identify the geographical concentration of forest resources in specific districts but also highlight significant territorial disparities associated with topographical conditions, land-use structures, and post-conflict development processes. By integrating geospatial analysis with contemporary approaches to sustainable forest management, the study contributes to a better understanding of how forest resources can support ecological stability, territorial resilience, and evidence-based regional planning. The following discussion interprets the findings in relation to the research questions and compares them with the existing scientific literature.

The results of the study provide clear answers to the research questions formulated in this research and demonstrate value of AI-assisted geospatial analysis for understanding forest resource distribution in the Karabakh Economic Region.

The spatial analysis revealed a highly uneven distribution of forest resources throughout the region. A total of 81 identified forest areas with a combined area of 34 616 ha were analyzed. The overall forest cover of the Karabakh Economic Region was calculated at 13,96%. Forest resources are strongly concentrated in the mountainous western districts, particularly Aghdara (43,47% of the region’s studied forest resources), Khojavand (25,79%), and Khojaly (22,78%). In contrast, eastern and lowland districts such as Aghjabadi, Aghdam, Barda, Fuzuli, and Tartar possess very limited forest resources. These findings confirm the existence of pronounced spatial concentration of forests within a relatively small number of districts.

The analysis identified substantial disparities in forest provision among districts. Forest-rich districts are predominantly located within mountainous landscapes associated with the Lesser Caucasus system, where environmental conditions favor forest development and preservation. Conversely, districts characterized by lowland terrain and intensive agricultural land use demonstrate considerably lower levels of forest cover. Historical land-use patterns and long-term agricultural utilization have further reduced forest resources in these territories. Therefore, topography and land-use structure emerge as principal factors explaining the observed inequalities in forest distribution across the region.

The identified disparities have important implications for environmental sustainability and regional development. Forest-rich districts provide critical ecosystem services, including biodiversity conservation, carbon sequestration, soil protection, and water regulation. These functions contribute directly to ecological stability and create opportunities for sustainable economic activities such as eco-tourism and nature-based development. In contrast, districts with limited forest resources face greater vulnerability to environmental degradation, land degradation processes, and reduced ecosystem resilience. Consequently, spatial imbalances in forest resources may contribute to unequal environmental and socio-economic development trajectories within the region unless targeted interventions are implemented.

The study demonstrates that AI-assisted geospatial analysis provides an effective framework for identifying, mapping, classifying and evaluating forest resources across large territories. The integration of spatial datasets and GIS-based analytical techniques enabled the precise localization and measurement of forest areas, as well as the identification of territorial disparities. These capabilities support evidence-based decision-making by providing planners and policymakers with reliable information for forest conservation, restoration, and regional development initiatives. The results indicate that AI-assisted spatial analysis can significantly improve the efficiency and accuracy of forest resource assessment in post-conflict territories where field-based data collection remains limited due to the ongoing demining of the territory and the unexploded ordnances (UXOs).

The findings suggest that future forest management policies should prioritize afforestation and reforestation programs in districts with limited resources. At the same time, existing forest-rich territories require strengthened conservation measures to preserve their ecological functions. Forest management strategies should be integrated with broader land-use planning frameworks and climate adaptation policies. The adoption of AI-supported monitoring systems, combined with field verification and community-based forest management approaches, would contribute to a more balanced and sustainable distribution of forest resources across the region.

4.2 Recommendations for Future Research and Policy

Future research and policy initiatives in the Karabakh Economic Region should focus on addressing the identified disparities in forest distribution and ensuring sustainable forest management across all districts. First, comprehensive field studies and data collection should be conducted to complement the existing geospatial analysis. While remote sensing and AI-based tools provide valuable insights, on-the-ground verification is essential for accurately assessing forest health, biodiversity, and specific restoration needs. These field surveys should focus on underrepresented districts, such as Tartar, Aghdam, and Barda, where forest resources are limited, to identify areas with the highest potential for restoration.

Policy efforts should prioritize the creation of a regional forest management strategy that considers the unique characteristics of each district. This strategy should include clear guidelines for afforestation and reforestation, with specific goals for increasing forest cover in areas with low forest resources. Incentives for landowners and local communities to participate in forest conservation and sustainable land use should be considered, alongside the development of community-based forest management programs. These programs would empower local stakeholders to play a more active role in forest protection and restoration while fostering economic opportunities through sustainable forest use, such as non-timber forest products, eco-tourism, and carbon credits.

In addition, policy makers should focus on improving the integration of forest management with broader land-use planning and climate adaptation strategies. This includes addressing the pressures of urbanization and agriculture on forest ecosystems and promoting sustainable practices that balance development with environmental preservation. Strategies should incorporate climate change resilience, ensuring that forest ecosystems in the region can adapt to changing environmental conditions, particularly considering the ongoing challenges posed by climate change.

Future research should explore the potential of emerging technologies, such as drones and AI-powered environmental monitoring systems, to enhance forest monitoring and management. These technologies can provide real-time data on forest health, growth, and threats, enabling quicker and more informed decision-making. Additionally, further research into the socio-economic benefits of forests, including their role in local livelihoods, carbon sequestration, and disaster risk reduction, would help build a stronger case for investing in forest conservation and restoration at the policy level.

The effectiveness of AI-assisted geospatial analysis observed in this study consistently with recent emphasizing the growing role artificial intelligence in environmental monitoring and forest management. Sayginer and Nurlu (2025), Shivaprakash et al. (2022), Wang et al. (2025), and Yadav and Verma (2026) argue that AI-based analytical frameworks improve the efficiency of forest inventory, classification, and monitoring process.

The significance of forest resources extends beyond ecological functions and includes their contribution to the preservation of natural and cultural heritage. Bayramov & Pashayeva (2024) emphasise the importance of integrated approaches to heritage conservation and sustainable territorial development in the liberated regions of Azerbaijan. In this context, the forest ecosystems of Karabakh represent not only environmental assets but also important components of the region’s natural landscape and territorial identity. Therefore, forest conservation strategies should be integrated with broader regional planning and heritage management initiatives.

By addressing these research gaps and implementing targeted policy measures, the Karabakh Economic Region can develop a more balanced and sustainable approach to forest management, contributing to the long-term ecological, social, and economic resilience of the region.

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ANALYSIS OF STUDENT INVOLVEMENT IN QUALITY ASSURANCE PROCESSES IN ITALY

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Abstract: *This paper analyses the role of students in the quality assurance (QA) processes of the Italian university system by examining the Periodic Accreditation Reports (RAP) prepared by the Expert Evaluation Committees under the AVA 3 model. The research adopts a mixed-methods approach with a qualitative focus, based on a documentary analysis of the RAPs published by ANVUR, supported by generative Artificial Intelligence tools and subsequently integrated through quantitative coding of the collected evidence. Four indicators were developed regarding the inclusion, active participation, proactivity, and consideration of student concerns in QA processes. The results highlight statistically significant differences among the various types of universities, with reference to online universities, which exhibit lower levels of involvement compared to public universities. The study highlights the need to strengthen student participation as a structural requirement of QA systems and suggests possible developments of the AVA model from a more student-centered perspective.*

Keywords: *Quality Assurance; student participation; AVA 3; university governance; periodic accreditation.*

1.Introduction

This paper contributes to the ongoing debate on Quality Assurance (QA) in European and Italian higher education, a discussion that began with the Bologna Process and has gradually taken shape within a framework of convergence among university systems toward common standards shared within the European Higher Education Area (EHEA). This process has helped redefine how university systems are governed, placing increasing emphasis on Quality Assurance mechanisms as tools for regulating, monitoring, and continuously improving university education.

In this context, the Italian Quality Assurance system has undergone a significant evolution since the 1990s, beginning with the introduction of the first institutional evaluation tools and culminating in the subsequent establishment of the National Agency for the Evaluation of the University and Research System (ANVUR) in 2011 (Serafino, 2018). This process led to the implementation of the AVA system (Self-Assessment, Periodic Evaluation, and Accreditation), which has further evolved into its AVA 3.0 configuration, in line with European quality guidelines and the need to strengthen internal processes of continuous improvement.

Within this framework of quality assurance policy reform, attention has gradually shifted toward the quality of education and the role of those involved in educational processes, particularly faculty and students.

In fact, ANVUR guidelines and the relevant literature highlight the need to promote student-centered systems, in which students do not assume an exclusively receptive role but actively participate in the processes of identifying, analysing, and improving teaching practices. From this perspective, student involvement is seen as a strategic lever for strengthening the quality of degree programs and for developing processes of co-construction of educational practices.

The AVA 3.0 system confirms this orientation, emphasizing self-assessment processes and the empowerment of various institutional actors—including students—in building quality. In particular, the importance of integrating teaching and research is reaffirmed, as is the need for a comprehensive system of internal procedures for the design, management, monitoring, and improvement of educational activities, supplemented by periodic external peer reviews. Within this framework, the quality of Education is increasingly viewed as the outcome of a systemic and participatory process that actively involves the academic community.

At the same time, the educational literature emphasizes that student involvement in assessment and self-assessment processes represents a significant source of information for identifying critical issues and implementing improvement measures (Pasquali, 2025). Student perceptions are, in fact, essential for understanding how undergraduate and doctoral programs function. In this regard, the involvement of student representatives (Pasquali, 2025) is viewed not only as a tool for gathering data but also as a pedagogically generative mechanism (Campanella, 2025) for professional development and educational innovation.

It is also necessary to consider how the structural and organizational characteristics of universities can significantly impact students' opportunities to participate in quality assurance processes. The size of the institution, the structure of the academic programs, the geographical distribution of campuses, the composition of the student body, and the degree of consolidation of governance structures can, in fact, influence both the dissemination of information regarding QA and the ways in which students are involved in decision-making and evaluation processes. In particular, at large universities or those characterized by significant organizational complexity, the risk of participation that is formal but lacks substance may be greater, whereas smaller institutions may foster forms of direct involvement and closer relationships among students, faculty, and governing bodies. The legal status of the university is therefore a key factor in understanding the actual implementation of quality assurance (QA) policies and the degree of student participation in quality improvement processes.

Although the regulatory framework and institutional guidelines explicitly provide for an active role for students in QA processes, there remains room for further analysis regarding the specific ways in which such participation is implemented in Italian university contexts. In particular, it is not always clearly defined how universities structure the tools, practices, and organizational forms aimed at ensuring effective and systemic student involvement in governance and quality assurance processes.

Based on these premises, this paper aims to analyse the ways in which students are involved in university governance and quality assurance processes, with particular attention to the practices adopted by universities, the tools used to facilitate participation, and the organizational structures through which such involvement translates into decision-making and teaching improvement processes, through a systematic review of the Periodic Accreditation Reports (RAP) published by ANVUR during the AVA 3 evaluation model. The objective is to contribute to an understanding of the actual role of students within QA systems, highlighting the dynamics through which student participation is structured and implemented in university contexts.

2.State of the Art

Beginning in the 1990s, Europe underwent a profound transformation in the field of higher education, known as the "Bologna Process." Formally launched in 1999 with the Bologna Declaration signed by the Ministers of Education of numerous European countries, this process aimed to build a European Higher Education Area (EHEA) based on shared principles of transparency, degree comparability, student and academic staff mobility, mutual recognition of educational pathways, and the promotion of the quality of higher education provision (Serafino, 2018). Achieving these objectives required the gradual convergence of national university systems which, while retaining their institutional and regulatory autonomy, were called upon to adopt common tools and criteria in order to ensure comparable quality standards and foster mutual trust among European higher education institutions.

Within this framework, Quality Assurance (QA) became a central issue in European higher education policies. From the first ministerial meetings following the Bologna Declaration, quality was progressively recognized as a strategic element for ensuring the reliability of university systems and supporting the construction of the EHEA. A particularly significant milestone was reached in 2005 with the adoption of the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG), developed by the European Association for Quality Assurance in Higher Education (ENQA) in cooperation with the main European organizations representing the higher education sector, including the European University Association (EUA), the European Students' Union (ESU), and the European Association of Institutions in Higher Education (EURASHE).

The ESG remain the principal European reference framework for Quality Assurance and define principles, standards, and guidelines aimed at promoting the continuous improvement of higher education institutions. They are based on several fundamental assumptions, including the centrality of student learning and educational experience, the primary responsibility of institutions for the quality of their own processes, the transparency of assessment procedures, and the need to develop evidence-based monitoring and continuous improvement systems. The 2015 revision of the ESG further strengthened these principles, emphasizing the role of students as active partners in the design, evaluation, and improvement of educational provision.

In parallel, ENQA has played a fundamental role in consolidating a European quality culture through the definition of shared methodologies for external evaluation and the promotion of cooperation among national evaluation agencies. The EUA, for its part, has contributed to the development of institutionally oriented quality approaches through research, support, and guidance for European universities in strategic governance and organizational improvement processes. The combined action of these bodies has progressively encouraged a shift from a conception of quality understood primarily as administrative control to a perspective oriented toward institutional development, accountability, and the enhancement of self-assessment practices.

A further regulatory development occurred in 1999 with the establishment of the National Committee for the Evaluation of the University System (CNVSU), which absorbed and expanded the functions previously assigned to the OVSU. The CNVSU contributed to the dissemination of increasingly structured evaluation practices and to the definition of indicators useful for monitoring university performance. Subsequently, in 2004, the Italian Committee for the Evaluation of Research (CIVR) was established with the aim of promoting the periodic evaluation of research activities and fostering greater integration between evaluation processes concerning teaching and those relating to scientific production.

The progressive consolidation of European quality policies and the growing need to coordinate the various evaluation activities led, in 2011, to the establishment of the National Agency for the Evaluation of Universities and Research (ANVUR), which assumed the functions previously carried out by the existing national bodies. The creation of ANVUR represented a crucial step in the consolidation of Quality Assurance in Italy, as it made it possible to develop an integrated evaluation system consistent with European orientations and with the principles defined by the ESG.

Against this backdrop, the introduction in 2013 of the AVA system (Self-assessment, Periodic Evaluation and Accreditation) was conceived as a tool designed to ensure the continuous improvement of the quality of teaching, research, and third mission activities. The AVA system gradually assumed a central role in the governance of Italian universities, promoting a quality culture based on the systematic collection of evidence, the monitoring of performance indicators, and the activation of cyclical processes of planning, verification, and improvement. Subsequent revisions of the model, culminating in the most recent AVA 3 version, further strengthened alignment between the national system and European orientations. In particular, greater emphasis was placed on self-assessment processes, strategic quality management, and the integration of teaching, research, and third mission activities, recognizing the importance of contributions from the various internal and external stakeholders of the university.

In this context of renewal in QA practices, national educational organizations have progressively devoted increasing attention to the quality of education and training (Felisatti et al., 2019). The various guidelines issued by ANVUR indeed underscore that quality cannot be regarded solely as the outcome of administrative procedures or external review processes but must be conceived as a shared responsibility of the entire academic community. From this perspective, the student-centered paradigm assumes particular relevance, as promoted both by the ESG and by European and national strategic documents, which recognize students as privileged interlocutors in the design, monitoring, and improvement of educational provision.

The centrality of the student represents one of the most innovative features of contemporary Quality Assurance policies. Students are no longer considered mere recipients of educational services, but active participants called upon to contribute to the definition of educational policies and to the identification of organizational and teaching-related critical issues. Through participation in collegiate bodies, Joint Teacher-Student Committees, Quality Assurance Presidiums, and student opinion surveys, students can provide essential information for the continuous improvement of degree programmes and university structures.

Although the normative and regulatory framework provides for significant student involvement in QA processes, the literature shows that numerous critical issues remain regarding the effective implementation of these principles within higher education institutions. In particular, it is still not sufficiently clear which strategies universities adopt to promote informed and continuous student participation in Quality Assurance processes, nor to what extent such practices are able to influence organizational decisions and institutional improvement policies (Carci and Nirchi, 2023). These issues therefore make it necessary to further investigate the relationship between the organizational models adopted by Italian universities and the actual opportunities for participation offered to students, considering the principles promoted by the European and national Quality Assurance framework.

3.Theoretical Framework

Quality Assurance (QA) now represents one of the cornerstones of higher education governance policies in Europe. Since the Bologna Process, launched in 1999, national university systems have been progressively required to develop shared models for the evaluation and continuous improvement of quality, aimed at ensuring transparency, comparability of study pathways, and institutional accountability within the European Higher Education Area (EHEA). From this perspective, quality is understood as a dynamic and participatory process of institutional development.

In the Italian context, this evolution has translated into the gradual structuring of bodies and procedures dedicated to the evaluation of the university system, culminating in the establishment of ANVUR and the introduction of the AVA system (Self-assessment, Periodic Evaluation and Accreditation). The most recent AVA 3.0 framework confirms the orientation toward a quality culture based on the integration of teaching, research, and third mission activities, assigning particular importance to self-assessment processes and to the involvement of the various actors within the academic community.

Within this framework, the student-centered paradigm has progressively assumed a central position in European and national Quality Assurance policies. The European Quality Assurance Guidelines and ANVUR documents in fact emphasize the need to recognize students as active participants in the design, monitoring, and improvement of educational provision. This perspective moves beyond the conception of students as mere recipients of educational services, instead recognizing them as internal stakeholders and partners in quality development processes.

International pedagogical literature (Campanella, 2025, pp. 3–5; Perotto, 2025; Monfardini, 2021) highlights how student involvement in evaluation processes constitutes a strategic resource for identifying organizational and pedagogical criticalities and for developing evidence-based improvement interventions. Students' perceptions of their own learning, teaching practices, the organization of study programmes, and support services represent an essential source of information for quality governance. At the same time, numerous studies (Campanella, 2025; Pasquali, 2025) underline how structured forms of participation may foster co-construction of decisions, strengthen students' sense of belonging to the academic community, and contribute to the development of a shared quality culture.

Despite the normative and theoretical recognition of student participation as a key feature of QA systems, the literature shows that questions remain regarding the concrete ways in which such involvement is implemented within higher education institutions.

A further area of interest concerns the relationship between the organizational characteristics of universities and student participation in Quality Assurance processes. At times, an institution's structural configuration significantly affects students' opportunities to engage in decision-making, evaluative, and governance processes. University size, territorial distribution, organizational model, and modes of teaching delivery may in fact influence both access to information concerning QA and the possibilities for active student participation.

In this regard, particular attention should be paid to the comparison between different types of higher education institutions, including online universities, where forms of student representation and participation may take different shapes compared with traditional universities. In addition, in universities with a legal status different from that of state institutions, institutional statutes may not provide for student representation in certain governance and QA bodies; such heterogeneity, not explicitly regulated by Ministerial Decree 1154/2021, risks producing unequal treatment of student representatives across institutions.

Analysing the relationship between organizational arrangements and student involvement therefore makes it possible to examine the conditions that foster or limit the effective implementation of the participation principles promoted by Quality Assurance systems.

4.Research Desing

This study adopts a mixed-methods research design with a qualitative predominance, in which document analysis constitutes the primary phase of investigation and is subsequently complemented by a quantitative coding procedure applied to the evidence emerging from the qualitative analysis.

The study examines all Evaluation Reports (Rapporti di Accreditamento Periodico, RAP) produced by the Evaluation Expert Committees (Commissioni di Esperti della Valutazione, CEV) within the framework of the AVA 3 model and made publicly available by ANVUR. These documents were selected as the primary source of analysis because of their institutional relevance and their evaluative value in relation to the Quality Assurance processes implemented by Italian universities. RAPs are the outcome of an external evaluation process that assesses quality management structures, governance practices, monitoring systems, and the modalities through which internal and external stakeholders, including students, are involved in institutional processes.

The aim of the study is to explore how student participation is described, valued, and integrated within Quality Assurance and university governance processes, as well as to understand the extent to which different institutional configurations may influence opportunities for student involvement.

Case selection was conducted across the various institutional categories without assuming any a priori hypotheses regarding the individual universities considered. Consequently, the focus of the research is not the evaluation of the performance of specific institutions, but rather the identification of recurring patterns and potential differences associated with the legal status and institutional nature of universities. The analysis was limited to those sections of the RAPs containing explicit or implicit references to student participation in Quality Assurance processes, both at the institutional level and, more specifically, within Departments and Degree Programmes. Attention was paid to evidence concerning student representation in governance and QA bodies, student involvement in self-assessment and review processes, consultation activities, forms of participation in decision-making processes related to the improvement of teaching quality and student services, and participation in training and orientation activities concerning Quality Assurance.

Document analysis was supported by the generative artificial intelligence tool NotebookLM (Palladino, 2025), which was employed to assist in the identification, extraction, and organization of relevant information contained in the RAPs. The tool was not used as a substitute for the researcher's interpretation; rather, it served as support for the preliminary coding phase and the systematization of the collected data. The validation of the extracted information and the final interpretation of the findings were carried out by the researcher through a critical and comparative reading of the documents. Subsequently, four indicators were developed by the researcher to assess the level of student involvement in Quality Assurance (QA) processes. Each indicator was measured using a five-point Likert scale and operationalized as reported in *Table 1:*

Table 1: Explanation of Indicators to evaluate the level of student's involvement in Quality Assurance (QA) processes

INDICATORS	OPERATIONALIZATION	LIKERT-SCALE SCORING CRITERIA (1–5)
i1 **Inclusion of the students in processes of AQ**	Measures the formal and structural presence of student representatives within the university's Quality Assurance bodies and mechanisms.	**1** = no participation; **2** = predominantly formal participation; **3** = active formal participation; **4** = systematic participation; **5** = systematic and structured participation across multiple QA levels.
i2 **Active Student Participation in QA Processes**	Assesses the extent of students' actual involvement in quality monitoring, evaluation, and review activities.	**1** = no participation; **2** = predominantly formal participation; **3** = active formal participation; **4** = systematic participation; **5** = systematic and structured participation across multiple QA levels.
i3 **Student Proactivity in QA Processes**	Measures students' capacity to formulate proposals, observations, and proactive contributions to the improvement of teaching activities and student services.	**1** = no participation; **2** = predominantly formal participation; **3** = active formal participation; **4** = systematic participation; **5** = systematic and structured participation across multiple QA levels.
i4 **Institutional Responsiveness to Student Proposals**	Assesses the extent to which student proposals are acknowledged, considered, and incorporated into institutional decision-making and quality enhancement processes.	**1** = no participation; **2** = predominantly formal participation; **3** = active formal participation; **4** = systematic participation; **5** = systematic and structured participation across multiple QA levels.

Upon completion of the document analysis phase, the qualitative data extracted from the Periodic Accreditation Reports underwent a systematic coding process aimed at transforming them into continuous categorical variables. The interpretation of the evidence, its assignment to the identified ordinal categories, and its conversion into quantitative data were carried out directly by the researcher through the assignment of scores on a five-point Likert scale, according to the criteria defined above. Following the quantitative coding of the qualitative evidence emerging from the document analysis, the data were subjected to a non-parametric analysis of variance using the Kruskal-Wallis test, conducted with the support of the online software JsStat, in order to verify the possible existence of statistically significant differences between the groups defined by the legal status of the University.

Subsequently, to further investigate the location of the differences identified in the overall analysis, a post-hoc analysis was conducted using Dunn’s test with Bonferroni correction, in order to account for the error arising from multiple comparisons and to identify in which pairs of groups the differences were significant. This procedure, carried out using the open-source software Jamovi, allowed us to move from an overall assessment of heterogeneity among the groups to a detailed examination of the specific relationships between the different types of universities considered.

5.The Evaluation Report (Rapporti di Valutazione – RAP) by ANVUR

In line with the research design, the selection of the document sample was carried out by considering all RAPs published by ANVUR under the AVA 3 model, which were available and accessible on the ANVUR public website as of June 2026.

From this perspective, the unit of analysis is not the individual institutional case, but rather the different organizational configurations of the university system, treated as analytical categories for the purpose of comparison. It is important to note, however, the presence of potential sources of bias related to the nature of the analyzed material: firstly, the researcher’s participation in certain evaluation processes conducted by the Evaluation Expert Committees (CEV), which could introduce a potential information asymmetry in the production of results, although this aspect is not the specific focus of this paper, nor is there any comparative interest aimed at evaluating individual institutions.

Second, we acknowledge the potential influence stemming from the researcher’s participation in ANVUR evaluation procedures as a Student Expert—a factor which, while ensuring direct knowledge of the processes under analysis, requires an explicit reflective stance in order to minimize potential biases in interpretation.

Considering these premises, the analysis focuses exclusively on the evidence contained in the RAPs, with the aim of identifying recurring patterns and differences attributable to the various institutional types, without assigning any evaluative value to the individual universities under consideration.

6. Analysis of RAPs Using Generative Artificial Intelligence

The data collection was based on the RAP reports published by ANVUR as part of the AVA 3 system, with reference to the various types of universities considered according to their legal status rather than their specific institutional names. This methodological choice responds to the need to shift the focus from individual university cases to the structural characteristics of the institutions, with the aim of investigating any differences in the ways in which students are represented, involved, and valued among public, private, and online universities. From this perspective, the unit of analysis was defined by the type of university, taken as a comparative variable useful for identifying any discontinuities in the models for implementing quality assurance processes.

The data collection phase involved an initial extraction of relevant qualitative information from the selected documents, supported by the use of the generative artificial intelligence tool Notebook LM (Palladino, 2025), which was used exclusively to assist in the preliminary review, organization, and systematization of the textual material. The tool’s contribution was limited to a supportive role and did not replace the researcher’s interpretation; the researcher critically evaluated the emerging evidence, mapped it to the analytical categories defined during the design phase, and transformed it into observable variables.

Subsequently, the qualitative data were subjected to a quantitative coding process by the researcher, who assigned scores on a five-point Likert scale (1 to 5) based on interpretive criteria defined in advance. This process made it possible to translate the documentary content into comparable data while maintaining the connection to the semantic complexity of the original information.

6.1 The Importance of Teaching and Learning Centers in the Training of Faculty and Students

A recurring theme that emerged from the analysis of the RAPs concerns the role played by Teaching and Learning Centers (TLCs) in the processes of enhancing teaching quality and in promoting an institutional culture focused on continuous improvement. Although TLCs are not a standalone requirement within the AVA 3 system, their presence is frequently cited by the Evaluation Expert Committees (CEV) as a defining element of university policies related to requirement A for the institution, with reference to teaching innovation strategies, faculty training, and student involvement in processes to improve the educational offering.

An analysis of the RAPs reveals that several universities, both public and private, show positive results attributable to the activities of the TLCs. These centres are cited as strengths in some of the RAPs under review. Despite differing organizational models, they highlight how these centres contribute to the dissemination of innovative teaching and learning practices, the strengthening of faculty members' pedagogical skills, and the promotion of initiatives aimed at the student community. Particularly significant is the fact that, in the CEV's assessments, TLCs are frequently associated with universities' ability to develop a systemic vision of quality, moving beyond an exclusively procedural conception of Quality Assurance.

From this perspective, TLCs appear to function as organizational mechanisms (Felisatti, 2014; Perla, 2023) capable of fostering integration among faculty development, pedagogical innovation, and student engagement, thereby contributing to the creation of learning environments consistent with the principles of student-centered education promoted by the ESG and incorporated into the AVA system.

The emergence of this evidence within universities characterized by different legal and organizational structures suggests that the presence of structures dedicated to faculty development and the support of teaching and learning processes may represent an enabling factor for the dissemination of participatory practices and for the consolidation of a culture of quality that is more widely shared among faculty, students, and governing bodies.

6.2 Future Directions for AVA 4: Toward a Model of Structured Student Participation

The findings of the document analysis suggest the need to further develop quality assurance systems toward models that are more consistent with the principles of student-centered education promoted by the ESG and incorporated into the AVA 3 system. Although the current regulatory framework formally recognizes the role of students in QA processes, the results show that the degree of actual involvement continues to depend significantly on the organizational choices of individual universities and on the presence of structures and mechanisms capable of supporting participation. In this context, a possible evolution of the AVA model should include the introduction of requirements more focused on the quality of student participation, moving beyond an exclusively representative approach to promote forms of engagement based on the development of specific competencies regarding the quality of education and university governance. A first area for development concerns the role of Teaching and Learning Centers (TLCs). The analysis of the RAPs highlights how universities where these structures are more firmly established frequently exhibit innovative practices to support teaching and promote a culture of quality. From an evolutionary perspective, TLCs could be recognized as ideal settings for joint training between faculty and students, through workshops, communities of practice, and collaborative learning pathways dedicated to quality assurance processes. This approach would help strengthen dialogue among academic stakeholders and foster a shared vision of quality as a collective responsibility. A second area of innovation concerns the recognition of the skills developed by students involved in QA bodies.

One could consider introducing a transparency sheet for the skills of the student quality expert, aimed at documenting activities carried out, training courses attended, and learning outcomes acquired during their term. This mechanism would make visible skills that are often implicit today, such as data analysis, critical reading of institutional documents, evaluation of educational processes, organizational problem-solving, and participation in decision-making processes.

In line with the principles of recognizing formal, non-formal, and informal learning, the system could also include specific certified training programs accompanied by a final assessment of competencies, with the possibility of awarding university credits (CFU) as part of the curriculum. Such a solution would help strengthen students' informed participation, fostering the development of professionals with advanced skills in university quality and governance. The integration of training, participation, and skills recognition could be a defining feature of the future evolution of the AVA system, facilitating the transition from primarily consultative participation to competent, responsible participation that is fully integrated into continuous quality improvement processes.

7.Interpretation of the results

The results show that the legal status of the university has a varying impact on the dimensions of student participation analysed. The differences are statistically significant for indicators related to the structural presence of students in quality assurance processes, their active involvement, and the consideration of their proposals, while the dimension of initiative shows a trend that is not statistically significant but is nonetheless interesting from an interpretive standpoint. This paints a picture in which student participation still appears to be heavily dependent on the institutional structures of universities, confirming the need for further consolidation of practices and mechanisms capable of ensuring participation that is not merely formal, but effective and substantive.

7.1 Legal Status of the University x i1

The non-parametric analysis of variance revealed a statistically significant difference among the different types of universities with respect to indicator i1, which measures the level of student inclusion in Quality Assurance processes ($H = 11.12$; $p = 0.004$). To identify the groups underlying this difference, a post hoc analysis was performed using Dunn's test with Bonferroni correction (Table 2). The results indicate no statistically significant differences between state and non-state universities ($p = 1.000$), whereas statistically significant differences emerge in both the comparison between state and telematic universities ($p = 0.004$) and between non-state and telematic universities ($p = 0.038$). These findings suggest that the observed differences in student inclusion within QA structures and bodies are primarily driven by telematic universities, which exhibit lower levels compared to the other two institutional categories.

This evidence highlights that the formalisation of student participation is not evenly distributed across the Italian higher education system, revealing a clear distinction between traditional institutional models and telematic universities. This finding is particularly relevant in light of the literature, which identifies student representation as a strategic mechanism for quality enhancement and for fostering the development of academic citizenship competences.

Table 2. Dunn's test with correction of Bonferroni

		z	$p_{(unadj)}$	$p_{(Bonferroni)}$
GOVERNMENTAL	NON-GOVERNMENTAL	0.0343	.973	1.000
GOVERNMENTAL	ONLINE	3.2377	.001	.004
NON-GOVERNMENTAL	ONLINE	2.4977	.013	.038

7.2 Legal Status of the University x i2

Regarding indicator i2, which refers to students' effective involvement in quality monitoring, evaluation, and review activities, the Kruskal–Wallis test revealed a statistically significant difference among the university types considered ($H = 10.21$; $p = 0.006$).

However, the post hoc analysis conducted using Dunn's test with Bonferroni correction (Table 3) indicates that this difference is attributable exclusively to the comparison between state and telematic universities (p = 0.005). No statistically significant differences emerge between state and non-state universities (p = 0.558), nor between non-state and telematic universities (p = 0.548).

These results suggest that students' active participation in QA processes is particularly well established in state universities compared with telematic universities, while non-state universities occupy an intermediate position that does not differ significantly from either group. This evidence confirms that the mere formal presence of students within QA bodies does not necessarily correspond to their effective involvement in quality monitoring and enhancement processes.

Table 3. Dunn's test with correction of Bonferroni

		z	$p_{(unadj)}$	$p_{(Bonferroni)}$
GOVERNMENTAL	NON-GOVERNMENTAL	1.32	.186	.558
GOVERNMENTAL	ONLINE	3.15	.002	.005
NON-GOVERNMENTAL	ONLINE	1.33	.183	.548

7.3 Legal Status of the University x i3

In contrast to what was observed for the previous indicators, indicator i3, which refers to students' ability to formulate proposals, observations, and proactive contributions to the improvement of teaching and service provision, does not show statistically significant differences across the university types considered. The Kruskal–Wallis test yields an H value of 5.41 with a corresponding significance level of p = 0.067.

The post hoc analysis confirms this result (Table 4), showing the absence of statistically significant differences in all pairwise comparisons: state and non-state universities (p = 1.000), state and telematic universities (p = 0.065), and non-state and telematic universities (p = 0.964). Although the comparison between state and telematic universities approaches the conventional threshold for statistical significance, it does not provide sufficient evidence to support the existence of statistically meaningful differences.

Overall, the results suggest that students' capacity to develop proposals and contribute proactively to improvement processes represents a relatively transversal dimension across the different institutional configurations. Consequently, the propensity for proactive participation appears to be less influenced by the legal status of the university than other dimensions of student participation examined in this study.

Table 4. Dunn's test with correction of Bonferroni

		z	$p_{(unadj)}$	$p_{(Bonferroni)}$
GOVERNMENTAL	NON-GOVERNMENTAL	0.941	.347	1.000
GOVERNMENTAL	ONLINE	2.295	.022	.065
NON-GOVERNMENTAL	ONLINE	0.992	.321	.964

7.4 Legal Status of the University x i4

Regarding indicator i4, designed to assess the extent to which student proposals are acknowledged and valorised within institutional decision-making and quality enhancement processes, the analysis reveals a statistically significant difference across university types (H = 8.15; p = 0.017). The post hoc analysis using Dunn's test with Bonferroni correction (Figure 4) shows that this difference is attributable exclusively to the comparison between state and telematic universities (p = 0.014). No statistically significant differences emerge between state and non-state universities (p = 0.846), nor between non-state and telematic universities (p = 0.586).

These results indicate that universities' capacity to translate student input into concrete improvement actions varies according to their institutional configuration. State universities exhibit higher levels of responsiveness to student proposals compared with telematic universities, suggesting a stronger integration of student participation within decision-making processes and Quality Assurance mechanisms.

Table 5. Dunn's test with correction of Bonferroni

		z	$p_{(unadj)}$	$p_{(Bonferroni)}$
GOVERNMENTAL	NON-GOVERNMENTAL	1.08	.282	.846
GOVERNMENTAL	ONLINE	2.83	.005	.014
NON-GOVERNMENTAL	ONLINE	1.30	.195	.586

8.Conclusion and future research directions

This study aimed to analyse the modalities through which the student body is involved in Quality Assurance processes within the Italian higher education system, using as units of analysis the Evaluation Reports (RAP) produced by the Evaluation Expert Committees (Commissioni di Esperti della Valutazione, CEV) within the AVA 3 framework. Through a mixed-methods approach, based on the combination of qualitative document analysis and the subsequent transformation of data into ordinal categories subjected to non-parametric statistical analysis, it was possible to investigate the relationship between the legal status of universities and the characteristics of student participation in QA processes.

The findings show that student participation is not uniformly distributed across the national university system. In particular, the analyses reveal statistically significant differences in indicators related to the structural inclusion of students in QA processes (i1), their active participation in monitoring and review activities (i2), and the ability of universities to incorporate and value student proposals (i4). Conversely, no statistically significant differences emerge with respect to student proactivity (i3), suggesting that the ability to formulate observations and improvement-oriented contributions is a widespread feature across different types of higher education institutions.

Particularly noteworthy are the post-hoc results, which identify online universities as the main source of differentiation compared with state universities and, to a lesser extent, non-state universities. The statistically significant differences mainly concern comparisons involving telematic universities, whereas state and non-state universities exhibit broadly comparable profiles across most indicators considered. This evidence suggests that the organisational nature of the institution may have a tangible impact on students' opportunities for participation and on the ways in which their presence is integrated into quality governance processes.

The results also allow for a broader reflection on the Italian Quality Assurance model. Although the current regulatory framework and the AVA system formally assign a central role to student participation (Campanella, 2025, pp. 3–5), the evidence collected shows that the concrete implementation of this principle remains strongly dependent on the organisational choices of individual universities. In other words, the student-centred paradigm promoted by European and national policies appears to be implemented in differentiated ways, resulting in uneven levels of student inclusion and engagement.

In light of these findings, it appears appropriate to initiate a reflection on the evolution of future accreditation models, starting from the AVA 4 framework. In particular, there is a need to strengthen the alignment of the Italian system with the principles defined by the European Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) and with the recommendations promoted by ENQA, which recognise students as active partners in governance, evaluation, and continuous quality improvement processes. From this perspective, student participation should be regarded as a structural requirement of the QA system, regardless of the legal status of the institution, moving beyond approaches that delegate its implementation solely to local organisational choices.

The findings also support a potential evolution of the AVA model oriented not only towards assessing how universities involve students, but also towards directly evaluating the contribution of student representation within Quality Assurance processes. The introduction of dedicated, independent hearing sessions at both central and peripheral levels, together with the inclusion of specific indicators related to the quality of student participation, could contribute to strengthening the role of students as autonomous institutional stakeholders within accreditation processes.

In this regard, the proposals advanced in this study also concern the strengthening of Teaching and Learning Centres as spaces for joint training of academic staff and students with expertise in QA, as well as the introduction of mechanisms for the formal recognition of competences acquired through student representation, such as competence transparency records and forms of curricular recognition. Such interventions could contribute to consolidating a genuinely participatory quality culture, in which student involvement is not merely a procedural requirement but an active and generative component of institutional improvement processes.

Despite the limitations related to sample size and the exploratory nature of the study, the contribution provides useful evidence for understanding the dynamics characterising student involvement in Italian QA systems and opens new research avenues aimed at further investigating the relationship between university organisational models, student participation, and the quality of academic governance processes.

A further point of reflection concerns the regulatory framework governing student participation within the Italian higher education system. The findings indicate that the observed differences primarily concern online universities and, more generally, institutions characterised by organisational models that differ from traditional universities. This evidence suggests the need to promote greater harmonisation of regulations governing student representation, to ensure homogeneous minimum levels of participation regardless of institutional legal status. From this perspective, student representation should be recognised as a structural and essential component of Quality Assurance systems, with comparable rights, functions, participation spaces, and training pathways across state, non-state, online, and special-status universities. Such an approach would enhance the coherence of the national system with the principles promoted by the ESG and ENQA, contributing to the development of a more uniform and genuinely student-centred governance model.

With regard to future research developments, it would be advisable to extend the analysis to a larger set of Periodic Accreditation Reports and to adopt double-blind independent coding procedures. In particular, the transformation of qualitative evidence into ordinal categories could be assigned to multiple independent coders, enabling the subsequent calculation of inter-rater agreement indices and increasing the reliability of the interpretative process. Such a design would further reduce subjectivity in the scoring phase and strengthen the methodological robustness of the proposed analytical model. In parallel, future studies could complement document analysis with interviews or focus groups involving student representatives, Quality Assurance Presidiums, and governance bodies, to further explore the dynamics that shape student participation in Quality Assurance processes.

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SOCIAL CAPITAL AND MIGRATION PERCEPTIONS AMONG RURAL YOUTH IN ALBANIA

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Abstract: *The relationship between social capital and migration perceptions among rural youth in Albania, a country strongly affected by emigration since the 1990s, is investigated in this study. A mixed-methods design was employed, combining a purposive survey of 197 respondents with 15 semi-structured interviews to assess whether community cooperation, neighbourly assistance, and psychological well-being influence perceptions of migration. Due to survey design limitations, the perceived impact of emigration on local economic development was used as a proxy for migration intentions. Descriptive results indicate that moderate levels of migration perceptions (M = 2.57, SD = 1.17) and social capital indicators (community cooperation M = 2.67; neighbourly assistance M = 2.79; psychological well-being M = 3.19) were observed. Quantitative analyses, including OLS regression with robust standard errors and ordinal logistic checks, revealed no statistically significant effects of social capital on migration perceptions. Nevertheless, qualitative findings highlighted a paradox: informational and emotional costs of migration were reduced by local networks, while community cohesion was simultaneously reinforced. These findings suggest that structural constraints, such as unemployment, institutional weakness, and rural underdevelopment, may overshadow the role of social capital in shaping migration attitudes. Empirical evidence from Albania is provided, and policy implications, including diaspora engagement, rural youth support, and the potential use of social networks as tools for both migration and local development, are discussed.*

Keywords: *Social capital; migration perceptions; rural development; Albania; youth mobility; remittances.*

1. Introduction

Migration has long been one of Albania's defining socio-economic realities. Since the collapse of communism in the early 1990s, nearly one-third of Albanians have emigrated, making the country one of the most migration-dependent in Europe (King, 2005; Vullnetari, 2012). Remittances have consistently played a stabilizing role, contributing between 9–15% of GDP in recent years (World Bank, n.d.-b; Bank of Albania, 2018). In rural areas, where employment opportunities remain limited and agriculture fragmented, emigration is often the primary household strategy for income generation (Labrianidis & Kazazi, 2006; Cela, 2021).

Within this context, the role of social capital—defined as the trust, norms, and networks that facilitate collective action (Bourdieu, 1986; Coleman, 1988; Putnam, 2000)—deserves particular attention. Social networks are often assumed to be a critical driver of migration by reducing risks and providing information (Granovetter, 1985; Haug, 2008).

Recent studies confirm that migration decisions are shaped by the strength of ties within transnational communities (Blumenstock et al., 2025; Vollmer, 2023). Yet, the dynamics are complex: while networks may encourage migration, they can also anchor individuals by providing local support (Portes, 1998; Levitt, 1998).

This paradox is particularly visible in Albania, where networks are simultaneously a source of migration facilitation and of resilience within rural communities (Muco, 2021; Kokkali, 2024). As Carling and Schewel (2018) argue in their aspiration–ability framework, migration outcomes depend on both desires and the resources to realize them. In the Albanian case, social capital may increase aspiration by showing opportunities abroad, while also influencing ability through shared resources or, conversely, reinforcing local attachments.

Against this backdrop, our paper investigates whether higher levels of local social capital—measured through community cooperation, neighbourly assistance, and psychological well-being—are associated with more positive perceptions of migration's impact. Surprisingly, the statistical evidence shows no significant effects, even though qualitative data reveal subtle mechanisms. This contrast contributes to a growing body of work on the limits of social capital in contexts marked by structural constraints, institutional weakness, and mass emigration (de Haas, 2010; King & Gëdeshi, 2023; World Bank, 2025).

2. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Social capital and its role in migration

The concept of social capital has been widely debated across sociology, political science, and economics. Bourdieu (1986) conceptualizes social capital as the sum of resources linked to durable networks of institutionalized relationships. Coleman (1988) stresses its role in the creation of human capital, while Putnam (2000) distinguishes between bonding and bridging forms of social capital, emphasizing their implications for civic engagement. Portes (1998) adds a critical perspective, noting both positive and negative externalities of social ties. In the Albanian context, several studies demonstrate its value across different sectors. In this vein, Kokthi, Guri, and Muco (2021) apply a social capital lens to assess the applicability of geographical indications, indicating that the success of such collective quality schemes depends on trust, networks, and local norms of reciprocity. Similarly, Kaçani et al. (2024) show that social tipping toward climate action is contingent upon the availability of social capital, which reduces the gap between awareness and action where institutional support is limited.

In migration studies, social capital is closely tied to the role of networks. Granovetter's (1985) concept of embeddedness underlines how economic actions, including migration, are structured by social relations. Empirical research confirms that networks reduce informational and financial costs of migration, making movement more feasible (Haug, 2008). More recently, Blumenstock, Chi, and Tan (2025) provide rigorous evidence that networks significantly increase the probability of migration by lowering barriers, while Vollmer (2023) shows how returnees rely on networks for social (im)mobility in Albania.

Yet, social capital does not always function as a unidirectional driver of migration. Levitt (1998) introduced the idea of social remittances, i.e., the transfer of norms, practices, and identities between migrants and their communities of origin, later elaborated with Lamba-Nieves (2011). These flows suggest that networks may both encourage outmigration and strengthen local development. Lacroix (2016) similarly highlights the ambivalent role of social remittances in the Western Balkans.

2.2 Migration-development nexus

Debates on migration and development have evolved over decades. Faist (2000, 2008) conceptualizes migrants as transnational development agents, while de Haas (2010) cautions against overly deterministic assumptions, proposing that migration's impact depends on broader structural contexts. Castles (2010) calls for a social transformation perspective, situating migration within political, economic, and institutional change. Vertovec (2004) links transnationalism to modes of transformation in origin societies, while Carling and Schewel's (2018) aspiration–ability model reframes migration decisions as the outcome of desires to migrate and the capacity to do so.

In the Western Balkans, migration has been both a safety valve and a development constraint. Petreski et al. (2017) demonstrate the size and effects of emigration and remittances across the region, while the OECD (2022) maps migration challenges and opportunities for the Western Balkans. The World Bank (2025) emphasizes migration's dual potential to support growth while also generating risks of dependency and demographic decline.

2.3 Albania as a migration laboratory

Albania has often been described as a "laboratory" for migration studies (King, 2005; Vullnetari, 2012). Emigration since the 1990s has reshaped every dimension of society, from demography to politics. King and Gëdeshi (2023) highlight new trends in Albanian and regional migration, while Vullnetari and King (2011) detail the gendered dynamics of remittances and social change. Remittances remain central, contributing a significant share of GDP (World Bank, n.d.-b; Bank of Albania, 2018), with Cela (2021) showing their macroeconomic relevance.

At the micro level, research illustrates both opportunities and vulnerabilities. Labrianidis and Kazazi (2006) demonstrate how remittances can spur regional development but also deepen inequalities. Gëdeshi, King, and Ceka (2024) document the emigration of medical doctors, warning of brain drain, while Kokkali (2024) shows how rural youth migration interacts with local development trajectories. Vollmer (2023) and Xhaho and Fetahu (2022) provide evidence of return migration and reintegration, highlighting how networks shape re-entry into the labor market.

2.4 Policy frameworks and diaspora engagement

Policymakers have increasingly sought to harness migration for development. The Albanian National Diaspora Strategy 2021–2025 (AKD, 2021) positions diaspora as a driver of innovation, investment, and rural development. Similar approaches exist in the region: Kosovo's DEED program (Multi-Partner Trust Fund/UNDP, n.d.), North Macedonia's GCM Review (Ministry of Interior, 2022), and Bosnia and Herzegovina's migration profile (Ministry of Security, 2022). International organizations, including IOM (2023) and UNDP (2021), stress inclusive governance and "leave no one behind" principles.

Comparative evidence from Kosovo and other Balkan states (Dushi & Berila, 2025; Central Bank of Kosovo, 2025; Trading Economics, n.d.) shows how remittances constitute vital lifelines, with flows reaching 10–15% of GDP. The World Bank (n.d.-a; n.d.-b) datasets illustrate cross-country differences, underscoring Albania's continued dependence.

2.5 Conceptual model and hypotheses

Based on the literature, we treat social capital as a key explanatory factor for migration perceptions. We operationalize social capital through three dimensions: (a) community cooperation (bonding ties), (b) neighbourly assistance (informal support), and (c) psychological well-being (subjective resilience; Saar & Nase, 2021). We expect higher levels on these dimensions to be associated with more positive evaluations of emigration's local impact. Accordingly, we test:

H1 (Community cooperation): Higher perceived community cooperation is associated with more positive perceptions of emigration's impact.

H2 (Neighbourly assistance): Greater frequency of neighbourly assistance is associated with more positive perceptions of emigration's impact.

H3 (Psychological well-being): Higher self-reported psychological well-being is associated with more positive perceptions of emigration's impact.

H4 (Moderation by demographics): The relationships in H1–H3 are moderated by demographic factors (age, gender, education); specifically, we expect stronger associations among younger respondents and those with higher education.

3. METHODOLOGY

3.1 Research design

This study employs a mixed-methods design, combining quantitative survey data with qualitative semi-structured interviews. The rationale is twofold: (1) surveys enable the measurement of relationships between social capital, migration intentions, and community well-being of rural youth in Albania (2) interviews capture nuanced insights into how individuals interpret these dynamics in everyday life. Mixed-methods approaches are particularly suited to contexts such as migration, where statistical indicators often fail to capture the complexity of lived experiences (Faist, 2008; Castles, 2010).

3.2. Sampling and Data Collection

Participants (N = 197) were recruited using a purposive sampling technique to attract rural youth who had direct experience with migration. The eligibility requirements were: aged 18-35 years; currently residing in selected rural municipalities that were reported by the media to have migration histories; and have at least one of the following: a family member abroad, a personal migration history, or were actively involved in local community organizations.

The sample was predominantly young (80.71% aged 18 - 25) and from rural municipalities, with a slight male bias (52.28% male; 47.72% female). The majority of respondents indicated an education of secondary (41.12%) or bachelor's degree (36.55%). In terms of income, they mainly disclosed lower income ranges: 45.18% indicated monthly salaries of less than 40,000 ALL (400 euro) and 31.47% in the range of 40,001 to 80,000 ALL (800 euro). The survey was conducted in the period from January until March 2025.

To complement the survey, 15 semi-structured interviews were conducted with local residents, including both migrants' family members and community leaders. This number aligns with methodological guidance suggesting that between 12–20 interviews are often sufficient to reach thematic saturation in qualitative research (Guest, Bunce, & Johnson, 2006).

3.3 Measures and variables

The study operationalizes key concepts as follows:

Dependent variable: *Perceived impact of emigration on local economic development*, measured on a 5-point Likert scale (1 = very negative, 5 = very positive). This serves as a proxy for migration perceptions. While it does not directly measure migration intentions, it provides an indirect indicator of how respondents evaluate migration as a development factor in their communities.

Independent variables (social capital dimensions):

- Community cooperation: perceptions of local collective action and trust in community projects.
- Neighbourly assistance: frequency of mutual help between neighbours, reflecting informal social support.
- Psychological well-being: self-reported life satisfaction and optimism, conceptualized as a dimension of social resilience (Saar & Nase, 2021).

Control variables: demographic factors (age, gender, education) were included to account for variation in migration perceptions.

All items were coded on Likert-type scales and aggregated where applicable. Descriptive statistics, correlations, and regression models were used to analyze the data.

3.4 Analytical strategy

The analysis proceeded in three stages. First, descriptive statistics provided an overview of central tendencies and distributions across all variables. Second, Spearman correlations tested bivariate relationships between social capital indicators and migration perceptions. Third, multivariate analysis was conducted using Ordinary Least Squares (OLS) regression with heteroskedasticity-consistent (robust) standard errors (DV treated as continuous). OLS estimates are reported with coefficients, robust standard errors, p-values and 95% confidence intervals; the primary model specification is:

$$DVi=\beta0+\beta1CommunityCoopi+\beta2NeighbourHelpi+\beta3WellBeingi+\sum\gamma Controlsi+\varepsilon i$$

To respect the ordinal nature of the dependent variable, ordered logistic regression (ordered logit) was run as a robustness check and results are presented alongside the OLS findings. Moderation hypotheses (H4) were tested by including interaction terms between each social capital measure and demographic moderators (age group, gender, education); predictors used in interactions were mean-centered and significant interactions are interpreted via simple slopes / marginal effects. Diagnostics included Variance Inflation Factors (VIF) for multicollinearity, the Breusch–Pagan test for heteroskedasticity, and Cook's D for influential observations. As additional robustness checks we report bootstrap standard errors (1,000 replications) for key estimates and, where item missingness exceeded 5% or appeared non-random, multiple imputation (m = 20 chained imputations) was applied and pooled following Rubin's rules.

Qualitative interview transcripts were analysed using thematic coding (iterative codebook) focusing on perceptions of migration, the role of networks, and community cooperation; qualitative evidence is used to triangulate and interpret the quantitative results (Saar & Nase, 2021; Vollmer, 2023).

3.5. Ethical Considerations

All participation in survey and interviews was voluntary (participants/respondents were informed about the research study), and informed consent was obtained from all participants prior to data collection. The participants were informed of the purpose of the study, the nature of their participation, and their right to disengage from participation at any time without consequence. All possible confidentiality and anonymity was ensured during the entire study process, such that all personal identifiers were removed, and participant responses were stored securely.

Some language editing and stylistic suggestions were provided with the assistance of AI tools. All research design, data collection, analysis, and interpretation were conducted solely by the authors.

3.6 Limitations of design

Several limitations must be acknowledged. First, the survey design did not directly measure migration intentions, requiring the use of a proxy variable. Second, the cross-sectional nature of the data limits causal inference, meaning the study can only assess associations rather than direct effects. Third, the sample size (N = 197) provides indicative patterns but restricts the generalizability of results. Finally, while interviews provide valuable context, the small number and purposive sampling limit their representativeness.

Despite these constraints, the study offers one of the few empirical attempts to link social capital and migration perceptions in rural Albania, contributing both methodologically and substantively to migration scholarship in the Western Balkans.

4. RESULTS

4.1 Descriptive statistics

Table 1 reports descriptive statistics for the main variables. Respondents show moderate average evaluations of emigration's local impact and mid-range values on social-capital indicators.

Table 1. Descriptive statistics of main study variables (N = 197)

Variable	Mean	Std. Dev.	Min	Max
Perceived impact of emigration (DV)	2.57	1.17	1	5
Community cooperation	2.67	1.06	1	5
Neighbourly assistance	2.79	1.05	1	5
Psychological well-being	3.19	1.04	1	5

Source: Authors' survey, 2025.

On average, respondents neither see emigration as strongly positive nor strongly negative for local development; social capital measures cluster around the mid-points of their scales, indicating moderate perceived cooperation, assistance and well-being.

4.2 Correlations

Table 2 displays Spearman rank correlations among the key variables. Social capital dimensions are intercorrelated (as theory expects), but their bivariate correlations with the DV are weak.

Table 2. Spearman correlations among dependent and independent variables

Variables	1. DV	2. Community cooperation	3. Neighbourly assistance	4. Psychological well-being
1. Perceived impact (DV)	1.00	0.12	0.07	0.13
2. Community cooperation		1.00	0.48***	0.38***
3. Neighbourly assistance			1.00	0.35***
4. Psychological well-being				1.00

*Source: Authors' survey, 2025. Note: Spearman's ρ reported. *** p < 0.001.*

Community cooperation, neighbourly assistance and psychological well-being are positively correlated with one another (moderate to strong correlations among the social capital measures). Their correlations with perceived impact of emigration are positive but small ($\rho \approx$ 0.07–0.13), indicating only weak bivariate associations.

4.3 Regression analysis

OLS regressions were estimated with heteroskedasticity-consistent (robust) standard errors as the primary specification, and ordered logistic models as robustness checks. All models include demographic controls (age group, gender, education) and report two-sided tests.

Table 3. OLS regression results (robust SE, N = 194)

Variable	Coef.	Robust SE	p-value	95% CI
Constant	1.823	0.303	<0.001	[1.229, 2.417]
Community cooperation	0.108	0.106	0.312	[−0.100, 0.316]
Neighbourly assistance	0.061	0.101	0.545	[−0.138, 0.260]
Psychological well-being	0.120	0.108	0.265	[−0.092, 0.332]

Source: Authors' survey, 2025. DV treated as continuous. OLS with heteroskedasticity-consistent (robust) standard errors. 95% confidence intervals in brackets.

All three social-capital predictors have *positive* point estimates (directionally consistent with theory), but none reach conventional statistical significance (all $p > .05$). Confidence intervals for the predictors include zero and are relatively wide, indicating uncertainty around the point estimates and limited empirical support for a meaningful effect in this sample. Ordered logistic (ordinal) models were estimated as a robustness check; results are concordant with OLS: predictors are positive in sign but not statistically significant. Thus, the null finding is robust to model choice.

4.4 Multicollinearity checks

A range of diagnostic procedures was performed to assess the robustness of the regression estimates. Variance Inflation Factors (VIFs) for the predictors were low (community cooperation = 1.44; neighbourly assistance = 1.44; psychological well-being = 1.25), all well below the common threshold of 5, confirming that multicollinearity is not a concern (Table 4).

Breusch–Pagan tests indicated the presence of heteroskedasticity in the raw OLS residuals; accordingly, all models were estimated with heteroskedasticity-consistent (robust) standard errors. Cook's D statistics identified no individual observation exerting undue influence on the coefficients. Bootstrap confidence intervals, based on 500–2,000 replications, confirmed the stability of results, consistently including zero for the main predictors. Missing data were minimal, and complete-case analysis was applied for the main models. Supplementary multiple imputation (m = 20) produced substantively similar estimates, indicating that the inference is not sensitive to missingness.

Table 4. Variance Inflation Factors (VIFs) for predictors

Variable	VIF
Community cooperation	1.44
Neighbourly assistance	1.44
Psychological well-being	1.25

Source: Authors' survey, 2025. Note: All VIF values < 2, indicating no multicollinearity concerns.

Overall, these diagnostic checks confirm that the null results are robust and cannot be explained by multicollinearity, heteroskedasticity, influential cases, or missing-data bias.

4.5 Qualitative insights

Qualitative interviews (n = 15) provide mechanisms and contextual nuance absent from the cross-sectional survey:

- Migration as family survival strategy: "*Many of us are planning to leave, not because we want to, but because we are helping our family back home by leaving*" (Interview #12).
- Social capital mobilized to exit in face of corruption and blocked opportunities: "*Even if we are here, opportunities are blocked through nepotism and corruption*" (Interview #9).
- Remittances sustain households but rarely catalyse village-wide development: "*Money comes in, but it does not help the village expand. It does help families remain*" (Interview #15).
- Institutional failure and reliance on family networks: "*Institutions do not serve youth needs, but rather turn to family networks*" (Interview #5).

Demographic patterns: migration intentions were reported higher among males, younger respondents, and those with higher education (interview-based pattern confirmed by survey distributions).

These interview excerpts make two points clear: (1) social capital operates instrumentally (to facilitate migration) and protectively (to support household survival); (2) structural and institutional blockages (corruption, lack of jobs, weak services) are repeatedly invoked as the root causes shaping both attitudes and behaviour.

4.6 Additional findings: challenges, priorities, information sources (survey frequencies)

From the survey responses (multiple-choice and ranking items), the study identified the most frequently reported problems and priorities among rural youth:

- Key issues reported: labour loss (n = 153), weakening of family connections (n = 104), dependence on remittances (n = 42).
- Top priorities for youth: employment opportunities (n = 137), physical infrastructure improvements (n = 115), access to health services (n = 105).

Structural economic and service needs (employment, infrastructure, health) consistently outranked social capital concerns when respondents listed priorities — suggesting that material constraints take precedence over network effects in shaping perceptions and decisions.

5. DISCUSSION

5.1 Interpreting a "non-finding": why the absence of statistically significant effects matters

The core quantitative finding of this study is parsimonious: community cooperation, neighbourly assistance and self-reported psychological well-being are not statistically significant predictors of rural youth's perceptions of emigration's impact in our cross-sectional models. Rather than treating this as a nullity, the mixed-methods evidence indicates that the absence of clear quantitative effects is itself informative. In contexts of entrenched out-migration and weak local economies, micro-level network resources may be insufficient to alter the broader calculus that drives migration attitudes and behaviours (de Haas, 2010; Carling & Schewel, 2018). In short, social capital exists, but its power to shape migration perceptions is constrained by macro-structural forces (economic opportunity, governance quality, labour market structure). This interpretation resonates with theoretical work cautioning against universalist expectations about network effects in low-opportunity settings (Castles, 2010; Portes, 1998).

5.2 Qualitative mechanisms: ambivalence, exit and anchoring

The qualitative interviews clarify mechanisms that the survey could not resolve. Interviewees repeatedly presented social ties as ambivalent: simultaneously enabling exit and providing protection. For example, one respondent summarized the moral economy underpinning departure: "*Many of us are planning to leave, not because we want to, but because we are helping our family back home by leaving*" (Interview #12). Other respondents described networks being mobilized as an exit resource in the face of corruption and blocked opportunity structures: "*Even if we are here, opportunities are blocked through nepotism and corruption*" (Interview #9). At the same time, remittances and neighbourly help provide immediate household resilience — "*Money comes in, but it does not help the village expand. It does help families remain*" (Interview #15) — revealing that social capital and remittances cushion families but do not necessarily foster community-level transformation.

This functional duality (networks as both exit enablers and social buffers) helps explain why cross-sectional estimates show little net directional effect: the same ties may raise both the aspiration and the anchoring incentives, producing offsetting effects on a single survey measure of perceived impact.

5.3 Institutional and demographic mediators

Interview evidence also highlights important mediators. Institutional deficiencies — real or perceived — operate as a key intervening factor. "*Institutions do not serve youth needs, but rather turn to family networks*" (Interview #5). When formal institutions fail to deliver employment, services or fair access, social capital is rerouted into private safety nets or exit strategies rather than collective public investment (AKD, 2021; OECD, 2022). Demographically, migration intentions and readiness were higher among younger respondents, males and those with higher education — patterns consistent with regional studies on youth mobility and brain drain (Friedrich-Ebert-Stiftung, 2024; Gëdeshi, King, & Ceka, 2024). These mediating factors suggest that social capital effects are contingent on governance quality and the availability of viable local alternatives.

5.4 Comparative and policy-relevant perspective: what the region teaches us

The comparative snapshot (see Table 5) indicates that remittance intensity and institutional arrangements vary across the Western Balkans. Kosovo's stronger institutionalised diaspora engagement (e.g., DEED/UNDP initiatives) appears to convert remittances and linking social capital into targeted local projects more successfully than in Albania or Bosnia & Herzegovina (Dushi & Berila, 2025; Multi-Partner Trust Fund/UNDP). This suggests that the policy architecture — not social capital per se — conditions whether remittances and networks translate into structural rural development. Thus, Albania's challenge is less about building social capital (bonding ties are typically strong) and more about strengthening linking capital through transparent, accessible institutional channels (AKD, 2021; World Bank, 2025).

5.5 Theoretical and methodological contributions

Theoretically, the study refines the aspiration–ability framing by showing that networks' influence on aspiration can be counterbalanced by structural constraints on ability; consequently, attitudes measured cross-sectionally may display weak net associations. Methodologically, the mixed-methods design demonstrates the importance of combining survey analysis with interviews: what appears as a "no effect" quantitatively can yield rich causal hypotheses and policy insights when complemented by qualitative data. Finally, by documenting empirical evidence from rural Albania — a key case in migration literature — the paper expands comparative knowledge about how social capital operates in high-emigration settings.

6. POLICY IMPLICATIONS

To transform the potential of social capital and remittances into sustainable rural development, policies must pair diaspora engagement with domestic reforms that address structural constraints (employment, governance, infrastructure). Below are targeted, actionable recommendations grounded in our mixed-methods findings and regional practice.

6.1 Build institutional channels that convert remittances into productive, communal investments (strengthen linking capital)

- Create a Rural Diaspora Investment Facility (pilot in high-migration municipalities: Tirana rural districts, Fier/Lushnje/Berat). The facility should offer matched public co-funding, streamlined project approval, and transparent reporting to attract pooled remittance investments (AKD, 2021; DEED/UNDP practices).
- Design diaspora bonds / micro-matching grants for community infrastructure (irrigation, roads, local processing units), with clear anti-corruption safeguards and community governance mechanisms. These instruments should be simple, low-barrier and monitored for local employment outcomes (World Bank, 2025).

6.2 Prioritise youth employment and local economic activation

- Launch a Rural Youth Employment Package combining wage subsidies, apprenticeships tied to local value chains (agro-processing, eco-tourism), and entrepreneurship seed grants conditional on job creation. Survey priorities (n = 137) show employment is the top youth demand; programming should respond directly.
- Incentivise returnee entrepreneurship with tax breaks, mentoring and market linkages; couple incentives with requirements for job creation or community reinvestment.

6.3 Channel remittances into collective goods and governance of pooled funds

- Promote community remittance pooling models (village savings & loan associations, cooperative funds) with municipal matching for clearly defined public goods projects. This addresses the interview insight that "*money helps families remain*" but rarely funds village expansion (Interview #15).

- Strengthen transparency & participatory decision-making in managing pooled remittance funds to reduce capture by patronage networks (Interview #9).

6.4 Strengthen service delivery, anti-corruption measures and youth-facing institutions

- Implement municipal 'Youth Service Desks' to coordinate training, job referrals, and small grant applications, increasing youth trust in public institutions (Interview #5; Friedrich-Ebert-Stiftung, 2024).
- Apply targeted governance reforms (merit-based hiring, open procurement, grievance mechanisms) in pilot districts to reduce nepotistic blockages that push networks toward exit strategies.

6.5 Evidence-based program design and evaluation (use mixed methods)

- Require M&E packages for diaspora investment pilots that include quantitative outcome metrics (jobs created, investment leveraged) and qualitative community perception measures, enabling iterative learning and scaling (OECD, 2022; World Bank, 2025).
- Fund experimental pilots that test remittance-matching, youth employment packages and community governance models, using randomized or phased roll-out designs to establish causality.

7. CONCLUSION

This mixed-methods study of rural Albanian youth finds that commonly held expectations about social capital and migration do not translate straightforwardly into measurable positive associations in cross-sectional survey models. Yet the story is far from trivial: qualitative evidence reveals that social ties are deeply consequential — they both enable departure by reducing costs and insulate households through remittances — while structural drivers (lack of jobs, institutional weakness, corruption) shape whether networks result in migration, resilience, or local transformation.

Policy responses should therefore focus less on building bonding capital (which is often present) and more on creating linking mechanisms that channel diaspora resources and social ties into productive, accountable rural development. Practical measures include a Rural Diaspora Investment Facility, youth employment packages, pooled remittance funds for community goods, and institutional reforms to reduce corruption and improve service delivery. These interventions must be designed, piloted and evaluated with rigorous, mixed-methods approaches to ensure they address both the social and structural dimensions of migration and development.

Limitations should be acknowledged: the dependent variable is a perceptual proxy rather than a direct measure of migration intention; the sample was purposive and cross-sectional; and the number of interviews, while sufficient for thematic saturation, limits broader generalization. Future research should pursue representative and longitudinal data, experimental policy pilots, and deeper comparative work across the Western Balkans to test which institutional designs most effectively convert social capital and remittances into sustained rural development.

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Operationalization table (Appendix)

Variable	Survey code	Scale	Model treatment
Perceived impact (DV)	S3_13	1–5 Likert	OLS (primary), Ordered logit (robustness)
Community cooperation	S5_24	1–5 Likert	Predictor (mean-centered for interactions)
Neighbourly assistance	S2_7	1–5 Likert	Predictor (mean-centered)
Psychological well-being	S4_21	1–5 Likert	Predictor (mean-centered)
Age	age_cat	categorical	control & moderator
Gender	gender	binary	control & moderator
Education	edu_cat	categorical	control & moderator

Table 5. Comparative overview (Western Balkans): Social capital, diaspora engagement and rural development

Country	Remittances (% of GDP)	Social capital (Bonding / Bridging / Linking)	Diaspora engagement	Migration pressure	Rural development outcomes	Notes
Albania	8.4% (2024)	Bonding: High; Bridging: Moderate; Linking: Low–Moderate	Limited institutional channels to convert remittances into productive investment (AKD, 2021)	High — persistent youth emigration, brain drain	Moderate — remittances support consumption & education but weak structural investment	Author’s survey (2025) + national reports; confidence Medium–High
Kosovo	17.5% (2023)	Bonding: Moderate; Bridging: Moderate; Linking: Moderate–High	High — structured programmes (DEED/UNDP) mobilise diaspora funds	Moderate — sustained emigration but active engagement in locales	High in targeted cases — diaspora institutionalisation catalyses rural projects	Program reports (UNDP/DEED); national statistics; confidence High
North Macedonia	3.1% (2023)	Bonding: Moderate; Bridging: Moderate; Linking: Moderate	Medium — diaspora cooperation & education initiatives	Moderate — youth emigration persists	Moderate — selective projects; limited systemic change	National policy docs + regional reports; confidence Medium–High
Bosnia & Herzegovina	11.0% (2024)	Bonding: Moderate; Bridging: Low–Moderate; Linking: Low	Low–Medium — reliance on passive remittances; limited national channels	High — longstanding emigration and large diaspora	Low–Moderate — remittances cushion households but weak structural outcomes	

(Sources: World Bank, UNDP, AKD, DEED/UNDP reports, national documents, author’s survey and interviews)

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PRICE ADJUSTMENT, CONTRACTUAL PENALTIES AND PERFORMANCE GUARANTEES IN ROMANIAN PUBLIC WORKS CONTRACTS: NOTES FROM RECENT PRACTICE

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Abstract: *This article examines three mechanisms that, in the ordinary course of a Romanian public works contract, rarely operate in isolation: price adjustment, contractual penalties, and performance guarantees. All three acquired renewed practical significance after 2022, once the gap between 2022-2023 tender prices and the actual cost of materials, labour and financing widened to a point where fixed-price contracts ceased to reflect any real economic equivalence between performance and consideration. The first part sets out the current legal architecture of price adjustment under Romanian public procurement law and its relationship to the penalty clause of the Civil Code. The second, and analytically more difficult, part examines what becomes of the adjustment entitlement where a subcontractor, rather than the main contractor, has performed the works in question, particularly where the subcontractor was never formally declared to the contracting authority. Drawing, in anonymised form, on recurring patterns encountered in recent Romanian construction practice, the article sets out the author's own position on how price adjustment, penalties and performance guarantees interact, and argues that price adjustment is not a discretionary concession contracting authorities may grant or withhold, but an imperative statutory entitlement that a main contractor cannot retain for itself by invoking its own failure to declare the subcontractor whose work generated it.*

Keywords: *price adjustment, contractual penalties, performance guarantees, public procurement, subcontractors, construction contracts*

Introduction

A public works contract preserves its character as a synallagmatic exchange only for as long as the price retains some relationship to the value of the works actually performed. Where execution is prolonged and the currency in which the price is denominated loses purchasing power in the meantime, that relationship breaks down unless the contract carries a corrective mechanism. The period beginning in 2021, marked by successive shocks to construction material prices, labour costs and financing conditions, turned that corrective mechanism, price adjustment, into one of the most litigated clauses in Romanian public procurement practice, and one whose theoretical entitlement frequently diverges from its practical availability.

A second, related mechanism concerns the sanctioning of delay in the performance of payment obligations, through contractual or statutory penalties. Price adjustment and penalties serve distinct legal functions, one restores value, the other punishes delay (Pop, 2015: p. 415-420), yet practice shows they frequently arise from the same factual matrix. A third mechanism, the performance guarantee (good workmanship guarantee), raises a structurally similar problem: a sum or a security instrument held by one party, subject to being retained, executed or substituted according to rules whose temporal application is not always straightforward for contracts predating successive legislative amendments.

The relationship of particular interest to this article is the one between main contractors and subcontractors. Romanian public procurement law grants subcontractors a set of protective mechanisms (Law nr. 98/2016, art. 218-219), yet those mechanisms operate only in favour of a subcontractor who has been formally declared to, and approved by, the contracting authority. Where that declaration is absent, not because the subcontractor concealed its participation but because the main contractor never made it, the statutory protective apparatus does not engage, notwithstanding that the works were, as a matter of fact, performed. The extent to which general principles of Romanian civil law can close this gap is examined below, and illustrated, in Sections IV and V, by reference to recurring patterns drawn from practice.

I. The legal framework of price adjustment in public works contracts

Price revision is addressed, in the first instance, by art. 221 alin. (1) lit. a) and lit. e) of Law nr. 98/2016 privind achizițiile publice (see also art. 164 of the Annex to Government Decision nr. 395/2016), which permit a public contract to be modified during its performance, without a new award procedure, where the possibility of adjustment was foreseen in clear, precise and unequivocal terms in the initial procurement documents, or where the modification results directly from a legislative or administrative measure affecting costs. In practice, both grounds remained largely theoretical for several years, since their invocation depended on a revision clause that the great majority of tender documentation drafted before 2022 simply did not include.

The regime changed materially, at least for works contracts already in progress, with Government Ordinance nr. 15/2021 (approved with amendments by Legea nr. 281/2021) and, more decisively, with Government Emergency Ordinance nr. 47/2022 (art. 1 and art. 3 alin. (4), as amended by Ordinance nr. 18/2023), which established a unitary and largely mandatory adjustment mechanism for public works contracts financed from public funds, irrespective of the contracting authority's field of activity, applicable to the value remaining to be executed as of 15 April 2022 and calculated by reference to the total construction cost index. The general regime of Law nr. 98/2016 was reinforced in parallel by Law nr. 208/2022, which introduced art. 222^2 of the law, making the inclusion of a price-revision clause compulsory for works contracts running for more than six months and for supply or service contracts running for more than twenty-four months; these thresholds were subsequently relaxed, for shorter-duration contracts, by Government Emergency Ordinance nr. 52/2024. Taken together, these successive interventions transformed price adjustment from a clause a contracting authority might, at its discretion, choose to include, into a statutory entitlement it is bound to grant, subject only to the conditions the law itself sets out.

The operational content of the mechanism is generally supplied by the formula recommended in the Instruction of the National Agency for Public Aquisitions nr. 1/2021, expressed as $K = av + (1 - av) \times IC(n)/IC(0)$, where av represents the fixed, non-adjustable share of the price, IC(n) is the relevant cost index at the moment of execution and IC(0) the reference index at the moment of bid submission. Where av equals zero, a common configuration for local infrastructure contracts, the entire remaining unexecuted value becomes subject to full indexation. The practical significance of this mechanism has only increased with successive minimum-wage increases and the rise of the standard VAT rate to 21 per cent, applicable since 1 August 2025 under Law nr. 141/2025, both of which materially affect the cost base on which contract prices were originally fundamented.

A recurring source of dispute concerns contracting authorities, frequently local public administrations acting as beneficiaries of nationally or European-funded works contracts, that refuse an adjustment request on the ground that the contract, signed in 2022 or 2023, contains no express adjustment formula. Such a refusal is difficult to reconcile with the public-order character of art. 221 and art. 222^2 of Law nr. 98/2016: a contractor cannot properly be deemed to have waived a statutory entitlement that depends on future, objectively verifiable cost indices, merely because the tender documentation, drafted before the relevant price shocks occurred, failed to anticipate them.

A comparable dispute, arising under a materially different contractual framework, has been encountered by the author in connection with a design-and-build works contract governed by FIDIC-based conditions of contract rather than the default regime of Law nr. 98/2016. The contract recorded a single, undifferentiated duration of execution, expressed in days, comprising a design period and a subsequent construction period. The price-adjustment sub-clause of the particular conditions applied only where the total duration of execution exceeded a stated threshold; the contracting authority took the position that only the construction period should be counted for that purpose, since the sub-clause referred to execution rather than to the contract as a whole. On the wording actually used in the contract, however, duration of execution was defined as a single figure inclusive of design, and nothing in the particular conditions supported isolating the construction component for the purposes of the threshold. The example illustrates that the practical unavailability of price adjustment is not confined to contracts governed by the default regime of Law nr. 98/2016, but recurs wherever a contracting authority has an interest in reading a duration or value threshold restrictively.

II. Passing price adjustments down the subcontracting chain

Where works are executed, wholly or in part, by a subcontractor, the question arises whether an adjustment collected by the main contractor, calculated on the full value of the works, must be passed down to the subcontractor in proportion to the value it actually executed. For declared subcontractors, Law nr. 98/2016 answers this question through art. 218 alin. (1)-(4) and art. 219: a subcontractor who has opted, at the time of contracting, to be paid directly by the contracting authority is entitled to payment for the part of the contract it performed, once that performance is confirmed by documents agreed between all three parties. This protection, while genuine, is narrow in scope: it presupposes, at every stage, a subcontractor named in the offer or subsequently approved, and offers no remedy to one who was not.

The Regulations for the Reception of Construction Works, approved by Government Decision nr. 273/1994 and substantially rewritten by Government Decision nr. 343/2017, requires the executant, understood in practice as the main contractor's own organisation, and the designer, to take part as invited members in the reception commission at completion of the works (art. 11 alin. (5) of the Regulations). The Regulations does not, however, provide any mechanism through which an undeclared subcontractor's actual contribution to the works can be recorded, still less recognized, within that same reception process. This silence is not without consequence: it leaves the main contractor free to present the works to the reception commission as its own, in full, regardless of who in fact performed them.

The more difficult situation, examined in detail in Section IV, arises where a construction company executes a substantial, technically discrete component of a public works contract without ever being formally declared to, or approved by, the contracting authority, notwithstanding that the main contractor organised, supervised and plainly benefited from that execution. In such situations, the main contractor collects the full price adjustment from the contracting authority and retains the subcontractor's share, relying on the very absence of a declaration, an omission attributable to itself, as a defence against the subcontractor's claim. In the author's view, this position is difficult to reconcile with established principles of Romanian civil law.

The maxim nemo auditur propriam turpitudinem allegans precludes a party from deriving a benefit from its own wrongful conduct (Pop, 2015: p. 512-515); where the failure to declare is attributable exclusively to the main contractor, that failure cannot subsequently be invoked to defeat the subcontractor's underlying entitlement to the value of the works it actually performed. The general prohibition of unjust enrichment, art. 1345 and following of the Civil Code, and the duty of good faith in the performance of contracts, art. 1170 of the Civil Code, reinforce the same conclusion, in the author's assessment. A subcontractor who in fact executed works is, on this basis, entitled to recover the corresponding share of a price adjustment collected by the main contractor, assessed against actual execution rather than formal declaration status.

III. Contractual penalties: function, limits, and their relationship to price adjustment

The penalty clause, art. 1538 alin. (1) and following of the Civil Code, operates as a conventional pre-liquidation of damages for non-performance or delay, dispensing the creditor from the need to prove the actual extent of the prejudice suffered. For ordinary non-performance, art. 1538 alin. (2) affords the creditor a choice between enforcement of the principal obligation and the penalty, but not both; for delay in performance at an agreed time or place, however, art. 1539 expressly permits cumulation, allowing the creditor to pursue both the principal obligation and the penalty for the delay itself. Art. 1541 permits a court to reduce a manifestly excessive penalty, though not to eliminate it, preserving the deterrent function the parties intended the clause to serve.

In construction subcontracts, penalties are typically stipulated against the paying party for delay in the performance of payment obligations beyond a contractually fixed term. Such penalties remain conceptually distinct from price adjustment, even where both arise from the same overdue payment: adjustment restores the real economic value of a consideration eroded by inflation, an indexation function unrelated to delay, whereas a penalty sanctions the delay itself in the performance of an obligation that was already due, a liability function unrelated to the reason why the underlying value changed. Because the two claims proceed from different legal causes, they are, on the strength of art. 1539 of the Civil Code, cumulative rather than mutually exclusive, provided the penalty is calculated exclusively on sums that were themselves due and unpaid.

This domestic regime should also be read together with Law nr. 72/2013, transposing Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions, which establishes a statutory reference interest and a standard compensation for recovery costs in business-to-business contracts, operating as a supplementary regime where the parties have not stipulated an equivalent contractual penalty.

From a procedural standpoint, because a penalty calculated on an overdue amount that itself includes a disputed price-adjustment component can only be liquidated once that component has been established, litigation strategy commonly combines a simplified payment-order procedure (payment order) for the liquid and undisputed portion of a claim with an ordinary action addressing the more complex adjustment and penalty components, and, where finalisation of the works reception would prejudice the claimant's position, a request for interim suspension by way of presidential ordinance pending resolution of the underlying dispute. Section IV illustrates this combination.

IV. A recurring pattern from recent practice: price adjustment and penalties in subcontracted infrastructure works

The interaction of the mechanisms examined above may be illustrated, in anonymised and generalised form, by a pattern the author has encountered in practice. A subcontractor executed stormwater drainage and slope stabilisation works forming part of a larger public infrastructure project, under a subcontract concluded with the main contractor responsible for the project as a whole, itself financed by a state investment company. The main contractor received from the funding entity a price adjustment calculated on the full value of the works, including the portion executed by the subcontractor, but did not redistribute the corresponding share; the main contractor separately contested the extent of the subcontractor's execution in related proceedings, in circumstances suggesting an intention to strengthen its position with respect to the works reception.

The subcontractor's claim, in the author's assessment, was properly framed as one for restitution of the withheld share of the price adjustment, together with penalties for the delay in its payment, invoking art. 218-219 of Law nr. 98/2016 and the nemo auditur principle discussed in Section II, on the basis that a main contractor's failure to declare a subcontractor under art. 219 of the law cannot be relied upon by that same contractor to deny the subcontractor's entitlement. Claims of this kind commonly proceed on parallel tracks: a simplified payment-order procedure for the liquid and undisputed portion, an ordinary action addressing the adjustment and penalty components, and, where the timing of the works reception makes it necessary, an application for interim suspension of that reception pending resolution of the underlying dispute, formulated in the alternative by reference to whichever proceeding is best placed to resolve the dispute first.

In the author's experience, Romanian courts have generally shown themselves receptive to the interim suspension of a works reception pending resolution of the underlying civil dispute, where allowing the reception to proceed would risk causing irreversible prejudice to a party whose substantive rights have not yet been adjudicated. The more difficult question, in this pattern as in comparable ones, is whether the restitution claim itself will be treated with the same urgency once the interim measures have run their course; the asymmetry between readily available interim protection and slower-moving relief on the merits is, in the author's view, one of the more significant practical shortcomings of the current framework.

V. A related mechanism: performance guarantees

The same underlying imbalance, a party in a position to withhold sums or securities belonging to another, recurs in disputes concerning the good workmanship guarantee (performance guarantee, GBE). In a further matter encountered by the author, a contractor executed works under a contract concluded in 2019 with a local public authority, which included a GBE retention corresponding to 30 per cent of amounts due. The contractor sought substitution of the retained amounts with a bank letter of guarantee, a substitution generally available under the methodological norms governing performance guarantees.

The matter was complicated by a question of temporal application. The provisions in force at the conclusion of the 2019 contract, including art. 39 alin. (2) and art. 42 of the Annex to Government Decision nr. 395/2016, were abrogated by Government Decision nr. 336/2023 (art. II pct. 14, 16 and 20 of that instrument, abrogating art. 38, art. 39 alin. (2) and art. 42 of the Annex), with effect from 19 April 2023, their substance being absorbed, in part, into art. 154 alin. (3) of Law nr. 98/2016, as amended by Law nr. 208/2022. Whether a contracting authority's power to make claims against a guarantee beyond the term of the contract, formerly addressed by art. 42 of the Annex, survives its abrogation for guarantees constituted before 19 April 2023, is not directly resolved by the transitional provisions of Government Decision nr. 336/2023.

The better view, in the author's assessment, is that the norms in force at the conclusion of a contract continue to govern its performance guarantee for as long as the contract itself remains in force, consistently with the general principle of the non-retroactivity of civil law (art. 6 of the Civil Code), and that the 2023 abrogation, absent an express transitional rule to the contrary, cannot be read as depriving a contractor of a substitution right it held at the time the guarantee was constituted. A comparable relationship also illustrates the penalty mechanism examined in Section III on a smaller scale: a notice of default for an unpaid instalment, together with contractual penalties calculated for the period of delay and an express reservation of penalties accruing under any further unpaid instalment, is a common accompaniment to disputes of this kind.

VI. Comparative and European law perspectives

Directive 2014/24/EU of the European Parliament and of the Council on public procurement permits, under art. 72, the modification of public contracts during their term, including through price revision clauses, provided such clauses were set out in the initial procurement documents in clear, precise and unequivocal terms. The Romanian legislator's shift from a merely permissive price-revision regime under the original text of art. 221 to the imperative regime introduced by art. 222^2 of Law nr. 98/2016 may fairly be read as a domestic response to inflationary pressure, developed within, and consistent with, this European framework.

Directive 2011/7/EU, discussed above in its domestic transposition, establishes an EU-wide floor of payment discipline across commercial supply chains, including the public sector, reinforcing that subcontractors, as downstream commercial parties, are entitled to late-payment protections comparable to those available to the main contractor in its own relationship with the contracting authority.

The structural vulnerability of subcontracting chains is not confined to Romanian practice. In its resolution on the revision of the EU public procurement rules, the European Parliament noted that long and complex subcontracting chains can be used to escape legal responsibilities, and that the current procurement directives do not equip contracting authorities with sufficient tools to address non-performance within such chains, calling for stronger enforcement mechanisms in the forthcoming revision of the procurement framework (European Parliament, 2025). This confirms, at the level of European Union policy, the same structural tension examined in this article at the level of domestic practice.

A useful comparative benchmark is offered by French law, where the Loi n° 75-1334 du 31 décembre 1975 relative à la sous-traitance (art. 12-14) grants an approved subcontractor a direct action (action directe) against the owner or the public contracting entity for sums due, independently of the main contractor's solvency or cooperation, and conditions the enforceability of the main contract's payment terms against the subcontractor on the subcontractor's prior approval by the owner. Romanian law pursues a broadly similar protective objective through art. 218-219 of Law nr. 98/2016, but its effectiveness remains, as shown above, largely dependent on the main contractor's voluntary declaration of the subcontractor, a dependency the French action directe was specifically designed to avoid.

Conclusions

Price adjustment, contractual penalties and performance guarantees are not isolated technical clauses appended to a public works contract; they are, in the author's view, three expressions of the same underlying principle, that a contract, however long its execution and however volatile the economic conditions surrounding it, must preserve a genuine equivalence between the value of the works performed and the price paid for them. Romanian law has moved, over the past four years, from treating price adjustment as a discretionary concession toward treating it as an imperative statutory entitlement, a development consistent with, and arguably compelled by, the broader European framework on contract modification and the timely payment of commercial obligations.

The more difficult question, and the one this article has sought to isolate through the patterns described in Sections IV and V, is whether that entitlement in fact reaches the subcontractor who performed the works, rather than terminating with the main contractor who signed the contract. Where a subcontractor executed works but was never formally declared, general principles of Romanian civil law, the prohibition on invoking one's own wrongdoing, the prohibition of unjust enrichment, and the duty of good faith, provide, in the author's assessment, a coherent basis for recognising that subcontractor's right to the corresponding share of any price adjustment collected by the main contractor. Practice suggests that courts are prepared to protect this right through interim measures where a works reception process risks entrenching a factual record adverse to the subcontractor's interests; courts appear markedly less consistent in treating the underlying restitution claim with comparable urgency, a divergence that, in the author's view, leaves subcontractors bearing most of the practical risk of a main contractor's non-declaration.

A further dimension of the problem concerns capacity rather than doctrine. The subcontractors encountered in this category of dispute are typically small or mid-sized construction undertakings specialised in a single technical component of a larger works project, and typically without the financial resources to sustain protracted litigation against a substantially larger main contractor. The legal principles identified in this article are, in the author's assessment, correctly resolved as a matter of doctrine; what they do not remedy is the asymmetry in the practical capacity of the parties to enforce them, an asymmetry that a well-designed statutory mechanism, rather than a favourable but slow-moving body of case law, would be better placed to correct.

De lege ferenda, the persistence of this pattern across a range of public works projects, together with its explicit recognition at European Parliament level as a structural weakness of current subcontracting chains (European Parliament, 2025), suggests, in the author's view, that Romanian law would benefit from a more direct mechanism of pass-through protection, closer to the French action directe, rather than one that continues to depend, as a practical matter, on the main contractor's voluntary compliance with its own declaration obligations. Pending such reform, careful contractual drafting, subcontracts that expressly mirror the main contract's adjustment formula, that fix a short, non-negotiable deadline for the redistribution of adjusted amounts, and that attach an autonomous penalty to its breach, together with vigilant attention to the temporal application of successive amendments to the rules governing performance guarantees, remain, in the author's assessment, the most reliable safeguards available within the existing legal framework.

Acknowledgement

Author's note: the factual patterns described in Sections IV and V are drawn, in anonymised and generalised form, from matters handled by the author. No party, contract, or case reference is identified, and the account should be read as an illustration of recurring legal issues rather than as a report on any specific proceeding.

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CLIMATE CHANGE EFFECTS IN THE NIGERIAN BANKING INDUSTRY AND THE IMPERATIVENESS OF SOCIO-LEGAL GUARDRAILS

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Abstract: *Climate change impacts have significant risks to the global financial system, yet the linkages of climate vulnerability and banking stability remain underexplored in the developing economies. This article examines the effects of climate change on the Nigerian banking industry, with particular focus on legal frameworks, regulatory responses, and emerging liabilities. Nigeria, as Africa's largest economy and the country which is highly susceptible to climate-induced hazards like flooding, desertification, and oil-related environmental degradation, posts need for compelling case study of climate change impact in the banking industry. The article synthesises legal authorities, including the Climate Change Act 2021, the Central Bank of Nigeria's Sustainable Banking Guidelines, and landmark judicial decisions to assess how climate risks translate into credit, market, operational, and liability risks for banks. It further explores the growing relevance of transnational climate litigation and its potential to extend liability to financial institutions. The analysis reveals significant gaps in prudential regulation, enforcement, and judicial preparedness, which impede the banking sector's capacity to manage climate-related financial risks. The article concludes with actionable recommendations for strengthening legal and regulatory frameworks, mandating climate-related financial disclosures, and embedding climate risk into the core of banking supervision. By situating Nigeria within the global discourse on sustainable finance, this study contributes to the evolving scholarship on climate law, banking regulation, and sustainable development in the emerging markets.*

Keywords: *Climate change, Nigerian banking industry, Climate risk, Financial regulation, and Sustainable banking.*

1. INTRODUCTION

Climate change has been a salient challenge for countries around the globe addressing the challenge requires shared commitment (Parsons, Godden, and Henrique, 2025). The adverse effects of climate change are no longer distant projections; they are present realities reshaping economies, livelihoods, and the stability of financial systems worldwide (Signé and Mbaye, 2022). The Intergovernmental Panel on Climate Change (IPCC) has repeatedly warned that rising global temperatures, changing precipitation patterns, and extreme weather events will intensify physical and transition risks across all sectors. Within that context, the banking industry occupies a uniquely vulnerable position, particularly in Nigeria. Banks act as financial intermediaries, channeling capital to businesses and households. When climate-induced shocks impair borrowers' ability to repay loans, erode collateral values, or disrupt entire industries, the resulting credit losses can cascade through the banking system, threatening financial stability.

Nigeria exemplifies this confluence of climate vulnerability and financial exposure due to its economic, social and cultural setting. As the most populous country in Africa and a leading oil producer, Nigeria faces acute climate challenges: flooding in the southern and central regions, desertification in the north, coastal erosion, and pervasive environmental degradation linked to oil extraction in the Niger Delta (Ofoezie, Eludoyin, Udeh, Onanuga, Salami and Adebayo, 2022). These phenomena directly impact the agricultural, real estate, and energy sectors with key areas of bank lending. Moreover, Nigeria's financial services industry is expected to grow significantly due to strong economic growth, a young population, and a surge in digital innovation (Olusanya, (2025). The Central Bank of Nigeria (CBN) has initiated sustainable banking reforms, but the legal and regulatory architecture for managing climate-related financial risks remains nascent in the banking industry.

This article undertakes a comprehensive examination of the effects of climate change on the Nigerian banking industry from a legal perspective. It addresses three central questions: (i) what are the legal and regulatory frameworks governing climate-related risks in Nigeria’s banking sector? (ii) how do physical, transition, and liability risks manifest in the Nigerian banking context, and what legal authorities and case laws illuminate these risks? and (iii) what reforms are necessary to enhance the resilience of Nigerian banks to climate change while aligning with international best practices?

The article is structured as follows. Section two sets out the conceptual framework for understanding climate-related financial risks. Section three surveys the international and domestic legal landscape, including the Climate Change Act 2021 and the CBN’s regulatory instruments. Section four analyses the specific impacts of climate change on Nigerian banks, drawing on desktop data and case studies. Section five engages with legal authorities and case law, examining both Nigerian jurisprudence, comparative analysis and foreign cases that portend future liability for financial institutions and as well as evaluates the regulatory responses and industry initiatives to date. Section six identifies critical gaps and challenges in the banking industry in relation to climate change in Nigeria. Section seven proposes a suite of legal and policy including the conclusion and recommendations.

2. EXPLICATING THE NUANCES OF CLIMATE RISKS IN BANKING

To analyse the effects of climate change on banking, it is essential to distinguish the transmission channels through which climate-related factors affect financial institutions in Nigeria in particular. The financial stability previews, particularly work by the Network for Greening the Financial System (NGFS classifies climate risks into two main categories which are physical risks and transition risks (Network for Greening the Financial System Technical document, 2020). A third category liability risks has gained prominence as climate litigation expands. With over 3,000 cases filed worldwide as of late 2024, climate litigation has grown from a specialised legal field to a significant source of considerable financial and legal concern. In the 1980s, the first cases of climate litigations in Australia and the US increased in relations to contested government policies or actions that did not sufficiently consider how they would affect climate change (Okedele, & Aziza, Oduro, Ishola, and Akinwale, 2024). Most of Nigerian related litigations have been on environmental litigations and the challenges.

Furthermore, it involves physical risks arise from the direct impacts of climate change, including acute events (e.g., floods, storms, heatwaves) and chronic shifts (e.g., sea-level rise, changing rainfall patterns). For banks, physical risks affect credit risk (borrowers’ capacity to repay), market risk (collateral values), and operational risk (bank branches and infrastructure) (Bassey, and Udoh, 2022). In Nigeria, recurrent floods devastate agricultural output, destroy property, and disrupt economic activity in states such as Anambra, Kogi, and Delta among others. Desertification threatens livelihoods in the north, undermining repayment capacity for agricultural loans that are taken from banks due to climate induced factors.

Transition risks stem from the process of adjustment to a low-carbon economy. These include policy changes (carbon taxes, fossil fuel phase-outs), technological shifts, and shifts in consumer sentiment. Nigerian banks have substantial exposure to the oil and gas sector, which accounts for a significant portion of corporate lending. A rapid global energy transition could strand fossil fuel assets, impairing borrowers in the extractive industry and triggering losses for banks. Also, the Nigerian banking industry is currently navigating a complex landscape of significant transition risks. These are defined as the financial and operational risks associated with the sector's adjustment to a new set of regulatory, economic, and environmental realities.

It also entails liability risks arise when parties seek compensation for climate-related harms, often through litigation against high third category implicates banks not merely as passive intermediaries but as potentially limiting corporations or, increasingly, against the financial institutions that fund them. This enables actors for financing activities that contribute to climate change or exacerbate its impacts. As it is discussed later in this article, the recent cases in Europe and elsewhere on climate change litigations signal growing trend of holding financial institutions accountable for inadequate climate risk management or complicity in environmental harm.

Understanding these risk categories is a prerequisite for evaluating the adequacy of Nigeria's legal and regulatory responses in the banking industry in nexus with climate change effects.

3. LEGAL AND REGULATORY LANDSCAPE

The legal framework governing climate change and banking in Nigeria is composite of international commitments, national legislation, sectoral regulations, and prudential guidelines and regulations issued by the CBN. This section considers and discusses the key instruments.

Nigeria is a party to the United Nations Framework Convention on Climate Change (UNFCCC) (ratified in 1994), the Kyoto Protocol (ratified in 2004), and the Paris Agreement (ratified in 2017). Nigeria filed its Nationally Determined Contribution (NDC) under the Paris Agreement, pledging to cut greenhouse gas emissions by 20% below business-as-usual by 2030, with conditional targets of up to 45% with international assistance. These commitments from different administrations of Nigerian government create an expectation that national policies, including financial regulation, will align with climate change objectives.

While international climate change treaties do not directly bind Nigerian banks, they influence domestic policy and may be invoked in judicial proceedings to interpret constitutional or statutory environmental provisions. In the landmark case of *The Registered Trustees of the Socio-economic and Accountability Project (SERAP) v. Nigeria & UBEC* (ECOWAS Court of Justice, 2012), the court relied on Nigeria's international human rights and environmental obligations to hold the government accountable for failing to address environmental degradation in the Niger Delta region of the country. The court also determined that Nigeria's oil contamination in the Niger Delta infringed the rights to a healthy environment, development, and health (African Charter on Human and Peoples Rights, 1981). The court concluded that Nigeria did not enforce environmental laws, to hold oil companies responsible, or to stop oil-related harm emanating from the extractive industry in the region.

In Nigeria, there are several domestic legislation on the environment and climate change. The Constitution of the Federal Republic of Nigeria 1999 does not contain explicit right to a clean environment, but Section 20 have been interpreted to encompass environmental rights. Although, Section 20 provides that "the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria," Section 33 (right to life) and Section 34 (right to dignity of human person) have been technically invoked in environmental litigations in various courts in Nigeria. As it was in the prominent case of *Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others* (2005), the Federal High Court held that the right to life includes the right to a healthy environment and that gas flaring violated the applicants' constitutional rights.

There is also the Climate Change Act 2021 is Nigeria's flagship climate legislation. It establishes the National Council on Climate Change (NCCC) and mandates the development of a National Climate Change Action Plan. Key provisions relevant to banking include Section 4(1)(c) of the Climate Change Act, 2021 which provides that the Council is tasked with ensuring that the financial sector incorporates climate change risks into its investment decisions. While Section 5 of the Climate Change Act, 2021 also provides that the Council is empowered to issue guidelines for climate-related financial disclosures. Section 11 of the Climate Change Act, 2021 imposes carbon budget and requires businesses to submit annual reports on their emissions and climate risk management. Although the Act does not explicitly mandate banks to adopt climate risk management, it creates a statutory basis for the CBN and other financial regulators to require such practices, which by extension relate with the banking industry. Implementation has been slow, but the Climate Change Act, 2021 represents a foundational legal instrument for the banking industry.

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007 empowers NESREA, the agency, to enforce environmental standards as noted by Ilesanmi (2019). The National Oil Spill Detection and Response Agency (NOSDRA) Act 2006 establishes NOSDRA to manage oil spills. These agencies have roles in addressing physical risks that affect banking, particularly in the Niger Delta where most of the oil and gas extractive activities take place in Nigeria. However, enforcements of these legal instruments and regulations have been weak, and banks have rarely been held accountable for financing entities that violate environmental laws or climate related matters.

3.1 Central Bank of Nigeria Regulatory Framework

The CBN, as the apex financial regulator, has issued several instruments that focus on how banks should manage climate and environmental risks. In 2012, the CBN, in collaboration with the Nigerian Bankers' Committee and the United Nations Environment Programme Finance Initiative (UNEP FI), launched the Nigerian Sustainable Banking Principles, 2012. The nine principles require banks to integrate environmental and social risks into credit risk management, to develop environmental and social management systems, to promote transparency and disclosure and to build capacity in sustainable banking. These principles were voluntary, but have been progressively incorporated into prudential guidelines. The CBN has conducted periodic assessments, though compliance remains uneven among the banks in Nigeria. If these principles are rekindle with current climate change realities in Nigeria, they will sustain climate change adaption and mitigation policies of Nigerian government.

In 2017, Nigeria became the first African country to issue a sovereign green bond (The Nigerian Green Bond Market Development Programme Impact Report, 2018-2021). The CBN, together with the Debt Management Office and the Securities and Exchange Commission (SEC), has promoted green bond issuance. With the bond projection, Nigeria can now fund eligible projects, assets, and expenditures that will support the fulfilment of the nation's sustainable development needs and meet international commitments. The Framework also emphasises Nigeria's dedication to the growth of the Sustainable Bond market. Banks have participated as issuers and investors. The CBN has also issued guidelines for green bonds, which require issuers to disclose use of proceeds and environmental impacts.

In 2025, the Federal Government of Nigeria has made another Sustainable Bond Framework which has been developed in line with the International Capital Market Association (ICMA) Green Bond Principles (2021), Social Bond Principles (2023), Sustainability Bond Guidelines (2021), and additional ICMA guidance on bonds to finance the Sustainable Blue Economy (2023) have all influenced the development of the Sustainable Bond Framework if applicable, individual issuances may adhere to the Climate Bonds Standard and Certification

Scheme of the Climate Bonds Initiative (Federal Republic of Nigeria Sustainable Bond Framework, 2025).

In November 2023, the CBN issued the 'Guidance Note on Climate-Related Risk Management for Banks and Other Financial Institutions.' This is a landmark document that:

a. Classifies climate risks as financial risks and requires integration into risk management frameworks.
b. Mandates banks to adopt the Task Force on Climate-related Financial Disclosures (TCFD) framework for governance, strategy, risk management, and metrics.
c. Requires banks to conduct scenario analysis and stress testing.
d. Sets timelines for compliance, with full implementation expected by 2025.

These guidelines represent a significant step toward aligning Nigerian banking regulation with global best practices. However, they remain administrative directives rather than primary legislation, and enforcement mechanisms are not fully specified. The CBN's prudential guidelines for deposit money banks require robust risk management, but historically they did not explicitly address climate risk. The 2023 guidance note fills this gap by amending the risk management framework to include climate-related risks under credit, operational, and market risk categories.

The Securities and Exchange Commission (SEC) has issued rules on sustainability disclosure for listed companies, including banks. The National Insurance Commission (NAICOM) has also introduced sustainable insurance principles. A whole-of-government approach is emerging, but coordination remains fragmented.

4. IMPACTS OF CLIMATE CHANGE ON THE NIGERIAN BANKING INDUSTRY

Having established the legal and regulatory backdrop, this section examines how climate change materially affects Nigerian banks. The impacts are analysed through the lens of physical, transition, and liability risks, with practical illustrations.

Flooding is the most recurrent climate-related hazard in Nigeria. The 2012 floods affected 30 states, displaced over 2 million people, and caused damages estimated at ₦2.6 trillion (approx. US$6.5 billion at the time). More recent floods in 2022 again submerged vast agricultural land and urban areas (Umar, and Gray, 2023). For banks, the implications are severe: Agricultural loans: Agriculture accounts for approximately 25% of Nigeria's GDP and receives substantial bank credit under the CBN's Agricultural Credit Guarantee Scheme (Nwankwo, Ikehi, Ejiofor, and Ifeanyieze, 2024). Floods destroy crops, kill livestock, and render farmers unable to service loans. The CBN has occasionally granted forbearance, but repeated losses weaken bank balance sheets. Mortgage and real estate: Flooding damages property used as collateral. In coastal cities like Lagos and Port Harcourt, sea-level rise and storm surges threaten waterfront real estate, eroding collateral values. Business interruption: Small and medium enterprises (SMEs) in flood-prone areas face operational disruptions, leading to default. Banks with concentrated portfolios in flood-prone zones or in the agricultural sector are particularly exposed. If stress tests is conducted by the CBN it will likely reveal significant vulnerability.

In Northern Nigeria, desertification and land degradation reduce agricultural productivity as opined by Ilesanmi, (2019). The Lake Chad Basin, once a major source of irrigation and fishing, has shrunk by 90%. Banks with lending exposure to agriculture in the north face similar credit risks. Additionally, desertification fuels farmer-herder conflicts, creating social instability that indirectly affects loan repayment.

The Niger Delta has experienced decades of oil spills and gas flaring, which have destroyed mangroves, contaminated water sources, and harmed fishing and farming communities as opined by Nyekwere and Ilesanmi (2017). Several multinational oil companies have been sued. Banks that have lent to oil majors or to contractors may face indirect physical risks: litigation costs and cleanup liabilities can impair borrowers' financial health. Moreover, banks that hold collateral in oil-impacted areas may find such assets devalued.

The adoption of transition risks and stranded assets and policy shifts. Nigerian banks have deep exposure to the fossil fuel sector. As of 2024, outstanding loans to the oil and gas sector accounted for roughly 25–30% of total bank credit (Tunji, 2024). Transition risks arise from global energy transition: As developed economies and international financial institutions pivot away from fossil fuels, demand for Nigerian crude may decline, affecting government revenues and the viability of oil companies. Carbon pricing and regulation: The Climate Change Act 2021 envisions a carbon pricing mechanism. If implemented, it could raise costs for high-emitting borrowers. Reputational pressure: International investors increasingly screen out banks with high fossil fuel exposure. Nigerian banks seeking foreign capital may face higher costs of funding if they do not manage transition risks. The CBN's guidance note explicitly recognises transition risk and requires banks to assess their exposure to high-carbon sectors.

Liability risks for Nigerian banks arise both directly from claims that a bank failed to manage climate risks in its lending and indirectly if banks are being sued for financing environmentally harmful activities. While direct climate litigation against banks is still nascent in Nigeria, global trends suggest that this will become a significant risk factor in the offing in Nigeria that implies that banks may be sued for:

Inadequate disclosure due to failure to disclose climate risks to shareholders or regulators could give rise to claims under the Companies and Allied Matters Act (CAMA) 2020 or securities regulations. It also exposes them to liability for complicity in environmental harm if a bank funds a project that causes significant environmental damage, and the bank had knowledge or should have known of the risks, it may be held liable under tort law or as a joint tortfeasor. It can also attract fiduciary duty breaches. Directors of banks have a duty to act in the best interests of the company. Ignoring climate risks could be framed as a breach of fiduciary duty. There are recent cases from foreign jurisdictions to support the risks stated above as it is discussed later in this article in Section 5 in which the cases illustrate the growing traction of such claims.

4.1 Case Study: Banking Exposure in the Niger Delta

To concretise the impacts, one can consider a hypothetical but representative scenario where A consortium of Nigerian banks extended a syndicated loan facility to an oil exploration company operating in the Niger Delta. If the company's operations involve routine gas flaring with history of oil spills, if there is a major spill that contaminates the water supply of several communities, the company faces numerous lawsuits and may be forced to halt operations. Subsequently, the company might default on the loan facilities taken from the banks. The banks may take possession of the collateral, oil infrastructure assets, but find them to be devalued due to cleanup liabilities and community protests.

The above scenario encapsulates the convergence of physical, transition, and liability risks. The banks' credit risk materialise because of environmental event; the collateral value is impaired; and the banks face reputational damage. In some instances, banks have also been named in community lawsuits for "aiding and abetting" environmental degradation by providing financing.

The preceding section analyses the legal authorities, regulations, and judicial decision which have shaped the legal landscape for climate-related risks in Nigerian banking. It also examines influential foreign case laws that may guide Nigerian courts or create transnational liability risks. The case of *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria* (2005). This landmark case was brought by the late environmental activist Jonah Gbemre and several communities against Shell Petroleum Development Company (SPDC). The plaintiffs challenged gas flaring in the Niger Delta as a violation of their constitutional rights to life and human dignity. Nwokorie, J., held that gas flaring violated the right to life guaranteed by Section 33(1) of the 1999 Constitution, as well as the right to a healthy environment derived from Section 20. The court ordered Shell to cease gas flaring in the affected communities unless it could prove that flaring was safe.

This decision has significance in banking. While the case did not involve banks, it established a strong judicial precedent that environmental harm can constitute a constitutional violation. Banks that finance projects involving gas flaring or other environmentally destructive practices could be exposed to similar arguments in future litigation. The decision also demonstrates Nigerian courts' willingness to draw on national and international environmental legal frameworks on climate or environmental inclined litigations.

There is also the decision in *SERAP v. Federal Republic of Nigeria*. The Socio-Economic Rights and Accountability Project (SERAP) sued the Nigerian government for failing to prevent environmental damage in the Niger Delta caused by oil extraction, alleging violations of the African Charter on Human and Peoples' Rights (ratified by Nigeria). The ECOWAS Court held that the government's failure to regulate the oil industry adequately constituted a violation of the right to a general satisfactory environment under Article 24 of the African Charter. The case underscores that the Nigerian state has a positive obligation to regulate environmental harm. This obligation extends to financial regulators such as the CBN. If the CBN fails to ensure that banks manage climate risks, it could face legal challenges. Moreover, the case strengthens the argument that banks, as regulated entities, have a duty to ensure their operations do not contribute to environmental rights violations.

SERAP v. Nigerian National Petroleum Corporation (2025) Socio-Economic Rights and Accountability Project (SERAP) has filed a lawsuit against the Nigerian National Petroleum Company (NNPC) Limited over the "failure to account for the alleged missing or diverted N22.3 billion, USD$49.7 million, £14.3 million and €5.2 million oil money." While this case is still *sub judice*, its final decision by the court will add value to the climate change and banking industry jurisprudence in Nigeria. The suit followed the damning allegations documented in the 2022 audited report by the Auditor-General of the Federation, which was published on 9 September 2025. SERAP is seeking: "an order of mandamus to direct and compel the NNPCL to account for the alleged missing or diverted N22.3 billion, USD$49.7 million, £14.3 million, and €5.2 million oil money."

It is imperative to note that there are several ongoing cases targeted at NNPCL and other state actors for environmental damage. While these cases have not yet finalised, they reflect increasing judicial activism on climate change and environmental related matters which are directly or indirectly affecting banking industry. It is plausible that future cases will name banks that financed oil operations as co-defendants.

One must indicate here that Nigerian courts are not bound by decisions of foreign courts, but they often cite persuasive foreign authorities. Several recent cases from other jurisdictions have profound implications for banks' climate-related liabilities. In *Milieudefensie v. Royal Dutch Shell plc (District Court of The Hague,* (2021), in a watershed decision, the Dutch court ordered Shell to reduce its CO_2 emissions by 45% by 2030 relative to 2019 levels, across its entire value chain (Scope 1, 2, and 3). While the case was against an oil company, not a bank, the reasoning extended to "scope 3" emissions—those generated by the company's products—which includes emissions from customers. If oil companies are required to reduce scope 3 emissions, banks that finance them could be seen as facilitating those emissions. The judgment has emboldened environmental groups to target financial institutions.

According to the Court of Appeal, public law instruments do not require explicit, enforceable emissions reduction objectives for individual corporations, even while they set crucial foundations for corporate climate responsibility. Instead, corporations are free to incorporate reduction objectives "where appropriate" into their preparations for the climate transition. Companies are free to choose their own methods for cutting emissions within the framework of their required climate transition plans, as long as these methods are in line with the objectives outlined in the Paris Agreement. These targets are not fixed nor legally obligatory. That point can help bank industry in Nigeria to take decisive positions toward climate change friendly policies in their general transactions and activities.

In *ClientEarth v. Shell plc (UK High Court, 2023)*, ClientEarth, an environmental organisation that wanted to use the law to fight climate change was the Claimant. It was able to request permission to file a derivative claim against the directors since it owned 27 ordinary shares in the international oil corporation Shell. ClientEarth claimed that by failing to take appropriate measures in response to climate concerns for Shell's financial position, the company's directors had violated their obligations. These hazards were described as physical, commercial, sociological, and regulatory. These included shifting regulatory frameworks that resulted in limitations on greenhouse gas emissions and growing public apprehension about fossil fuels, which led to a decline in demand and may cause its oil and gas assets to become stranded and unprofitable. Nigerian banking directors should take note as it is provided under CAMA 2020, where directors have fiduciary duties to act in the best interests of the company. A failure to manage climate risks could expose them to similar claims.

McVeigh v. Retail Employees Superannuation Trust (Australia, 2020), A pension fund member sued the trustee for failing to disclose climate-related risks. The court did not decide on liability, but the case led to regulatory reforms requiring disclosure. The parties in the suit reached a settlement where the Australian pension fund agreed to incorporate climate change financial risks in its investments and implement a net-zero by 2050 carbon footprint goal. In Nigeria, the SEC and CBN are moving toward mandatory climate disclosure, partly in anticipation of such litigation which may later snowball to affect the general banking industry in Nigeria.

5. REGULATORY RESPONSES AND INDUSTRY INITIATIVES

In response to growing awareness of climate risks, the CBN and other stakeholders have taken steps to green the financial system. This section evaluates the efficacy of these responses. One of such responses is through the adoption of sustainable banking principles implementation. Since 2012, Nigerian banks have adopted environmental and social (E&S) management systems. Many have established sustainability departments, published sustainability reports, and incorporated E&S screening into credit processes. The Nigerian Bankers' Committee has conducted annual assessments. However, a 2023 review by the CBN revealed that while tier-1 banks had made progress, smaller banks lagged in capacity and data infrastructure.

Also, the adoption of the green bond market in Nigeria remains small but growing. As of 2025, total green bond issuance exceeded ₦200 billion. Banks such as Access Bank, Zenith Bank, and First Bank have issued green bonds to fund renewable energy, energy efficiency, and sustainable agriculture projects. The programme has raised awareness and provided a mechanism for banks to align their funding with climate objectives.

Furthermore, the adoption of the CBN Guidance Note on Climate-Related Risk Management (2023) has been a lever. This guidance is the most significant regulatory development to date. It mandates governance: Boards of banks must oversee climate-related risks and approve strategies, strategy adoption as banks must assess climate-related risks and opportunities in the short, medium, and long term. It also mandates risk management by ensuring that banks must identify, measure, monitor, and control climate risks as part of their enterprise risk management. Metrics and targets: Banks must disclose greenhouse gas emissions (Scope 1 and 2, and Scope 3 where material) and set targets.

The guidance sets a phased implementation timeline: initial self-assessment by end-2024, full integration into risk frameworks by end-2025. The CBN has indicated that it will conduct supervisory reviews and, ultimately, impose sanctions for non-compliance.

Task Force on Climate-related Financial Disclosures (TCFD) Adoption and Disclosure. The guidance explicitly requires alignment with the TCFD framework. The TCFD's four pillars are governance, strategy, risk management, and metrics. These have become the global standard. By mandating TCFD-aligned disclosures, the CBN aims to enhance transparency and enable market discipline. Several Nigerian banks have already published TCFD reports, though the quality varies and inadequate. The CBN has begun developing climate-stress testing capabilities. In collaboration with the NGFS, it has conducted pilot exercises to assess how climate scenarios would affect bank capital adequacy. Preliminary results indicate that a severe climate scenario, like rapid energy transition combined with recurrent flooding, could reduce average bank capital ratios by 2-5 percentage points. These exercises are expected to become a routine part of the CBN's supervisory toolkit. Nigeria participates in the NGFS, the Sustainable Banking Network, and the African Sustainable Finance Alliance. This engagement facilitates knowledge transfer and alignment with international standards.

Despite these initiatives, it is noted that shortcomings that relate to enforcement gap, which indicates that the CBN has not yet publicly sanctioned any bank for inadequate climate risk management. There is also capacity constraints in which many banks lack the data and expertise to conduct scenario analysis or measure Scope 3 emissions. The short-term focus of the banking industry which primarily remains heavily oriented toward short-term profitability may understate long-term climate risks. Finally, the fragmentation of many regulatory bodies like the CBN, SEC, NAICOM, and NCCC which operate with limited coordination will continually leading to duplicative or inconsistent requirements on climate change decisions in the Nigerian banking industry.

6. CHALLENGES AND GAPS

A robust legal and regulatory framework is essential, but several structural and institutional challenges hinder effective management of climate risks in Nigerian banking. Absence of a dedicated climate-finance law: The Climate Change Act 2021 does not give the CBN explicit powers to regulate climate risks. The CBN's guidance, while influential, lacks statutory force. Also, there is weak enforcement mechanisms. NESREA and NOSDRA have historically been underfunded and constrained by political interference. Environmental violations often go unpunished, reducing the incentive for banks to screen borrowers.

Furthermore, there is inadequate of judicial experience; Nigerian courts have limited exposure to complex climate and financial litigation. Specialised tribunals or commercial divisions with environmental expertise are absent. Hence**,** Climate risk assessment requires granular data on borrowers' emissions, physical asset locations, and supply chains. Such data are often unavailable or unreliable. Banks struggle to quantify exposure to flood zones or to calculate financed emissions. While top-tier banks have dedicated sustainability teams, many mid-size and smaller banks lack personnel with expertise in climate science, environmental law, and climate-related financial analysis. The CBN's own supervisory staff also require training to assess climate risk management effectively.

Nigeria's energy policy presents a dilemma: on one hand, the government seeks to attract investment in fossil fuels; on the other, it has made climate commitments. This inconsistency creates uncertainty for banks. A bank that reduces lending to oil and gas may lose business, while a bank that continues lending may face transition risks. Moreover**,** Nigeria's economy is heavily dependent on agriculture and extractive industries, both highly exposed to climate change. Diversification is slow. Banks are thus forced to continue lending to these sectors, amplifying their climate exposure.

7. CONCLUSION AND RECOMMENDATIONS

Climate change is no longer an abstract environmental issue; it is a material financial risk that threatens the stability and sustainability of Nigeria's banking industry. This article has demonstrated that Nigerian banks are exposed to significant physical, transition, and liability risks through their lending to agriculture, real estate, and the fossil fuel sector. The legal and regulatory landscape has evolved considerably in recent years, with the Climate Change Act 2021 and the CBN's 2023 Guidance Note on Climate-Related Risk Management representing important milestones. However, substantial gaps remain in enforcement, judicial preparedness, and the statutory basis for climate-related financial regulation. The path forward requires a coordinated effort by the legislature, regulators, the judiciary, and the banking industry. Legislative reforms are needed to embed climate risk management into the core of prudential regulation. The CBN must move from guidance to enforceable rules, backed by robust supervisory mechanisms. Nigerian courts must develop expertise in climate and financial law to handle emerging disputes. And banks themselves must invest in data, analytics, and governance structures that treat climate risk with the same gravity as credit and market risk. Addressing climate effects on banking is not merely a matter of risk mitigation; it is also an opportunity to align the financial system with sustainable development goals. By proactively managing climate risks, Nigerian banks can enhance their resilience, attract international capital, and contribute to a just transition to a low-carbon economy. The legal framework is the bedrock upon which this resilience must be built. The time to act is now, before the physical and transition risks crystalise into systemic financial crises.

To address the identified challenges and to align with global best practices, a comprehensive set of legal and policy reforms is necessary.

Enact a Climate-Finance Integration Act: Parliament should enact legislation that explicitly mandates the CBN, SEC, and other financial regulators to incorporate climate-related risks into prudential regulation. This Act should: Require banks to conduct climate stress tests regularly; Empower the CBN to impose capital add-ons for high-carbon exposures; Create a legal duty for bank directors to consider climate risks.

Moreover, amend the Companies and Allied Matters Act: Clarify that directors' duties include the consideration of material climate-related risks and that failure to do so can constitute a breach.

There is the urgent need to strengthen Environmental Laws. Increase the enforcement powers of NESREA and NOSDRA, and establish a system of environmental courts to expedite cases.

Also, there is need for the regulator to ensure mandatory climate disclosures: The CBN and SEC should jointly issue rules requiring banks and listed companies to disclose climate risks in line with the International Sustainability Standards Board (ISSB) IFRS S2 (Climate-related Disclosures). Such disclosures should be audited. Moreover, Climate-Related Capital Requirements: The CBN should develop a framework to incorporate climate risk into Pillar 1 capital requirements (under Basel III/IV), using the NGFS guidance. Banks with high exposure to climate-sensitive sectors should hold additional capital. Specialised Climate and Environmental Divisions: Create divisions within the Federal High Court dedicated to environmental and climate cases, with judges trained in climate science and finance.

Moreover, The CBN, in collaboration with the Chartered Institute of Bankers of Nigeria (CIBN), should mandate annual climate risk training for bank directors and senior management. The CBN should establish a climate risk data repository, leveraging geospatial data and collaboration with NIMET (Nigerian Meteorological Agency) and other agencies. Portfolio Alignment Metrics: Encourage banks to adopt science-based targets and to report financed emissions using the Partnership for Carbon Accounting Financials (PCAF) methodology.

Technical Assistance: Seek continued support from the NGFS, World Bank, and other international partners to enhance stress testing, disclosure frameworks, and green finance instrument and cross-border litigation coordination. Work with international partners to address the extraterritorial reach of climate litigation, ensuring that Nigerian banks are not unduly exposed to foreign judgments without domestic legal safeguards.

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FRONTIERS OF DEMOCRACY IN EAST EUROPEAN COUNTRIES: TRAJECTORIES, CHALLENGES, AND COMPARATIVE PERSPECTIVES

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Abstract: *East European democracies stand at critical junctures characterized by simultaneous advancement and erosion. Three decades after the collapse of communist regimes, countries in the region display remarkable diversity in democratic development, ranging from EU and NATO members with robust institutions to competitive authoritarian systems demonstrating significant backsliding. This article examines the frontiers of democracy in East European countries through comparative institutional analysis, assessing trajectories of democratization, contemporary challenges to democratic consolidation, and emerging fault lines defining the region's democratic future. By analyzing Poland, Hungary, Czech Republic, Slovakia, Romania, Bulgaria, and the Western Balkans, we identify common patterns—democratic fatigue, populist mobilization, judicial independence threats, media capture, and EU-state tensions—while recognizing significant variations reflecting distinct historical, institutional, and geopolitical contexts. The article concludes that East European democracies face unprecedented pressures requiring innovative institutional responses and renewed commitment to democratic values.*

Keywords: democracy, East, European, countries.

1. Introduction

The "Third Wave" of democratization that swept across East Europe following 1989 represented one of history's most dramatic political transformations (Huntington, 1991). Yet more than three decades later, the region's democratic achievements appear less assured than optimistic observers anticipated. While some countries—notably the Czech Republic, Slovakia, and the Baltics—have achieved stable democratic institutions and successful EU integration, others display alarming trajectories of democratic backsliding and institutional decay.

Poland and Hungary, once celebrated as successful post-communist transitions, have experienced significant democratic erosion under right-wing populist governments. Romania and Bulgaria continue struggling with corruption, weak rule of law, and institutional instability. The Western Balkans remain trapped in hybrid regimes combining electoral competition with authoritarian practices. Meanwhile, authoritarian regimes in Russia, Belarus, and the former Soviet republics demonstrate how transition trajectories can diverge dramatically from democracy toward entrenched authoritarianism.

This article examines the contemporary frontiers of democracy in East Europe—the boundaries of democratic practice, the flashpoints of institutional conflict, and the emerging challenges defining the region's democratic future. Rather than treating East Europe as a monolithic bloc, we employ comparative analysis recognizing significant diversity while identifying common patterns and structural vulnerabilities.

The article's central argument is that East European democracies face a distinctive configuration of challenges distinguishing them from democracies in older, more stable regions. These include: (1) incomplete institutional consolidation creating vulnerability to anti-democratic actors; (2) geopolitical pressures from neighboring authoritarian powers creating security-democracy tensions; (3) legacies of communist and post-communist authoritarianism complicating democratic culture and norms; (4) EU integration effects creating both opportunities and tensions; (5) populist mobilization exploiting genuine grievances and institutional weaknesses; and (6) emerging polarization around fundamental constitutional questions.

2. Democratic Trajectories: Divergence and Variation

2.1 The Post-1989 Consensus and Its Unraveling

The initial post-1989 transition period was characterized by broad consensus favoring democracy, market economics, and integration with Western institutions (NATO, EU). This consensus reflected: (1) rejection of communist authoritarianism and planned economics; (2) aspiration to "return to Europe" after decades of forced separation; (3) genuine enthusiasm for democratic self-governance; and (4) belief that market economics would generate prosperity benefiting all social groups. This consensus supported relatively smooth transitions in Central European countries (Poland, Czech Republic, Hungary, Slovakia) compared to more violent transitions in Yugoslavia and the Caucasus. Institutional design reflected this consensus: most East European constitutions adopted rule-of-law commitments, separation of powers, and protection of fundamental rights.

However, this post-1989 consensus has progressively unraveled over three decades. Multiple factors contributed: (1) economic disappointment as market transition generated inequality, deindustrialization, and regional disparities; (2) perceived Western imperialism as NATO expansion and EU integration were experienced by some as threats rather than opportunities; (3) cultural conflicts as globalization and social liberalization conflicted with traditional values; (4) political exhaustion as the initial enthusiasm for democracy waned without delivering anticipated improvements; and (5) rise of new political actors—particularly populist, nationalist, and right-wing parties—mobilizing resentment against established elites and institutions.

2.2 Central Europe: Relative Success and Contemporary Tensions

The Czech Republic, Slovakia, and Slovenia (often grouped with Central European countries despite geographic positioning) achieved relatively successful democratic consolidation and are widely regarded as the region's success stories. These countries feature:

- Stable party systems with alternation of power among competing parties
- Professional civil services and bureaucracies
- Independent judiciaries (though facing contemporary pressures)
- Robust civil societies and media sectors
- Strong EU and NATO integration with public support
- Relatively low corruption (by post-communist standards)

The Czech Republic particularly stands out. Václav Havel's moral authority, Civic Forum's institutional design, and early economic reforms established strong democratic foundations. The country has experienced genuine party competition, occasional governmental corruption scandals resulting in accountability (unlike some regional peers), and strong civil society. Yet even Central European success stories face contemporary challenges. The Czech Republic has experienced polarization around immigration and EU sovereignty, with populist parties gaining electoral support. Slovakia witnessed significant democratic backsliding under Robert Fico's governments (2006-2018, 2023-present), though institutional resilience enabled correction through 2018 elections and renewed reform efforts following 2022 elections. Despite reversals, these countries maintain stronger institutional foundations than regional peers, suggesting that consolidation, while not irreversible, provides resilience against democratic erosion.

2.3 Poland: From Democratic Pioneer to Constitutional Crisis

Poland's transition narrative reveals the contingency of democratic development. Under Solidarity's leadership in 1989-1990, Poland pioneered Central European democratization, with Lech Wałęsa's presidency symbolizing democratic renewal. The 1997 Constitution, adopted through democratic consensus, established a comprehensive framework for democratic governance.

Poland's first fifteen years (1989-2004) featured genuine democratic achievements: contested elections with power alternation, independent judiciary, free media, and EU integration reflecting institutional strength. The country appeared to exemplify successful democratic consolidation.

However, the election of Law and Justice (PiS) under Jarosław Kaczyński in 2015 initiated dramatic reversal. Key developments include:

Judicial Independence Threats: PiS pursued comprehensive judicial reform, establishing new courts with government-dominated appointment processes and reducing Constitutional Tribunal independence (Venice Commission, 2017). The 2017 Constitutional Court crisis, involving attempts to prevent Constitutional Tribunal judges from functioning and invalidating judges' elections, represented unprecedented constitutional confrontation.

Media Capture: State-controlled media increasingly promoted government narratives and attacked opposition parties. Public television (TVP) became essentially a government propaganda outlet, fundamentally altering the media landscape that had previously featured pluralistic public broadcasting (Freedom House).

Rule of Law Deterioration: International assessments indicate significant weakening of rule of law, with concerns regarding judicial independence, prosecutorial politicization, and selective enforcement against opposition figures. The EU initiated Article 7 proceedings against Poland in 2017, the first such action against an EU member state since the treaty's adoption (European Commission, 2023).

Gender and LGBTQ+ Rights Restrictions: The government pursued controversial restrictions on abortion (despite 1997 constitutional protections) and refused to recognize same-sex partnership rights, creating significant social polarization.

Geopolitical Tensions with EU: Poland's resistance to EU court decisions, assertions of constitutional supremacy over EU law, and judicial independence questions created unprecedented tensions between a member state and EU institutions, challenging assumptions about institutional EU integration.

Yet Poland's situation also demonstrates institutional resilience. Independent courts (outside PiS-controlled structures) issued rulings protecting judicial independence. Civil society mobilized against constitutional violations. International pressure and EU mechanisms constrained government action. The 2023 elections resulted in PiS's electoral defeat and installation of a reformist government, suggesting that democratic electoral mechanisms, while strained, retained functionality.

2.4 Hungary: Democratic Backsliding and Authoritarian Drift

Hungary presents perhaps the region's most concerning democratic trajectory. Under Viktor Orbán's Fidesz government (1998-2002, 2010-present), Hungary has experienced systematic democratic erosion that international observers increasingly characterize as transition toward competitive authoritarianism or "illiberal democracy" (Levitsky et al., 2010).

Key developments include:

Constitutional Rewriting: The 2011 "New Constitutional Regime," adopted with supermajority support but without opposition participation, fundamentally revised Hungary's institutional framework. Changes included: redefining property rights to enable property seizures; restricting Constitutional Court authority; weakening judicial independence; and establishing unilateral amendment procedures enabling further constitutional change without consensus (Venice Commission, 2011).

Electoral System Manipulation: The government altered electoral rules multiple times, creating an electoral system international observers assessed as structurally advantaging Fidesz (IDEA, 2011). Gerrymandering, manipulation of single-mandate district boundaries, and elimination of runoff provisions enabled Fidesz to maintain power despite declining vote shares.

Institutional Capture: The government systematically placed allies in leadership positions across independent institutions—constitutional court, judicial oversight bodies, election commission, media authority—effectively subordinating supposedly independent institutions to executive control.

Media Capture: State media promotion, combined with advertising pressure on independent media and ownership changes placing pro-government oligarchs in control of major outlets, created a media landscape where government narratives dominated public discourse (Reporters without Borders, 2023; Media Matters for Democracy, 2020).

Corruption and Oligarchy: Rather than reducing corruption, Orbán's government institutionalized corruption through crony capitalism, directing government contracts and EU funds toward allied oligarchs and companies. Hungarian media documented systematic corruption, yet limited judicial independence restricted accountability (Transparency International).

Attacks on Civil Society: The government pursued restrictions on NGOs, particularly those receiving international funding, establishing requirements for registration and reporting that effectively created state surveillance of civil society.

Attacks on Universities: Constraints on Central European University's operations and broader restrictions on academic freedom undermined higher education's role in democratic society.

International assessments reflect these developments. V-Dem (Varieties of Democracy) project data shows Hungary's democratic quality declining to levels comparable to competitive authoritarian regimes (V-Dem Institute, 2023). EU mechanisms—Article 7 proceedings (initiated 2018) and rule of law enforcement actions—have constrained but not reversed backsliding.

Hungary's trajectory raises critical questions: At what point does democratic erosion become authoritarianism? Can electoral mechanisms, even if manipulated, retain legitimacy? How should democracies respond to internally-driven democratic collapse?

2.5 Romania and Bulgaria: Corruption and Institutional Weakness

Romania and Bulgaria present different democratic challenges than Poland and Hungary. Rather than experiencing dramatic constitutional crises, these countries demonstrate persistent institutional weakness, particularly regarding corruption and rule of law.

Romania experienced tumultuous early transitions involving violence, constitutional complications, and political instability. President Ion Iliescu's successive governments (1990-1996, 2000-2004) demonstrated limited commitment to democratic consolidation. However, EU integration catalyzed institutional reforms. Accession negotiations required anti-corruption measures, judicial independence protections, and rule of law commitments. The 2004-2007 reforms, particularly regarding the judiciary, established anti-corruption institutions including the National Anticorruption Directorate (DNA).

Romania's subsequent history reflects tension between reform momentum and resistance. The DNA, led by Laura Codruța Kovesi (2013-2018), pursued aggressive anti-corruption prosecutions against high-level officials, establishing unprecedented accountability. However, government response involved legislative measures restricting prosecutorial authority and judicial independence. The government pardoned and subsequently attempted to pardon major corruption cases, generating significant civil society mobilization (OECD, 2019).

More recently, the election of Klaus Iohannis as president and his appointees has renewed reform momentum. However, persistent vulnerabilities remain: judicial independence remains limited by political pressures; corruption remains endemic in certain state structures; and organized crime maintains deep institutional penetration.

Bulgaria demonstrates even weaker institutional development. The country has experienced persistent problems with corruption, organized crime, and judicial capture. EU assessments repeatedly emphasized Bulgaria's failure to address corruption at the highest levels, particularly regarding state capture by organized crime networks (European Commission).

The COVID-19 pandemic generated massive anti-corruption protests (2020-2021) against Prime Minister Boyko Borisov's government, highlighting public dissatisfaction with institutional weakness and perceived organized crime influence. The 2021 elections resulted in governmental transition, yet institutional continuities and structural corruption have persisted. Bulgaria's situation demonstrates that formal democratic institutions (elections, constitution, courts) can coexist with severe institutional dysfunction and criminal penetration of state structures.

2.6 Western Balkans: Hybrid Regimes and Stalled Transition

The Western Balkans—Serbia, Bosnia-Herzegovina, Montenegro, North Macedonia, Kosovo, and Albania—present the most dramatic democratic deficits in East Europe. These countries remain outside the EU, with varying commitments to democratic development and EU integration.

Serbia under Aleksandar Vučić (2017-present, with prior influence 2012-2017) demonstrates hybrid regime characteristics: electoral competition continues, yet media capture, organizational advantages for ruling parties, and constraints on opposition result in dominant-party systems. Civil society reports ongoing restrictions on protest, journalist harassment, and limited judicial independence (Balkan Insight).

Serbia's geopolitical positioning—balancing EU integration aspirations with Russian relationships—creates contradictory pressures undermining democratic consolidation. EU accession requires democratic reforms; yet security partnerships with Russia generate countervailing pressures toward closed governance.

Bosnia-Herzegovina has experienced perpetual institutional instability stemming from its post-war constitutional structure (Dayton Agreement) establishing three-entity federation with ethnic representation requirements (International Crisis Group, 2021). This arrangement, designed to manage post-conflict divisions, has enabled persistent ethnic mobilization and prevented institutional consolidation. International oversight (Office of the High Representative) attempted to impose democratic reforms, yet without genuine local consensus, institutional development remained limited. Recent democratic developments show modest improvement, yet structural ethnic divisions continue undermining democratic consolidation.

North Macedonia experienced dramatic institutional crisis (2015-2017) involving wiretapping of senior officials, justice system politicization, and opposition party boycotts of parliament. EU mediation and pressure enabled negotiated resolution, though underlying tensions persist regarding justice sector reform and ethnic Macedonian-Albanian relations.

Albania has experienced modest democratic improvements under Edi Rama's government (2013-present), with anti-corruption efforts and judicial reforms undertaken. However, organized crime penetration remains substantial, and corruption continues at significant levels.

Kosovo and Montenegro, despite challenges, demonstrate greater democratic commitment. Kosovo, though not internationally recognized as a nation-state by all countries, has established functioning democratic institutions and held contested elections. Montenegro achieved EU candidacy status and made institutional progress, though persistent organized crime networks and corruption remain concerning.

The Western Balkans' democratic challenges stem from multiple factors: post-conflict trauma and ethnic divisions; limited state capacity; external military intervention legacies; organized crime penetration; and insufficient economic development supporting robust civil society. EU conditionality and pressure have generated reforms, yet institutional consolidation remains incomplete.

3. Populism and Anti-Establishment Mobilization

3.1 The Rise of Populist Movements

A defining feature of contemporary East European politics is the dramatic rise of populist movements, particularly right-wing populist parties mobilizing resentment against established elites, immigrants, and supranational institutions (especially the EU).

Populist parties in the region include: Poland's Law and Justice, Hungary's Fidesz, Czech Republic's SPD (Pirate Party variants), Slovakia's ĽSNS, Poland's Confederation, Hungary's Jobbik, and numerous other movements. These parties, despite diversity, share core characteristics: anti-establishment rhetoric, nationalist appeals, religious and cultural traditionalism, and populist claims to represent "the people" against corrupt elites.

Several factors explain populist success: (1) Economic grievances from market transition, deindustrialization, and EU integration generating concentrated losses for workers in declining industries; (2) Cultural anxiety from globalization, migration, and social liberalization; (3) Distrust of established parties, perceived as corrupt and unresponsive to citizens; (4) Identity politics centered on national sovereignty, Christian values, and anti-immigration; and (5) Geopolitical anxieties regarding NATO expansion and perceived Western hegemony.

Populist parties have effectively exploited legitimate grievances while proposing authoritarian or destructive solutions. In Poland and Hungary, populist governments pursued democratic backsliding and constitutional violations. In other countries, populist parties remain in opposition, threatening democratic norms through intemperate rhetoric while not yet implementing authoritarian programs.

3.2 Populism and Democratic Erosion

Scholarly debate persists regarding populism's relationship to democracy. Some scholars argue populism represents a distortion of democratic principles, substituting "people's will" for democratic procedures and institutions (Cas Mudde, 2007). Others contend populism reflects authentic democratic grievances and can catalyze institutional reform (Rodrik, 2017).

East European evidence supports a nuanced view: populist mobilization reflects genuine frustrations with established elites and institutions; yet populist leaders frequently employ anti-democratic methods (constitutional violations, institutional capture, media suppression) once in power. Rather than reforming institutions as promised, populist governments have typically deepened institutional dysfunction.

The relationship between populism and authoritarianism appears particularly concerning in East Europe. Populist leaders—Orbán, Kaczyński, Vučić—have utilized populist rhetoric to justify authoritarian measures framed as "returning power to the people." This rhetorical strategy—populist justification for anti-democratic action—represents a distinctive threat to East European democracies.

3.3 Social Basis of Populism

Research on East European populism identifies its social basis: primarily working-class and rural populations experiencing economic decline, cultural displacement, and status anxiety (Goodwin et al., 2020). These groups, having suffered from market transition, supported populist parties promising to restore national greatness, protect traditional values, and challenge cosmopolitan elites.

Regional variations reflect different economic trajectories. Poland's PiS found particular support in rural areas and declining industrial regions; Hungary's Fidesz similarly mobilized among economically disadvantaged populations. Czech populist movements have attracted similar constituencies.

Notably, educational polarization characterizes East European politics: university-educated, urban populations tend to support liberal parties and EU integration; less educated, rural populations support populist, nationalist, and Euroskeptic parties. This polarization creates challenges for democratic consensus and makes institutional compromise difficult.

4. Threats to Democratic Institutions

4.1 Judicial Independence and Rule of Law

One of the most significant contemporary challenges across East Europe involves threats to judicial independence and rule of law. Governments in Poland, Hungary, and Romania have undertaken measures restricting judicial autonomy, politicizing appointments, and subordinating courts to executive control.

These threats take multiple forms:

Appointment Procedures: Governments have altered judicial appointment procedures to favor candidates aligned with ruling coalitions. Poland's National Council of Judiciary reorganization, Hungary's Constitutional Court restructuring, and Romania's periodic efforts to control appointment processes exemplify these tactics.

Retirement Age Modifications: Poland lowered retirement ages for Supreme Court judges, enabling government replacement of jurists; Hungary employed similar tactics. These changes enabled rapid transformation of judicial composition without requiring explicit removal of inconvenient judges.

Structural Changes: Governments have created new court structures outside traditional judicial hierarchies (Poland's Chamber for Extraordinary Review and Public Affairs), staffed with government-aligned judges and possessing authority over sensitive cases.

Prosecutorial Independence: Politicization of prosecutors offices has undermined independent investigation of governmental corruption and crimes. Hungary, Poland, and Romania have all experienced concerns regarding selective prosecution against opposition figures while protecting government allies.

These developments fundamentally threaten rule of law. If courts cannot function independently of political control, property rights become insecure, contracts unenforceable, and political opponents vulnerable to arbitrary punishment. The judicial capture that these reforms enable represents a fundamental threat to democratic governance.

4.2 Media Capture and Information Disorder

Across East Europe, governments have undertaken efforts to control media narratives and restrict opposition information access. These include:

Public Media Politicization: State-controlled television and radio, ostensibly independent public broadcasters, have been subordinated to governmental control, becoming essentially propaganda organs. Poland's TVP provides the most egregious example, though Hungary's media environment similarly reflects state influence.

Advertising Pressure: Governments have directed state advertising toward favorable media while withdrawing advertising from critical outlets, creating financial pressure on independent media.

Ownership Concentration: In several countries (Hungary particularly), pro-government oligarchs have acquired controlling interests in major media outlets, creating media landscapes favorable to government narratives.

Digital Campaigns: Governments have employed social media manipulation, bot networks, and coordinated disinformation campaigns to amplify government messages and suppress opposition narratives.

Journalist Harassment: Physical attacks, legal harassment, and public delegitimization of journalists have created hostile environments for investigative reporting on government corruption and abuses.

These developments have created information environments where citizens receive systematically distorted information about political realities. Public television, traditionally trusted institutions, now serve governmental propaganda functions. This media capture undermines citizens' capacity for informed democratic choice and eliminates institutional constraints on governmental power.

4.3 Electoral Manipulation and Democratic Distortion

While most East European countries continue holding elections, some governments have undertaken measures undermining electoral democracy:

Electoral System Changes: Multiple governments (Hungary, Poland, and others) have altered electoral systems to advantage ruling parties while disadvantaging opposition. Hungary's hybrid electoral system has been particularly criticized for structural advantages favoring Fidesz.

Gerrymandering: Electoral district boundary manipulation has enabled governments to win supermajorities despite declining vote shares. Hungary and Poland provide examples of sophisticated gerrymandering reducing opposition influence despite substantial electoral support.

Voter Suppression: While overt voter suppression remains limited compared to some democracies, governments have pursued subtle measures constraining opposition supporters' voting: residency requirement enforcement, voter registration complications, and reduced polling locations in opposition-dominated areas.

Campaign Inequality: State media bias and advertising advantages for ruling parties create unequal campaign conditions advantaging incumbents.

These electoral distortions fundamentally undermine democratic legitimacy. If electoral systems are systematically manipulated to predetermine outcomes, elections become theater rather than genuine democratic choice. Citizens' capacity to express preferences through voting becomes compromised.

4.4 Civil Society Constraints

Governments in Poland, Hungary, and other East European countries have undertaken measures constraining civil society organizations, particularly NGOs receiving international funding and advocacy organizations critical of government policies.

Registration and Reporting Requirements: Governments have imposed burdensome registration and financial reporting requirements on NGOs, creating state surveillance of civil society.

Funding Restrictions: Laws restricting foreign funding of NGOs have eliminated resources for organizations receiving international support while leaving government-aligned organizations unaffected.

Physical Intimidation: Activists have experienced harassment, physical attacks, and public delegitimization for advocating controversial positions.

Legal Harassment: Strategic lawsuits against critics (SLAPPs) have targeted journalists, activists, and opposition figures, using litigation threat to suppress criticism.

These constraints undermine civil society's role as institutional check on governmental power and advocate for citizen interests. Vibrant civil societies characteristic of successful democracies require freedom of association, expression, and access to resources. Constraints on civil society eliminate these democratic prerequisites.

5. The European Union and Democratic Development

5.1 EU Conditionality and Democratic Reform

The European Union has significantly influenced East European democratic development through conditionality mechanisms. EU accession required adoption of Copenhagen Criteria—democratic governance, rule of law, and human rights protection—creating powerful incentives for institutional reform prior to membership (Copenhagen European Council, 1993).

This external conditionality produced genuine institutional improvements. Central European countries undertook comprehensive judicial reforms, adopted human rights protections, and established independent institutions to satisfy EU requirements. The promise of EU membership provided motivation for democratic consolidation that internal factors alone might not have generated.

However, post-accession conditionality has proven far weaker. Once member states joined the EU, external pressure to maintain democratic standards diminished. The EU lacked effective mechanisms for enforcing democratic standards among member states. Article 7 proceedings (initiated against Poland and Hungary) provide mechanisms for suspension of rights, yet require unanimity or near-unanimity, making enforcement difficult when multiple states resist.

5.2 Contemporary EU-Member State Tensions

More recently, EU-East European member state relationships have become increasingly contentious regarding democratic standards and rule of law. Key tensions include:

Rule of Law Disputes: The EU, through the European Court of Justice, has issued rulings requiring member states to maintain judicial independence, respect EU law supremacy, and cease discriminatory practices. Poland and Hungary have resisted these rulings, claiming national constitutional supremacy and sovereignty (CJEU cases: Case C-619/18 (Polish Judicial Independence); Hungarian cases regarding constitutional supremacy and EU law).

Conditionality Linkages: The EU has increasingly linked funding (EU budget allocations, recovery fund distributions) to rule of law compliance, creating financial pressure on member states to maintain democratic standards. However, member states have resisted this linkage as infringement on sovereignty.

Geopolitical Tensions: East European countries' historical experiences with Russian dominance create security anxieties driving NATO and EU integration. However, EU policies (migration, energy, climate) sometimes conflict with member state preferences, generating frustration with supranational governance.

Cultural Conflicts: EU policies on LGBTQ+ rights, gender equality, and religious freedom conflict with culturally conservative governments' priorities. Poland and Hungary's resistance to EU requirements regarding LGBTQ+ rights reflects genuine cultural conflicts, though framed through sovereignty assertions.

These tensions suggest that EU democratic conditionality, while significant, has limits. Once member states gain EU status and negotiate favorable terms, coercive pressure diminishes.

The EU's mechanisms for enforcing democratic standards among members remain underdeveloped.

5.3 The EU's Democratic Legitimacy

East European democratic crises also raise questions regarding the EU's own democratic legitimacy. If the EU, supposedly a union of democracies, proves unable to prevent member state democratic backsliding, what does this suggest about EU institutions?

Some scholars argue that the EU's supranational governance structure, with limited direct democratic accountability to citizens, creates legitimacy problems that undermine its ability to enforce democratic standards (Streeck, 2016). If EU institutions themselves lack democratic legitimacy, their claims to protect democracy ring hollow.

Others argue that EU mechanisms, while imperfect, have constrained member state backsliding more effectively than alternative approaches would have. Without EU pressure, Poland and Hungary might have pursued even more aggressive democratic erosion.

The relationship between the EU and East European democracy remains complex and contested, suggesting that supranational institutions can facilitate but not guarantee democratic consolidation.

6. Nationalism, Geopolitics, and Democratic Constraints

6.1 National Identity and Sovereignty Claims

A significant dimension of contemporary East European politics involves renewed emphasis on national sovereignty and identity. This partly reflects legitimate historical experiences: Russian imperialism, communist domination, and post-communist dependence created strong desires for national self-determination.

However, contemporary nationalism has created tensions with democratic institutions. Nationalist parties claim to represent "true" national interest against foreign (EU, Western, liberal) interference. This nationalist framing positions supranational institutions and international human rights standards as threats to national sovereignty rather than as democratic enhancements.

The EU's existence as supranational governance structure creates legitimate tensions: to what extent should national majorities accept limitations on their sovereignty imposed by supranational institutions? At what point does protection of democratic minorities and minorities' rights infringe legitimate national self-determination?

These questions remain unresolved in East European political theory and practice. Nationalist governments exploit sovereignty claims to justify constitutional violations; yet genuine concerns about external imposition and cultural preservation motivate nationalist movements.

6.2 Geopolitical Pressures and Security Dilemmas

East European countries face distinctive geopolitical pressures reflecting proximity to Russia and historical experience of Russian dominance. The Russian invasion of Ukraine (2022) crystallized these security concerns, transforming abstract discussions of NATO and EU integration into immediate survival questions.

Geopolitical pressures create security-democracy tensions: governments facing external security threats often justify restrictions on domestic freedoms as necessary for national survival. Countries bordering Russia employ security arguments to justify military buildups, intelligence expansion, and domestic surveillance.

Furthermore, Russian influence operations—disinformation campaigns, cyber operations, support for anti-democratic parties—represent external threats to East European democracies distinct from internal governance challenges. Russian interference, documented in multiple democracies, complicates assessment of whether democratic erosion stems from internal factors or external manipulation.

The Ukraine war has intensified these dynamics. Democratic countries on Russia's borders (Poland, Baltic states) have pursued security measures that, if pursued indefinitely, could undermine democratic institutions. Balancing security imperatives with democratic protections remains an unresolved challenge.

6.3 NATO Expansion and Democratic Divergence

NATO expansion into East Europe has catalyzed both democratization and reaction. For Central European countries, NATO membership became synonymous with democratic development and Western integration. Countries meeting NATO standards (rule of law, civilian control of military) simultaneously met EU accession criteria.

However, NATO expansion also created reaction. Russia views NATO expansion as threatening, generating security competition that affects East European geopolitics. Furthermore, NATO membership for countries like Poland and Hungary has created contradictions: these countries joined NATO expecting Western support for democracy, yet NATO (focused on security cooperation) has limited capacity to enforce democratic standards among members.

The broader point is that geopolitical pressures create incentives that may not align with democratic consolidation. Security dilemmas can justify restrictions on freedoms; external threats can unite populations around nationalist leaders; and military security cooperation can proceed despite democratic backsliding if security interests align.

7. The Role of Civil Society and Democratic Resistance

7.1 Civil Society Mobilization Against Democratic Erosion

Despite numerous threats, East European civil societies have mobilized substantially against democratic backsliding. These mobilizations demonstrate that democratic resistance remains possible even under significant constraints.

Poland: The 2015-2016 "Black Protests" against abortion restrictions mobilized hundreds of thousands in demonstrations, becoming the largest protests since 1989. The 2017 Constitutional Court crisis generated sustained civil society mobilization defending judicial independence. The "Committee for the Defense of Democracy" (KOD) organized sustained opposition to constitutional violations. While unable to prevent PiS legislation, these movements maintained democratic discourse and enabled the 2023 electoral victory against PiS.

Hungary: Despite more severe constraints on civil society, civil society organizations have organized sustained opposition. The Momentum party emerged from civil society mobilization, winning surprising electoral support in 2022. Anti-Orbán coalitions formed to oppose the government, though hampered by election system manipulation and media disadvantages.

Romania: Anti-corruption protests (2016-2017, 2020-2021) against government attempts to weaken anti-corruption institutions mobilized hundreds of thousands. These demonstrations demonstrated public commitment to rule of law and anti-corruption despite modest political representation for anti-corruption constituencies.

Czech Republic: Civil society mobilization contributed to the 2018 election victory against populist parties and sustained pressure on subsequent governments regarding rule of law and anti-corruption.

These mobilizations demonstrate that even under constraints, democratic resistance remains possible. Civil society organizations, labor unions, religious institutions, and cultural organizations have organized sustained opposition to democratic backsliding, maintaining democratic values despite institutional challenges.

7.2 Institutional Resilience and Unexpected Strengths

One significant finding from East European experience is that democratic institutions often prove more resilient than anticipated. Courts operating outside government control have issued rulings constraining executive power. Constitutional tribunals have occasionally ruled against governments on democratic principles. Professional civil services have resisted complete politicization.

In Poland, despite judicial capture efforts, some courts have issued decisions protecting constitutional rights and limiting government authority. Constitutional Tribunal judges outside government control have issued dissenting opinions articulating constitutional principles. Lower courts have occasionally ruled against government interests based on legal principle.

In Hungary, despite Fidesz's supermajority and constitutional rewriting, opposition parties have competed in elections and won representation. Civil society organizations continue functioning despite constraints. International pressure and EU mechanisms, while imperfect, have constrained government action.

These examples suggest that even significantly compromised democracies retain institutional capacities for resistance. The expectation that democratic capture would be complete and irreversible has sometimes proven incorrect.

7.3 Education and Generational Change

Long-term democratic resilience may depend on generational replacement and education. Younger East Europeans, educated after 1989 in democratic systems (however flawed), may possess different democratic consciousness than older generations shaped by communism.

University education, despite government efforts to constrain academic freedom, remains a space where democratic ideas circulate. Student movements have mobilized against government overreach (Poland, Hungary, Romania). Educational institutions' resistance to complete politicization provides some institutional continuity for democratic values.

8. Comparative Challenges and Patterns

8.1 The "Unfinished Business" of Post-Communist Transition

A common theme across East European democracies is incomplete institutional consolidation. Unlike established Western democracies where institutional development occurred gradually over centuries, East European democracies required compression of institutional development into decades.

This acceleration created vulnerabilities. Parties, judiciaries, and civil services established relatively recently lack the deep roots and institutional cultures characteristic of century-old institutions. Consequently, these institutions proved susceptible to capture and politicization when strong actors attempted to control them.

Furthermore, economic transformation accompanying political transition created substantial dislocations that ongoing institutional development struggles to manage. The "winners" and "losers" of market transition include constituencies with fundamentally different interests regarding democracy, further complicating institutional consolidation.

8.2 Corruption and State Capture

Persistent corruption and state capture plague East European democracies to varying degrees. Post-communist privatization, conducted with limited rule of law protections, created opportunities for corrupt appropriation of state assets. Subsequent decades witnessed criminalization of the state, with organized crime networks infiltrating state structures.

Corruption undermines democracy by: (1) reducing citizen trust in institutions; (2) enabling criminal networks to influence policy; (3) distributing public resources to connected elites rather than citizens; and (4) creating perception that democratic institutions serve oligarchs rather than people.

Addressing corruption requires sustained institutional development, prosecutorial independence, and international cooperation. Partial successes (Romania's DNA anti-corruption campaign, Latvia's limited reforms) demonstrate that progress remains possible. However, entrenched interests resist comprehensive anti-corruption efforts, and backsliding remains possible (as Romania experienced with government efforts to constrain prosecutors).

8.3 Polarization and Democratic Compromise

A distinctive challenge across East Europe is political polarization that undermines democratic compromise. Polarization takes several forms:

Ideological Polarization: Fundamental disagreement regarding constitutional principles, EU integration, and national values creates divisions difficult to bridge through negotiation. Polish divisions regarding judicial independence versus democratic majority sovereignty, Hungarian divisions regarding EU integration versus national sovereignty, reflect incompatible visions.

Identity Polarization: Divisions along urban-rural, educated-uneducated, and cosmopolitan-nationalist lines create polarization difficult to reconcile through democratic procedures. Voters divided on fundamental identity questions struggle to compromise.

Institutional Polarization: When political actors lack shared commitment to democratic rules, institutional procedures become weaponized. Opposition parties refuse to participate in proceedings they perceive as illegitimate; governments utilize procedures to delegitimize opponents; mutual disrespect for institutions undermines democratic practice.

Addressing polarization requires restoration of shared democratic commitment and mutual respect among political competitors. Some East European democracies (Czech Republic's post-2018 coalition-building, Slovakia's anti-Fico mobilization) have demonstrated capacity for cross-partisan cooperation. Others (Poland, Hungary) remain mired in zero-sum polarization where compromise appears impossible.

9. International Responses and External Support for Democracy

9.1 Democracy Promotion by Western Institutions

Western democracies and institutions have invested substantially in East European democratic development. The National Endowment for Democracy, Freedom House, international democracy support organizations, and bilateral aid programs have provided resources and expertise for democratic capacity-building.

These efforts have achieved mixed results. Democracy promotion assistance contributed to institutional development and civil society capacity-building in early transition period. However, as East European institutions have matured and geopolitical tensions have increased, democracy promotion has become increasingly contested.

Governments pursuing democratic erosion (Poland, Hungary) view democracy promotion as foreign interference in national affairs. Aid organizations' focus on rule of law, human rights, and LGBTQ+ rights conflicts with conservative governments' priorities. Furthermore, democracy promotion's effectiveness remains debated; external resources cannot substitute for internal commitment to democratic consolidation.

9.2 Sanctions and Coercive Democracy Promotion

As democratic backsliding has intensified, Western democracies and institutions have employed sanctions and coercive mechanisms:

EU Sanctions: The EU has threatened and implemented funding cuts, rule of law conditionality, and various sanctions against Poland and Hungary. However, sanctions' effectiveness remains limited: despite financial pressure, governments have continued backsliding, suggesting sanctions cannot reverse determined antidemocratic action.

Visa Restrictions: Some democracies have imposed visa restrictions on officials responsible for democratic abuses, creating consequences for perpetrators. However, these targeted sanctions remain limited in scope and impact.

International Court Referrals: Proposals for international prosecution of officials responsible for systematic democratic abuse remain largely aspirational. International criminal mechanisms focus on war crimes and crimes against humanity, not democratic violations per se.

These coercive mechanisms raise difficult questions: At what point should democracies intervene in other democracies' internal affairs? Do external sanctions effectively promote democracy or merely entrench anti-democratic actors? These questions remain unresolved.

9.3 Support for Civil Society and Independent Media

External support for civil society and independent media represents less coercive but potentially more effective democracy promotion. Organizations supporting journalists, civic organizations, and human rights defenders provide resources enabling continued democratic resistance despite constraints.

International media networks (Reporters Without Borders, Committee to Protect Journalists) document journalist harassment and provide support. International funding for civil society organizations enables continued operation despite government constraints. University networks maintain academic exchange and scholarship supporting intellectuals and students from restrictive contexts.

These support mechanisms, while limited, sustain democratic alternatives even when governments pursue systematic democratic erosion.

10. Scenarios and Future Trajectories

10.1 Consolidation and Democratic Renewal

In some East European countries, trajectories toward consolidated democracy remain possible. The Czech Republic and Slovakia, despite setbacks, maintain institutional capacity for democratic correction. Poland's 2023 election demonstrates that electoral mechanisms can produce anti-authoritarian verdicts even after years of democratic erosion.

Scenarios for democratic renewal require: (1) electoral defeat of anti-democratic movements; (2) institutional restoration through reformed governments; (3) international pressure and support; and (4) renewed civil society mobilization. Poland's post-2023 trajectory, with institutional reform and anti-corruption prosecutions, potentially exemplifies this pattern.

10.2 Managed Decline and Competitive Authoritarianism

More pessimistic scenarios involve trajectories toward competitive authoritarian regimes—systems maintaining electoral competition and formal democratic institutions while fundamentally limiting democracy through institutional capture, media control, and civil society constraints. Hungary increasingly approximates this model, as do several Western Balkans states.

In competitive authoritarian systems, elections continue, opposition parties persist, yet ruling parties' structural advantages make their defeat unlikely. Citizens retain formal voting rights yet limited meaningful choice. International observers certify elections as formally proceeding even while identifying systematic irregularities.

These scenarios, while deeply concerning from democratic perspectives, at least retain institutional possibilities for democratic change should elite interests or geopolitical circumstances shift.

10.3 Democratic Breakdown and Authoritarianism

The most pessimistic scenario involves democratic breakdown: abolition of elections, elimination of opposition parties, and establishment of overt authoritarianism. This scenario, characterizing Belarus under Lukashenko and Russia under Putin, remains possible in East European contexts, particularly if geopolitical crises create security justifications for authoritarian measures.

However, this scenario appears less likely in EU member states, where institutional constraints and international oversight create barriers to complete democratic breakdown. Competitive authoritarianism appears more probable than full authoritarianism in these contexts.

11. Democratic Requirements and Institutional Reform

11.1 Rule of Law and Judicial Independence

Genuine democratic consolidation requires restoration and protection of rule of law and judicial independence. This requires: (1) reversal of judicial capture reforms; (2) establishment of transparent, merit-based judicial appointment procedures; (3) protection of prosecutorial independence; and (4) strengthening of constitutional courts' authority and protection.

International standards (UN Principles on Independence of Judiciary, Council of Europe Rule of Law Standards) provide frameworks for judicial independence. Implementation requires political commitment and sustained international monitoring.

11.2 Media Pluralism and Information Freedom

Democratic consolidation requires genuinely pluralistic media landscapes with free, independent news organizations. This requires: (1) protection of editorial independence for public broadcasters; (2) prevention of ownership concentration; (3) strong defamation and libel protections preventing use of legal mechanisms to suppress journalism; and (4) protection of journalists from harassment and violence.

Some jurisdictions (Estonia, Latvia, Lithuania) have maintained relatively strong media pluralism; others (Poland, Hungary) have experienced significant deterioration. Restoration requires both legal reform and international pressure against media capture.

11.3 Civil Society Protection and Democratic Space

Democratic consolidation requires protection of civil society and democratic space. This requires: (1) freedom of association and assembly; (2) elimination of arbitrary restrictions on NGOs; (3) protection of international civil society engagement; and (4) protection of vulnerable populations (minorities, LGBTQ+) from discrimination and violence.

International human rights mechanisms (European Court of Human Rights, UN mechanisms) can support civil society protection, though limitations on enforcement remain.

11.4 Electoral System Reform

Some East European countries require electoral system reform to eliminate structural distortions. Gerrymandering, electoral system manipulation, and voter suppression require correction through: (1) independent electoral commissions; (2) transparent electoral rules; (3) international election observation; and (4) protection of voting rights.

Addressing electoral system manipulation remains difficult because incumbent governments benefit from existing systems and rarely voluntarily reform them. Reform requires either external pressure or electoral defeat enabling reform-oriented governments to restructure systems.

12. Conclusion: Democracy at Critical Junctures

East European democracies stand at critical junctures characterized by simultaneous vulnerability and resilience. While several countries have achieved relatively robust democratic consolidation, others face serious risks of democratic erosion or transition toward competitive authoritarianism. The region's diversity—ranging from Czech democratic success to Hungarian authoritarian drift—suggests that democratic trajectories remain contingent on institutions, leadership, and societal commitment rather than inevitable.

Several conclusions emerge from this analysis:

First, the post-1989 consensus favoring liberal democracy, market economy, and Western integration has substantially eroded. While this consensus facilitated initial transitions, its exhaustion has enabled populist and anti-democratic mobilization. Renewal of democratic commitment requires addressing genuine grievances (economic dislocation, cultural change, geopolitical anxiety) that populist movements exploit.

Second, East European democratic vulnerabilities stem not from inevitable regional characteristics but from incomplete institutional consolidation. Institutions established within decades lack the deep roots characteristic of century-old systems. However, this also suggests that institutional strengthening through reform remains possible.

Third, democratic backsliding, while serious, has proven reversible in some contexts. Poland's 2023 electoral defeat of PiS demonstrates that even significantly compromised democracies retain electoral mechanisms enabling course correction. This provides grounds for cautious optimism.

Fourth, international mechanisms (EU conditionality, international courts, external support for civil society) have significance but significant limitations. External pressure can constrain but not reverse determined anti-democratic action by governments controlling state resources and media. Democratic consolidation ultimately requires internal commitment.

Fifth, civil societies across East Europe have demonstrated significant capacity for democratic resistance. Sustained mobilization against democratic backsliding, despite constraints, demonstrates that democratic values retain salience and that resistance to authoritarianism remains possible.

Sixth, the relationship between security concerns and democracy deserves greater attention. Geopolitical pressures (Russian threats, regional instability) create legitimate security imperatives that sometimes generate anti-democratic pressures. Balancing security and democracy remains unresolved in East European contexts.

The frontiers of democracy in East Europe are not fixed boundaries but dynamic spaces of ongoing contestation. Whether these frontiers advance toward consolidated democracy, retreat toward authoritarianism, or stabilize in hybrid competitive authoritarian systems depends on choices made by political actors, civil societies, and international institutions in coming years.

The stakes are substantial. East European democracies' fates will significantly affect Europe's democratic future and the global competition between democratic and authoritarian governance models. Renewed commitment to democratic consolidation, coupled with realistic understanding of challenges and vulnerabilities, offers the best foundation for navigating democratic frontiers toward more stable and robust democratic futures.

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UNDERSTANDING THE NEO-NATIONALISM PHENOMENON IN EAST EUROPEAN COUNTRIES: IDEOLOGY, MOBILIZATION, AND TRANSFORMATION OF DEMOCRATIC POLITICS

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Abstract: *Neo-nationalism has emerged as the defining ideological force reshaping East European politics in the twenty-first century. Distinct from nineteenth-century nationalism or Cold War anti-communism, contemporary neo-nationalism combines assertions of national sovereignty with cultural conservatism, anti-immigration policies, and skepticism toward supranational institutions (particularly the EU). This article examines the neo-nationalist phenomenon across East European countries—Poland, Hungary, Czech Republic, Slovakia, Romania, Bulgaria, and the Western Balkans—analyzing its ideological foundations, social bases, mobilization strategies, and transformative effects on democratic institutions and practices. We argue that neo-nationalism represents not merely a political movement but a comprehensive alternative vision of governance, identity, and international relations that challenges liberal-democratic consensus and threatens democratic consolidation. Understanding neo-nationalism requires examining economic grievances, cultural anxieties, historical traumas, geopolitical insecurities, and the organizational capacities of neo-nationalist political entrepreneurs. The article concludes that addressing neo-nationalism's political dominance requires not dismissal but serious engagement with underlying grievances while defending democratic institutions against anti-democratic nationalist capture.*
Keywords: *neo-nationalism, East, European, countries.*

1. Introduction: Defining Neo-Nationalism

1.1 Nationalism Reconsidered

Nationalism—the political ideology organizing state authority around national communities and prioritizing national interest in international relations—has profoundly shaped world history. Nationalism facilitated national unification movements, anti-colonial independence struggles, and modern nation-state formation. Yet nationalism has also generated devastating wars, ethnic cleansing, and authoritarian regimes.

Contemporary nationalism requires careful analysis distinguishing it from historical predecessors. Twenty-first century neo-nationalism differs fundamentally from nineteenth-century romantic nationalism (Herder, Fichte) that celebrated national cultures, from fin-de-siècle nationalisms generating imperial competition, and from twentieth-century fascist ultra-nationalism justifying totalitarian violence.

Neo-nationalism is a distinctive contemporary ideology characterized by: (1) sovereignty assertions against supranational institutions and international law; (2) cultural nationalism prioritizing national identity and traditional values; (3) anti-immigration and restrictive citizenship policies; (4) state-centric economic nationalism opposing free trade and globalization; (5) geopolitical multipolarity emphasizing national interest over liberal internationalism; and (6) populist claims to represent "authentic" national interest against cosmopolitan elites (Müller, 2016; Ignazi, 2017).

1.2 Neo-Nationalism in East Europe

East European neo-nationalism possesses distinctive characteristics reflecting the region's historical experiences. Unlike Western European right-wing parties (French National Rally, Italian Brothers of Italy) that often emphasize ethno-cultural nationalism and immigration restriction primarily, East European neo-nationalism emphasizes: (1) resistance to perceived Western (American and EU) hegemony and imperialism; (2) reassertion of national sovereignty after decades of subjugation (Soviet domination, Nazi occupation); (3) preservation of cultural and religious traditions against secular liberalism; (4) grievances regarding economic marginalization within EU integration; and (5) geopolitical balancing between Western institutions and Russian regional influence.

Key neo-nationalist parties include Poland's Law and Justice (PiS), Hungary's Fidesz (under Viktor Orbán), Czech Pirate Party and Freedom and Direct Democracy, Slovakia's ĽSNS (People's Party–Our Slovakia), Romania's AUR (Alliance for the Union of Romanians), Bulgaria's VMRO (Internal Macedonian Revolutionary Organization), and numerous Western Balkan movements. While these parties display significant diversity, they share core neo-nationalist characteristics.

1.3 Article Scope and Structure

This article examines neo-nationalism as comprehensive ideological and political phenomenon rather than isolating single policy domains or partisan movements. We analyze: (1) neo-nationalism's ideological foundations and intellectual traditions; (2) social bases supporting neo-nationalist mobilization; (3) specific grievances neo-nationalism exploits; (4) organizational and mobilization strategies; (5) neo-nationalism's relationship to authoritarianism and democratic erosion; (6) geopolitical dimensions; and (7) possible futures for neo-nationalist political forces.

The article's central argument is that neo-nationalism, while deeply concerning from liberal-democratic perspectives, represents a comprehensible response to genuine grievances and genuine alternative vision of governance and international relations. Addressing neo-nationalism requires understanding rather than dismissing, engagement with underlying grievances rather than mere condemnation, and institutional defense against anti-democratic capture while respecting legitimate nationalism and national interest considerations.

2. Intellectual Foundations and Ideological Roots

2.1 Varieties of Nationalism Theory

Neo-nationalism draws selectively from diverse nationalist intellectual traditions. Understanding neo-nationalism requires examining these foundational ideas and their contemporary application.

Romantic Nationalism: Johann Gottfried Herder's romantic nationalism emphasized the distinctive character of national cultures, claiming each people possessed unique historical missions and cultural essences requiring political expression. While Herder's philosophy itself was not inherently aggressive, romantic nationalism's emphasis on cultural particularism and national uniqueness provided intellectual foundations for later ethno-nationalist ideologies (Herder, 2003). East European neo-nationalism's emphasis on national cultures and values—Polish Catholic identity, Hungarian linguistic and cultural distinctiveness, Slovak regional traditions—echoes romantic nationalism's cultural emphases.

Integral Nationalism: Charles Maurras and Maurice Barrès developed "integral nationalism" emphasizing the nation as organic whole transcending individual interests, with national interest supreme. This tradition justified hierarchical social organization, strong executive authority, and subordination of particular interests to national purpose. Contemporary neo-nationalist emphasis on centralized authority, weak civil society constraints on executive power, and subordination of minority rights to national interest reflects integral nationalism's influence (Maurras, 2013).

National Self-Determination: Woodrow Wilson's post-World War I emphasis on national self-determination established the principle that peoples possess right to self-governing nation-states. While potentially democratic (enabling peoples to establish governments reflecting their values), national self-determination principle also created foundation for authoritarian movements claiming to represent national will and opposing supranational constraints on national sovereignty. East European neo-nationalism's sovereignty assertions employ national self-determination rhetoric (MacMillan, 2001).

Conservative Nationalism: Edmund Burke and Friedrich Hayek, while not primarily nationalists, provided intellectual foundations for conservative nationalism emphasizing tradition, organic social development, and skepticism toward abstract rationalism and cosmopolitan ideologies. Burke's emphasis on particular historical inheritances and skepticism toward rationalist revolutionary projects influenced conservative nationalism. East European neo-nationalism's cultural conservatism and emphasis on traditional values reflects conservative nationalist influence (Burke, 1790; Hayek, 1960).

Realist International Relations: Hans Morgenthau and other international relations realists emphasized that states pursue national interest in anarchic international system without ultimate authority above them. Realism's emphasis on power, national interest, and skepticism toward internationalism influences neo-nationalist foreign policy orientations emphasizing national interest over liberal internationalism (Morgenthau, 1948; Waltz, 1979).

2.2 Post-Communist Nationalism and Historical Memory

East European neo-nationalism particularly draws from post-communist nationalist movements emphasizing recovery of national identity after Soviet suppression. The Soviet Union suppressed distinct national identities through Russian cultural dominance, ideological conformity requirements, and integration into Soviet system. Post-1989 transition enabled nationalist reassertion emphasizing suppressed national cultures, languages, and historical experiences.

This post-communist nationalism emphasized: (1) national languages and literatures suppressed under Russification; (2) Christian religious traditions suppressed by communist atheism; (3) national historical narratives emphasizing independence movements and resistance to foreign domination; and (4) national symbols and monuments celebrating national greatness.

Initially, this post-communist nationalism facilitated democratic transitions by mobilizing against communist authoritarianism. However, as post-communist transition matured, nationalism's potential for democratic capture became apparent. National identity claims transitioned from liberatory assertions into anti-democratic nationalist mobilization.

2.3 The Visegrád Group Intellectual Network

The Visegrád Group (Poland, Hungary, Czech Republic, Slovakia)—established 1991 as regional cooperation structure—developed distinctive intellectual frameworks emphasizing Central European identity, Christian civilization, and skepticism toward Western hegemony. While initially emphasizing democratic consolidation and integration with West, Visegrád discourse increasingly emphasized regional distinctiveness and resistance to external pressure.

Intellectual figures associated with Visegrád nationalism include: Jarosław Kaczyński (Poland's political leader emphasizing Polish Catholic identity and sovereignty), Viktor Orbán (Hungary's ideologist of "illiberal democracy" and Christian civilization), and various intellectuals and publicists developing neo-nationalist critiques of globalization and liberalism Ash, 2016).

These intellectual networks helped translate abstract nationalism into concrete political programs, providing theoretical justification for democratic erosion and anti-EU policies under nationalist auspices.

3. The Social Bases of Neo-Nationalism

3.1 Economic Grievances and Market Transition Losers

A fundamental foundation for neo-nationalist mobilization involves economic grievances stemming from market transition and globalization. The transition from command economies to market systems created substantial economic disruption disproportionately affecting certain populations.

Deindustrialization and Regional Decline: Formerly industrial regions based on communist-era heavy industry experienced collapse as subsidized Soviet trade relations disappeared and industries lost competitiveness. Steel, coal, and manufacturing towns throughout the region experienced plant closures, mass unemployment, and demographic decline. Workers in these sectors lost secure employment and faced declining life prospects.

Poland's Silesia, Hungary's mining regions, Romania's industrial belt, and similar areas throughout East Europe experienced dramatic economic decline. This deindustrialization concentrated losses on specific populations (industrial workers, lower-educated populations) in specific regions, creating geographically concentrated grievances.

Rural Marginalization: Agricultural transformation and rural depopulation created grievances in farming communities. Agricultural subsidies favoring large-scale production disadvantaged small farmers. Rural depopulation as young people migrated to cities left aging rural populations behind. EU agricultural policies often disadvantaged East European farmers relative to Western European agribusiness.

Public Sector Contraction: Transition from communist welfare states to market economies involved substantial public sector contraction. Pensions declined, healthcare deteriorated, and public employment shrunk. Populations dependent on public services and employment experienced direct losses.

Wage Inequality and Income Stagnation: While overall GDP growth occurred, wage growth for lower-income populations stagnated or declined in real terms. Income inequality increased dramatically. Top earners benefited substantially from market transition; working-class and lower-middle-class populations experienced wage stagnation or decline.

Research demonstrates that regions and populations experiencing greatest economic losses from transition provide strongest support for neo-nationalist parties. Poland's PiS found strongest support in declining industrial and rural regions; Hungary's Fidesz similarly mobilized economically disadvantaged populations; Czech populist parties similarly drew support from economically stressed areas (Ivaldi, 2020).

However, economic grievances alone cannot explain neo-nationalism, as similar economic dislocation affected Western European populations without generating equivalent neo-nationalist mobilization. Rather, economic grievances combine with cultural and political factors to create neo-nationalism.

3.2 Cultural Anxieties and Identity Threats

Neo-nationalism mobilizes not merely around economic grievances but around cultural anxieties regarding identity transformation. Globalization, migration, and social liberalization have generated cultural changes experienced by many as threatening to national and local identities.

Immigration and Demographic Change: Immigration into East European countries (though substantially lower than Western Europe) has created demographic anxieties. While East European countries remain substantially ethnically homogeneous compared to Western

Europe, recent immigration from Middle East, Africa, and Asia has catalyzed anti-immigration mobilization. Neo-nationalist parties have emphasized immigration threats, sometimes in explicitly xenophobic terms.

Concerns regarding immigration reflect multiple factors: cultural differences and integration challenges; perceived security threats (terrorism, crime); employment competition; and concerns regarding national cultural preservation. Whether immigration levels actually justify anxiety level, perceived immigration threat drives electoral behavior (Pappas, 2019; Mudde et al., 2017).

Religious and Value Conflicts: Globalization has introduced religious pluralism and secular liberalism into traditionally Christian societies. LGBTQ+ rights, gender equality, secular education, and religious pluralism challenge traditional values and social structures. Populations committed to traditional religion and values experience social liberalization as threatening.

Poland's Catholic Church, while not explicitly backing neo-nationalist parties, has aligned with cultural conservatism and traditional values. Hungary's Christian nationalism explicitly combines religious belief with national identity. Slovakia's nationalism similarly emphasizes Catholic tradition. These religious-nationalist alignments reflect perceived threats to religious and traditional values from secular liberalism (Pye et al., 1965; Hacohen, 2016).

Urban-Rural and Educational Divides: Voting patterns demonstrate sharp geographic and educational divides. Urban, university-educated populations support liberal parties and EU integration; rural, lower-educated populations support neo-nationalist parties. This reflects differing exposure to globalization's benefits and costs: urban professionals benefit from international mobility, trade, and cultural pluralism; rural populations experience globalization as threat to local communities and traditional ways.

This educational-geographic divide represents structural polarization difficult to bridge through negotiation, as competing constituencies literally inhabit different cultural worlds.

3.3 Status Anxiety and Lost Great Power Status

East European neo-nationalism partly reflects anxiety regarding national status and great power loss. Throughout modern history, Poland, Hungary, and other East European nations possessed significant regional power, cultural influence, and international standing. Communist period subordinated these nations to Soviet dominance, reducing them to client states.

Post-1989 transition brought EU and NATO integration but also subordination to Western-dominated international order. For populations identifying with historical great power status, contemporary subordination generates status anxiety. Neo-nationalism appeals to this status anxiety through reassertion of national greatness and resistance to external domination (Anderson, 2006).

Poland's "Four Crowns" doctrine (combining historical Polish territories to recreate alleged greater Poland) reflects this status anxiety, as do Hungarian neo-nationalism's references to pre-1920 greater Hungary, and similar status-restoration narratives throughout the region.

3.4 Generational Factors and Communist Legacy

Generational analysis reveals important patterns. Populations that experienced communism (those over fifty) sometimes display greater attachment to nationalist solutions as response to communist internationalism and Russian domination. Younger populations, educated in post-communist democratic systems, might be expected to embrace liberal democracy more fully.

However, empirical evidence suggests more complex patterns. While some younger populations embrace liberal democracy enthusiastically, others support neo-nationalist parties equally strongly, suggesting that communist legacy and age provide limited explanation for neo-nationalism.

Rather, educational trajectories appear more significant than generational positioning per se. Young university-educated urban professionals support liberal parties regardless of communist experience; young rural or lower-educated populations support neo-nationalist parties. Education rather than age drives political orientation.

4. Specific Grievances and Neo-Nationalist Narratives

4.1 EU Integration and Perceived Foreign Domination

A central neo-nationalist grievance involves EU integration and perceived loss of national sovereignty. While EU integration initially promised prosperity and security, decades of integration have generated specific grievances neo-nationalist parties exploit.

Agricultural Losers: Small farmers disadvantaged by EU agricultural policies (favoring large-scale production, imposing environmental regulations, competing with Western European agribusiness) constitute a constituency with concrete EU grievances. These farmers' organized opposition to EU policies has provided neo-nationalist parties with mobilization opportunities.

Labor Market Competition: EU labor mobility provisions enable migration of Eastern European workers to Western Europe for employment. While this benefits individual migrants, it drains East European labor markets and communities of working-age population, contributing to demographic decline and labor shortages. Communities experiencing significant emigration experience these effects as erosion of national human resources.

Regulatory Burdens: EU environmental and labor regulations, while promoting legitimate protections, impose costs on East European economies and businesses less wealthy than Western European counterparts. Neo-nationalist narratives frame EU regulations as Western impositions disadvantaging Eastern European businesses.

Supranational Authority: The EU exercises authority over member states in numerous domains (trade, monetary, regulatory, environmental). This supranational authority limits national governments' capacity to implement preferred policies. Neo-nationalist parties frame this supranational authority as foreign domination and national surrender, appealing to sovereignty-conscious constituencies.

Democratic Deficit: EU decision-making occurs substantially outside direct democratic control, with executive councils, European Commission, and appointed European Court of Justice making major decisions. Neo-nationalist narratives exploiting this democratic deficit gain traction among populations skeptical of distant, unaccountable institutions (Stadigh-Hörstedt, 2019).

4.2 Globalization, Cultural Change, and Anti-Liberalism

Neo-nationalist grievances extend to globalization's cultural effects—spread of secular liberalism, cosmopolitan values, and challenge to traditional cultures and religious authority.

- Religious Liberty Restrictions: While secular liberalism claims to protect religious liberty, in practice secular governance restricts religious authority over social domains. Prohibitions on religiously-motivated discrimination, secular education curricula limiting religious instruction, and secular marriage law overriding religious requirements all constrain religious authority. Neo-nationalist religious leaders experience this as religious persecution (Sornat, 2020).
- Gender and Family Structure Changes: Traditional patriarchal family structures characterized by male economic authority and female domestic roles have been substantially displaced by gender equality, female labor participation, and diverse family arrangements. Populations invested in traditional family structures experience gender equality as threatening.

- LGBTQ+ Rights: The expansion of LGBTQ+ rights—including marriage equality, anti-discrimination protections, and inclusion in public institutions—represents fundamental value change from traditional society. Neo-nationalist parties mobilize opposition to LGBTQ+ rights as defense of traditional values and Christian civilization.
- Multiculturalism and Identity Politics: Liberal emphasis on multiculturalism, minority rights, and identity politics marginalizes majority national identity and Christian civilization. Neo-nationalist movements reposition majority identity as oppressed and demand recognition of national Christian values against minority identity claims (Kymlicka, 1995; Trencsényi, 2010).

4.3 Historical Narratives and Victimization

Neo-nationalist movements construct historical narratives emphasizing national victimization by foreign powers—Ottoman dominance, Austro-Hungarian imperialism, Nazi occupation, Soviet communism, and Western imperialism. These victimization narratives justify neo-nationalist assertion as recovery of national dignity after centuries of foreign domination.

Poland's historical narrative emphasizes: partition by neighboring empires (Prussian, Austrian, Russian), Nazi occupation and Holocaust, and Soviet domination. This history of victimization justifies contemporary assertion of Polish sovereignty and resistance to external pressure.

Hungary similarly emphasizes loss of pre-1920 territorial extent through post-WWI Treaty of Trianon, treating territorial loss as national humiliation requiring memory and potentially redress.

These historical narratives, while containing genuine historical experiences, are selectively deployed to justify contemporary politics. Historical suffering becomes justification for contemporary neo-nationalist policies and even democratic erosion, framed as necessary recovery from historical victimization (Snyder, 2010; Hoffman, 2004).

4.4 Perceived Cosmopolitan Elite Betrayal

A core neo-nationalist narrative involves cosmopolitan elites' betrayal of national interests. According to this narrative, educated, internationally-oriented elites prioritize supranational institutions and cosmopolitan values over national interest. These elites, collaborating with foreign powers (Western institutions, international capital), sell out national interests.

This narrative has substantial salience because it contains grain of truth: educated elites often embrace European integration and cosmopolitan values more enthusiastically than general populations. EU integration policies, while ostensibly benefiting nations generally, have created concentrated benefits for certain constituencies (capital, educated professionals) and concentrated losses for others.

However, neo-nationalist narratives transform legitimate disagreement regarding integration policies into conspiracy narratives of elite betrayal and treason. This delegitimizes establishment political parties and justifies neo-nationalist seizure of power as recovery of national sovereignty from treacherous elites.

5. Mobilization Strategies and Organizational Forms

5.1 Populist Framing and Charismatic Leadership

Neo-nationalist parties typically employ populist framing positioning leaders as spokespersons for "the people" against corrupt elites and foreign interests. This populism combines nationalist appeals with social policy promises addressing working-class grievances.

Key populist mechanisms include:

Vertical rather than Horizontal Organization: Neo-nationalist parties typically employ charismatic leadership with strong central authority rather than distributed democratic decision-making. Jarosław Kaczyński (Poland's PiS), Viktor Orbán (Hungary's Fidesz), and similar neo-nationalist leaders exercise substantial personal authority. This organizational structure reflects integral nationalism's emphasis on centralized authority.

Media Amplification: Neo-nationalist parties employ sophisticated media strategies amplifying leader visibility and message. Control of public media, favorable private media ownership, and social media campaigns enable message saturation.

Direct Leader-People Connection: Neo-nationalist leaders position themselves in direct relationship with people, bypassing intermediate institutions. Rallies, public speeches, and social media enable direct communication. This reflects populist emphasis on unmediated connection between leader and people (Laclau, 2005; Damm, 2017).

5.2 Institutional Capture and Party-State Fusion

Once neo-nationalist parties gain power, they typically pursue institutional capture—subordinating supposedly independent institutions to party control. This serves multiple functions:

- Electoral Advantage: Controlling state institutions (media, election commission, police) enables electoral system manipulation and advantage for ruling parties.
- Policy Implementation: Party control of state institutions enables efficient policy implementation without institutional constraints.
- Patronage and Resource Distribution: State control enables patronage networks and resource distribution to party allies and supporters.
- Preventing Power Loss: Institutional capture makes electoral defeat less consequential, as captured institutions constrain incoming governments' power.

Poland's PiS and Hungary's Fidesz exemplify this institutional capture. Both parties, upon gaining power, pursued systematic capture of media, judiciary, and other institutions, creating party-state fusion where distinguishing party interests from state interests becomes impossible.

5.3 Social Media and Digital Mobilization

Neo-nationalist parties have effectively employed social media and digital platforms for mobilization. Social media's algorithmic amplification of emotionally resonant content—including nationalist appeals, immigration fears, and elite criticism—naturally advantages neo-nationalist messaging.

Digital platforms enable: (1) direct communication bypassing traditional media filters; (2) microtargeting of messages to specific audiences; (3) rapid viral mobilization around emerging issues; and (4) bot networks and coordinated amplification of nationalist narratives.

Russian disinformation operations, while technically distinct from neo-nationalism, have substantially supported neo-nationalist mobilization through amplification of nationalist narratives and criticism of EU integration (Stanford Internet Observatory, 2018).

5.4 Religious and Civil Society Organizations

While neo-nationalist parties attempt to capture state institutions, they simultaneously cultivate relationships with religious organizations, business associations, and cultural organizations. These partnerships provide organizational resources and legitimacy.

Catholic Church relationships with Polish PiS and Slovak nationalism, for example, provide institutional support and moral authority for neo-nationalist policies. Business associations sometimes support neo-nationalist policies benefiting particular industries.

However, these relationships remain asymmetric—neo-nationalist parties ultimately subordinate civil society organizations to party objectives rather than maintaining genuine partnership.

6. Neo-Nationalism and Anti-Democratic Governance

6.1 The Illiberal Democracy Thesis

Viktor Orbán famously declared intention to build "illiberal democracy" in Hungary—governance system maintaining elections and popular legitimacy while eliminating constraints on executive power from judiciary, media, and civil society (Barany, 2016). This concept, though controversial, accurately describes neo-nationalist governance patterns.

Illiberal democracy combines:

- Electoral Legitimacy: Parties maintain regular elections and electoral competition (however manipulated). Orbán's Fidesz, despite system manipulation, regularly wins substantial vote shares.
- Majoritarian Governance: Rather than protecting minorities and limiting executive power, illiberal democracy prioritizes majority will expressed through elections, with minimal institutional constraints.
- Captured Institutions: Supposedly independent institutions (courts, media authority, election commissions) become subordinated to majority will (as expressed through governing party).
- Weakened Civil Society: Civil society organizations' independence is constrained through funding restrictions, legal harassment, and pressure.
- Nationalism and Cultural Politics: Illiberal democracy typically emphasizes national identity, traditional values, and cultural nationalism, distinguishing it from purely authoritarian governance.

6.2 The Democratic Paradox: Electoral Mandate for Anti-Democracy

A central paradox of neo-nationalist governance involves democratic election of anti-democratic governments. Neo-nationalist parties win electoral majorities and use democratic mandates to justify anti-democratic governance. Poland's PiS and Hungary's Fidesz legitimized institutional capture through their electoral victories, claiming to implement popular will against minority opposition and international pressure.

This electoral paradox raises fundamental questions: If democratic majorities vote for anti-democratic governance, does this represent democracy or democratic suicide? Can democratic mechanisms be employed to eliminate democracy itself?

Legal and philosophical responses vary. Some argue that democracy includes basic protections against self-elimination—core rights and institutional constraints preventing majorities from abolishing democracy. Others argue that pure majoritarian democracy cannot restrict majority will, even if majority chooses anti-democratic governance.

East European experience suggests that electoral mechanisms, while strained by institutional capture and manipulation, retain some constraining force. Poland's 2023 electoral defeat of PiS demonstrates that even captured electoral systems can produce anti-incumbent verdicts. This suggests that while neo-nationalist parties can substantially manipulate institutions, elections retain some independence and unpredictability (Runciman, 2018; Levitsky et al., 2018).

6.3 Nationalism as Justification for Anti-Democracy

Neo-nationalist leaders justify anti-democratic measures through nationalist appeals: restrictions on judicial independence protect national sovereignty against international courts; restrictions on media independence prevent foreign (Western) control of national discourse; restrictions on opposition prevent "foreign agents" from undermining national interest.

This nationalist justification of anti-democracy—framing democratic constraints as foreign impositions and national sovereignty as requiring strong executive authority—represents distinctive neo-nationalist contribution to authoritarian governance. Rather than traditional authoritarian justifications (efficiency, order, or security), neo-nationalism justifies authoritarianism through national sovereignty and cultural nationalism.

7. Geopolitical Dimensions of Neo-Nationalism

7.1 Great Power Balancing and Strategic Autonomy

A significant dimension of East European neo-nationalism involves geopolitical balancing and assertion of strategic autonomy. East European states, located between Western Europe and Russia, have historically existed in geopolitical tension. Post-Cold War settlement incorporated East European states into Western institutions (NATO, EU), but this Western orientation was neither inevitable nor universally welcomed.

Neo-nationalist movements have exploited geopolitical anxieties, particularly regarding:

Russian Threat and NATO: While most East European populations support NATO membership for security, some neo-nationalist movements emphasize NATO as Western imperialism and Russian military as legitimate regional power deserving respect. Hungary under Orbán has notably resisted anti-Russian positioning, maintaining substantial trade relationships and diplomatic cooperation with Russia despite EU sanctions.

EU Constraints and National Sovereignty: Neo-nationalist movements frame EU integration as constraint on national sovereignty and German hegemony (in EU context). These movements advocate for looser EU relationships, greater national autonomy, and potential disengagement from EU integration.

China and Global Multipolarity: Some neo-nationalist movements have embraced emerging powers (particularly China) as counterweights to Western hegemony. Hungary's openness to Chinese investment and Belt and Road participation reflects this geopolitical positioning (Pei, 2016; Lendvai, 2017).

These geopolitical orientations reflect genuine tensions in East European positioning: integration with Western institutions provides security and prosperity but also constrains autonomy; balancing between great powers enables diplomatic flexibility but creates vulnerability.

7.2 The Visegrád Four Regional Bloc

The Visegrád Group—Poland, Hungary, Czech Republic, Slovakia—has emerged as regional bloc asserting collective positions distinct from broader EU framework. Initially emphasizing democratic consolidation and EU integration, the Visegrád bloc increasingly emphasized regional distinctiveness and resistance to EU immigration and rule of law pressures.

This regional bloc formation enables: (1) collective assertion of national interests against EU; (2) blocking of EU initiatives through coordinated votes; (3) development of parallel regional institutions and cooperation mechanisms; and (4) common opposition to perceived Western impositions.

However, Visegrád unity has also fragmented, particularly regarding Russia policy post-Ukraine invasion, with Poland and Czech Republic supporting Ukraine more enthusiastically than Hungary.

7.3 Orthodox Civilization and Christian Identity

A significant neo-nationalist geopolitical narrative involves civilizational conflict between Western secular liberalism and Orthodox/Christian civilization. This narrative, drawing from Samuel Huntington's "clash of civilizations," positions Central and Eastern Europe as Christian civilization distinct from secular Western Europe (Huntington, 1993; Bougarel, 2003).

This civilizational framing: (1) justifies resistance to EU values (LGBTQ+ rights, secularism, multiculturalism); (2) positions Orthodox Christianity (and Catholicism) as superior to secular liberalism; (3) potentially enables alliance with Russia on civilizational grounds despite geopolitical tensions; and (4) creates alternative civilizational identity beyond Western liberalism.

Hungary's Viktor Orbán has most explicitly developed this civilizational nationalism, declaring intention to defend "Christian civilization" against secular liberalism and Islamic expansion. This framing reflects genuine concerns regarding value differences while also serving to justify democratic backsliding as defense of Christian values.

8. Intellectual Critique and Opposition to Neo-Nationalism

8.1 Liberal Democratic Critique

Liberal democracy defenders argue that neo-nationalism fundamentally conflicts with core democratic principles: protection of minority rights, constraints on majority power, rule of law, and pluralism. By subordinating these principles to national sovereignty and cultural majoritarianism, neo-nationalism threatens democracy itself.

Furthermore, liberal critics argue that neo-nationalism's economic policies—state-directed investment, barriers to trade, protection of connected oligarchs—generate economic inefficiency and corruption rather than prosperity. Nationalist appeals to traditional values obscure actual economic policies benefiting political elites (Zakaria, 2003; Levitsky et al., 2010). This liberal critique, while containing valid points, sometimes dismisses genuine grievances underlying neo-nationalism and treats neo-nationalist supporters as irrational or manipulated rather than rationally responding to real problems.

8.2 Left Critique of Neo-Nationalism

Left intellectuals argue that neo-nationalism represents false consciousness—nationalism diverts working-class attention from genuine class exploitation toward scapegoating of immigrants and elites. True working-class interest lies in international solidarity and class struggle, not nationalism.

Furthermore, left critics argue that neo-nationalism's cultural conservatism (opposition to gender equality, LGBTQ+ rights) harms working-class women and minorities despite nominal working-class appeal. Neo-nationalist economic nationalism often protects capitalist interests rather than genuinely benefiting workers.

This left critique offers valuable insights regarding nationalism's ideological function, yet sometimes dismisses nationalism as purely false consciousness rather than partially legitimate response to real grievances (Hobsbawm, 1990; Balibar, 1991).

8.3 Cosmopolitan Critique

Cosmopolitan critics argue that nationalism itself—however "liberal" or "neo"—fundamentally privileges national interest over universal values and global justice. Nationalism justifies prioritizing co-nationals over strangers, legitimate borders over open migration, and national self-determination over global governance.

Cosmopolitan perspective emphasizes that nationalism, even in relatively benign forms, generates injustice by prioritizing national populations and limiting obligations to global poor and vulnerable populations.

This cosmopolitan critique, while raising important normative questions, often fails to explain nationalism's political power and popular appeal, treating nationalism as merely ideology of elite manipulation rather than response to genuine popular desires for community and belonging (Nussbaum, 1986; O'Neill, 2002).

8.4 Conservative Critiques of Neo-Nationalism

Interestingly, some conservative intellectuals, while sympathetic to nationalism's emphasis on tradition and cultural values, criticize neo-nationalism for its populism, disdain for institutional constraints, and actual willingness to violate democratic procedures in pursuit of power.

These conservative critics, often influenced by Edmund Burke and Michael Oakeshott, argue for "constitutional nationalism"—assertion of national values within democratic institutional constraints rather than populist majoritarianism overriding institutions (Scruton, 2015; Burke, 1790).

This conservative critique usefully distinguishes between legitimate national interest assertion and anti-democratic populism, though finding little contemporary East European political home.

9. Mobilization of Counter-Movements

9.1 Civil Society Resistance and Democratic Defense

Despite neo-nationalist institutional capture, civil societies across East Europe have mobilized substantial resistance. These movements, analyzed in previous article section, demonstrate capacity to defend democratic values and constrain anti-democratic measures.

Key resistance movements include: Poland's "Committee for the Defense of Democracy," Hungary's "Momentum" and anti-Orbán civil society coalitions, Romania's anti-corruption protests, and Czech Republic's anti-populist mobilization. These movements, though facing constraints and limited institutional power, maintain alternative political vision and democratic consciousness.

9.2 Regional Variation and Counter-Movements' Strength

Civil society resistance varies substantially across the region. Czech civil society proved stronger in constraining populism than Hungarian; Polish civil society demonstrated substantial capacity for mobilization despite PiS institutional capture. These variations reflect different institutional histories and civil society strength.

Countries with stronger civil society traditions (Czech Republic, Poland) have proven more effective at constraining neo-nationalist governments than countries with weaker civil society (Hungary, Bulgaria).

9.3 Opposition Party Competition

While neo-nationalist parties have dominated several electoral cycles, opposition parties have maintained competition. Poland's 2023 election saw substantial anti-PiS mobilization and coalition formation, resulting in government defeat. Hungary's 2022 elections saw unified opposition to Orbán (though Fidesz manipulation enabled continued governance). Romania's electoral volatility reflects continued party competition despite neo-nationalist influences.

These electoral competitions, while sometimes constrained by institutional manipulation, retain possibilities for neo-nationalist electoral defeat and government transition.

10. Legitimacy, Grievances, and Political Possibility

10.1 Partial Legitimacy and Genuine Grievances

A central argument of this article is that neo-nationalism, while deeply concerning from democratic perspectives, contains partial legitimacy and responds to genuine grievances. Rather than dismissing neo-nationalist supporters as irrational, xenophobic, or manipulated (though some certainly are), more productive analysis recognizes rational responses to real problems.

Market transition genuinely dislocated significant populations. EU integration genuinely created concentrated costs for certain constituencies while benefiting others. Globalization genuinely threatens local communities and traditional cultures. These grievances are real and deserve serious engagement rather than dismissal.

Furthermore, legitimate questions regarding national sovereignty, cultural preservation, and democratic accountability to local communities—questions neo-nationalism raises—remain important political questions even if neo-nationalist answers prove inadequate or dangerous.

10.2 The Problem of Populist Solutions

However, neo-nationalist populist solutions to genuine grievances frequently prove ineffective or harmful. Scapegoating immigrants for unemployment, blaming foreign elites for economic problems, and asserting national sovereignty against supranational constraints often misidentify sources of problems and propose ineffective remedies.

Furthermore, neo-nationalist governance—despite populist promises—frequently betrays working-class supporters, serving oligarchic interests instead. Poland's PiS, while maintaining populist rhetoric, has frequently privileged business interests and connected oligarchs over working-class material improvement. Hungary's Fidesz similarly has presided over corruption and oligarchic capture while maintaining populist narrative.

10.3 Alternative Responses to Legitimate Grievances

Addressing neo-nationalism requires not dismissing grievances but proposing alternative responses to legitimate problems. This might include: (1) economic policies genuinely benefiting displaced populations (retraining, regional investment, labor protections) rather than symbolic nationalist measures; (2) protection of local communities and cultural traditions within inclusive democratic frameworks; (3) democratic governance structures more responsive to local communities than distant supranational institutions; and (4) honest engagement with immigration and cultural change rather than scapegoating.

These alternative approaches require institutional innovation and genuine political leadership willing to address grievances while defending democratic values. Such political leadership has proven scarce in contemporary East Europe.

11. Comparative Analysis: Variations in Neo-Nationalist Development

11.1 Poland: Powerful Neo-Nationalism Constrained by Electoral Mechanism

Poland demonstrates the most developed and powerful neo-nationalist movement (Law and Justice), yet with notable democratic capacity for course correction. PiS's victory in 2015 initiated democratic backsliding but also polarized society, mobilizing substantial civil society opposition and democratic consciousness.

The 2023 electoral defeat of PiS—despite institutional capture and media bias—demonstrated that even substantially compromised electoral systems retain capacity for anti-incumbent verdict. This suggests that Polish neo-nationalism, while achieving significant institutional capture, did not achieve complete democratic elimination.

Notably, PiS's defeat resulted partly from overreach—pursuing increasingly aggressive cultural and institutional measures that eventually alienated even some supporters. This suggests limits to neo-nationalist durability even among electorates initially supporting them.

11.2 Hungary: Entrenched Neo-Nationalism and Competitive Authoritarianism

Hungary demonstrates most advanced neo-nationalist institutional capture and transition toward competitive authoritarianism. Orbán's Fidesz has effectively subordinated institutions to party control while maintaining electoral competition and formal democratic procedures.

Hungary's experience suggests that sophisticated institutional capture, combined with demographic advantage (rural populations supporting Fidesz more than declining urban populations), can enable neo-nationalist dominance across multiple electoral cycles despite civil society opposition.

However, Hungary's path toward democratic authoritarianism has generated international consequences—EU sanctions, rule of law proceedings, and geopolitical pressures—raising costs of continued democratic erosion.

11.3 Czech Republic: Civil Society Constraining Neo-Nationalism

Czech Republic has experienced neo-nationalist movements (SPD, ANO) and political volatility, yet relatively successful civil society and institutional resistance to anti-democratic capture. This partly reflects Czech Republic's stronger starting point (more consolidated democratic institutions in 1989) and relatively strong civil society.

Czech civil society effectively mobilized against Andrej Babiš's ANO party, helping produce 2021 electoral defeat despite party advantages. This suggests that strong civil society can constrain neo-nationalist governance even without complete institutional reform.

11.4 Romania and Bulgaria: Weak Institutions Limiting Neo-Nationalism's Effectiveness

Romania and Bulgaria, despite neo-nationalist influences, have not experienced powerful single neo-nationalist parties capturing power. Instead, weak institutions and fragmented political systems have limited any party's capacity for comprehensive institutional capture.

This suggests a paradox: weakest institutional democracies show least neo-nationalist dominance because weak institutions prevent effective party consolidation. Conversely, stronger institutions enable neo-nationalist parties to achieve greater institutional capture once in power.

11.5 Western Balkans: Neo-Nationalism and Ethno-Nationalism Fusion

Western Balkans demonstrate fusion of neo-nationalism with ethno-nationalism and post-conflict mobilization. Serbia's Aleksandar Vučić, for example, combines neo-nationalist sovereignty assertion with Serb ethnic nationalism, creating particularly potent political force. Bosnia-Herzegovina's ethno-nationalist divisions prevent unified neo-nationalist mobilization.

This suggests that neo-nationalism's effects vary depending on pre-existing ethnic tensions and post-conflict contexts.

12. Theoretical Frameworks and Explanatory Models

12.1 Modernization Theory and Reactions Against Modernity

Some scholars interpret neo-nationalism as reaction against modernization—resistance to rapid social change, cosmopolitan values, and institutional complexity characteristic of advanced societies. From this perspective, neo-nationalism represents backward-looking resistance to inevitable modernity.

However, this interpretation often contains dismissive judgments about neo-nationalist supporters (as irrational, backward) rather than serious engagement. Furthermore, it misidentifies neo-nationalism as rejection of modernity per se—neo-nationalist movements embrace modern technology, military strength, and economic development while opposing particular modern values (secularism, cosmopolitanism, gender equality) (Smith, 1971; Tamir, 2019).

12.2 Political Opportunity Structures

Political opportunity structure analysis argues that neo-nationalism's rise reflects availability of political space—decline of traditional left parties, institutional fragmentation, and openness to new movements. From this perspective, neo-nationalism succeeds not because of irresistible social forces but because existing parties failed to address grievances, creating opportunity for new movements.

This framework suggests that strong traditional parties effectively addressing working-class grievances might constrain neo-nationalism. Poland's post-2023 Democratic Coalition and Romania's Socialist Party, where strong, provided alternative addresses to grievances. Conversely, collapse of traditional left (Hungary, Czech Republic) enabled neo-nationalist ascendancy.

12.3 Identity Politics and Postmaterialism

Ronald Inglehart's postmaterialism thesis suggests that post-scarcity wealthy societies shift from material to post-material (environmental, cultural, identity) concerns. From this perspective, neo-nationalism represents cultural backlash against postmaterialist elite values by populations remaining focused on material security.

Applied to East Europe, this framework suggests that neo-nationalism reflects material insecurity and anxiety among populations experiencing economic dislocation, positioned against elite cosmopolitanism. However, this framework sometimes underestimates material dimensions of neo-nationalist politics and overemphasizes cultural factors.

12.4 Constructivist Approaches: Nationalism as Constructed Identity

Constructivist scholarship on nationalism emphasizes that national identities, rather than objective essences, are socially constructed through political mobilization, historical narratives, and institutional practices. From this perspective, neo-nationalism represents particular construction of national identity rather than discovery of pre-existing essential identity (Anderson, 2006; Bilig, 1995).

This framework helpfully emphasizes that nationalism's power derives from construction and mobilization rather than objective national essences. However, it can overstate construction's plasticity, underestimating constraints on identity construction from genuine historical experiences and geopolitical realities.

13. Future Trajectories and Possible Scenarios

13.1 Entrenchment Scenario: Durable Neo-Nationalist Authoritarianism

One possible trajectory involves durable establishment of neo-nationalist competitive authoritarian regimes across East Europe. In this scenario, institutional capture proves effective enough to prevent opposition electoral victory, institutions subordinate themselves adequately to prevent major constraints on power, and international pressure proves insufficient to reverse trajectory.

This scenario would see East European countries transitioning toward authoritarian governance while maintaining formal democratic procedures and electoral competition, resembling contemporary Russia or Azerbaijan. Such regimes could persist for decades if geopolitical circumstances align and internal challenges remain limited.

However, this scenario requires sustained competence and ideological commitment from neo-nationalist leaders. Internal contradictions (corruption within neo-nationalist movements, elite defection, popular disengagement from captured institutions), external pressures (EU sanctions, isolation, military threats), or unforeseen events might alter trajectory.

13.2 Democratic Reversal Scenario: Electoral Defeat and Institutional Restoration

Alternatively, neo-nationalist dominance might prove less durable. Poland's 2023 electoral defeat of PiS provides potential model: despite institutional capture and media bias, opposition mobilization and electoral coordination produced anti-incumbent verdict.

In this scenario, neo-nationalist governments overreach, generating civil society mobilization and coalition-building that overcomes institutional disadvantages. Incoming reform governments then undertake institutional restoration, addressing rule of law violations and institutional capture.

This scenario resembles transitions from competitive authoritarianism toward democratic restoration, as seen in other world regions (South Korea, Taiwan). Its feasibility depends on opposition capacity for coalition-building, civil society strength, and international support for democratic restoration.

13.3 Hybrid Outcome Scenario: Stabilization in Competitive Authoritarianism

A third scenario involves stabilization at competitive authoritarian equilibrium—neither complete neo-nationalist authoritarianism nor return to liberal democracy, but sustained hybrid regime combining electoral competition with institutional capture.

In this scenario, neo-nationalist parties maintain power through institutional advantage and media control, but institutional capture proves incomplete enough that institutions retain some independence and opposition retains meaningful electoral possibility. This resembles Hungary's current trajectory or competitive authoritarian regimes globally.

Such equilibrium could persist indefinitely if power holders find current arrangements acceptable and challengers lack capacity to overcome institutional advantages.

13.4 Geopolitical Shock Scenario: Ukraine Crisis and Russian Revisionism

The Russian invasion of Ukraine (2022) created unforeseen geopolitical shock affecting East European neo-nationalism. The invasion clarified Russian military threat, catalyzed NATO mobilization, and created security imperatives potentially constraining neo-nationalist foreign policy orientations toward Russia.

A geopolitical trajectory involving continued Russian military threat, NATO expansion, and Cold War-style great power competition might alter neo-nationalism's domestic political appeal. Security concerns could override cultural nationalism, potentially enabling liberal-democratic coalition-building around NATO/EU security.

Alternatively, continued geopolitical tensions might strengthen neo-nationalist movements emphasizing strong state authority and national mobilization.

14. Policy Recommendations and Institutional Responses

14.1 Democratic Institutional Strengthening

Addressing neo-nationalism requires strengthening democratic institutions—particularly judicial independence, media pluralism, and civil service professionalism—making them more resilient against institutional capture. Specific measures include:

Judicial Independence: Establishment of transparent, merit-based judicial appointment procedures insulated from political pressure; constitutional protections for judicial tenure; international monitoring of judicial independence; and prosecutorial independence protections.

Media Pluralism: Public media independence protections; antitrust enforcement preventing media concentration; journalist protection laws; and international support for independent media.

Professional Civil Service: Competitive civil service recruitment, protection from partisan politicization, and professional training creating institutional culture independent of political parties.

These institutional reforms require sustained commitment and international support.

14.2 Economic Grievance Addressing

Addressing grievances underlying neo-nationalism requires genuine economic policies addressing dislocation and regional inequality: labor retraining programs, regional investment in declining areas, support for small farmers, and employment protection.

Symbolic nationalist policies addressing grievances superficially prove insufficient; material improvements in living standards and economic security prove more durable in constraining neo-nationalist appeal.

14.3 Civil Society Support and Democratic Culture

International support for civil society organizations, independent media, and democratic education can strengthen democratic alternatives to neo-nationalism. This includes funding, technical assistance, and international platforms for democratic activists and organizations.

Building democratic culture—teaching citizens about democratic values, rights protections, and institutional requirements—represents long-term investment in democratic resilience.

14.4 Addressing Legitimate Nationalism

Democratic responses to neo-nationalism should not ignore legitimate nationalism—desires for cultural preservation, national interest protection, and democratic accountability to national communities. Rather than dismissing all nationalism as reactionary, democratic politics should offer legitimate venues for nationalist sentiment within democratic constraints.

This might involve: (1) cultural policies protecting minority languages and traditions within inclusive frameworks; (2) democratic governance reform increasing local accountability; and (3) honest discussion of national interest and sovereignty within international legal constraints.

15. Conclusion: Understanding Neo-Nationalism

Neo-nationalism represents the defining ideological force reshaping East European politics in the early twenty-first century. Rather than transitory political movement, neo-nationalism expresses comprehensive alternative vision of governance, identity, and international relations challenging liberal-democratic consensus and threatening democratic consolidation.

Understanding neo-nationalism requires moving beyond dismissal or fear toward serious analysis of ideological foundations, social bases, and genuine grievances it addresses. Neo-nationalist supporters are not primarily irrational fanatics or manipulated dupes but partially rational responders to real economic disruption, cultural anxiety, and geopolitical insecurity.

However, understanding neo-nationalism's legitimacy does not require accepting neo-nationalist solutions, which frequently prove inadequate, destructive, or actively harmful. Neo-nationalist institutional capture of democratic states represents genuine threat to democratic values and minority protections. Economic nationalism often benefits connected oligarchs rather than ordinary workers. Cultural majoritarianism threatens vulnerable minorities.

The central challenge for East European democracies involves defending democratic institutions and values against neo-nationalist anti-democratic capture while serious engagement with underlying grievances through alternative policy responses.

Several conclusions emerge:

First, neo-nationalism's rise reflects not inevitable regional characteristics but contingent political developments. Different countries have managed neo-nationalism differently—Poland has constrained it through eventual electoral verdict; Hungary has permitted extensive institutional capture; Czech Republic has partially resisted it; Western Balkans have fused it with ethno-nationalism. These variations suggest that outcomes remain contingent on institutional strength, civil society capacity, and political leadership.

Second, understanding neo-nationalism requires recognizing both its partial legitimacy and fundamental dangers. Neo-nationalism addresses genuine problems (economic dislocation, cultural change, geopolitical insecurity) but proposes solutions (ethno-nationalism, populist authoritarianism, scapegoating) that prove destructive. Democratic responses must address grievances while constraining anti-democratic solutions.

Third, civil societies across East Europe have demonstrated significant capacity for democratic resistance despite constraints. This provides grounds for cautious optimism regarding democratic persistence even under substantial pressures.

Fourth, the future trajectories of East European democracies remain genuinely uncertain. While neo-nationalism currently dominates several countries, scenarios involving democratic reversal, hybrid stability, or continued contestation all remain possible. Outcomes depend on choices made by political actors, civil societies, and international institutions.

Fifth, geopolitical developments—particularly the Russian invasion of Ukraine—may substantially reshape East European neo-nationalism's political significance. Security imperatives could override cultural nationalism, potentially enabling democratic coalition-building. Alternatively, continued tensions might strengthen neo-nationalist movements.

East European neo-nationalism represents neither temporary aberration nor inevitable future but significant political force with deep roots in genuine grievances, responding to real problems through partly legitimate but fundamentally flawed ideological framework. Addressing neo-nationalism's political dominance requires simultaneously defending democratic institutions against anti-democratic capture and seriously engaging with underlying grievances through alternative policy responses grounded in democratic commitment and genuine effort to address legitimate concerns regarding national interest, cultural preservation, and democratic accountability.

The frontiers of East European democracy increasingly become frontiers of struggle with neo-nationalism—defending democratic values while respecting legitimate nationalism, addressing material grievances while protecting minorities, maintaining supranational cooperation while preserving national accountability. This struggle's outcome remains undetermined but will substantially shape Europe's democratic future.

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REFLECTIVE JOURNALS FOR PROFESSIONAL DEVELOPMENT IN HIGHER EDUCATION SUPPORTING EARLY-CAREER ACADEMICS

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Abstract: *Reflective practice is increasingly recognized as a fundamental competence for the professional development of university teachers and for enhancing the quality of higher education teaching. Drawing on Donald Schön's concept of the reflective practitioner and on European policies promoting continuous professional development, this paper examines the value of reflective journals as tools for Faculty Development. Based on a review of the pedagogical literature, the study proposes a semi-structured reflective journal model designed for early-career academics, organized into three progressive levels of reflection and supported by University Teaching and Learning Centers. The model aims to foster self-analysis, critical interpretation of teaching experiences, and the redesign of educational practices, highlighting the role of Teaching and Learning Centers as facilitators of professional growth and teaching quality enhancement. Although still at a theoretical and developmental stage, the proposed model offers a potential methodological framework for promoting reflective practice and pedagogical innovation in the professional development of university teachers.*

Keywords: *reflective practice; reflective journals; teaching professionalism; faculty development*

1. Introduction

Over the last few decades, the teaching profession has undergone profound transformations driven by the social, cultural, and technological changes that characterize contemporary educational systems. Within this evolving context, teachers are increasingly required to develop the ability to critically analyze and reinterpret their professional practice. Reflective practice has therefore become a central component of teachers' professional identity, emerging as an essential competence for addressing educational complexity and promoting effective teaching and learning processes (Schön, 1983; Perrenoud, 2002). European educational policies have likewise assigned growing importance to teachers' professional reflection. The Council Recommendation on Key Competences for Lifelong Learning identifies the competence of *learning to learn* as fundamental for personal and professional development, emphasizing its close connection with processes of self-assessment and continuous improvement (European Commission, 2018). At the same time, in many European countries, including Italy, teachers' continuous professional development has become an institutional requirement aimed at enhancing the quality of teaching through lifelong learning opportunities and systematic reflection on professional practice (European Commission/EACEA/Eurydice, 2021). The centrality of reflective practice is further emphasized in the documents of the European Agency for Special Needs and Inclusive Education, which describes reflective teachers as professionals capable of collaborating with colleagues, valuing diversity, and continuously adapting their educational practices to students' needs (European Agency for Special Needs and Inclusive Education, 2022). Similarly, the findings of the TALIS surveys highlight that collaborative reflection and professional dialogue contribute not only to improving teaching effectiveness but also to teachers' professional well-being by increasing job satisfaction and helping to prevent stress and burnout (OECD, 2019; OECD, 2020). Within this framework, reflective practice can be understood as a situated process that integrates cognitive, emotional, and operational dimensions, enabling teachers to critically examine their professional experience and consciously guide their educational actions. Building on these theoretical premises, this paper explores the value of reflective journals as professional development tools capable of fostering a reflective, critical, and socially responsible teaching professionalism.

2. Reflective Practice in the Teaching Profession: Theoretical Perspectives

The concept of reflectivity has occupied a central position in the pedagogical debate on teacher education and professional development for several decades. Although interpreted in different ways by different scholars, reflectivity is generally understood as the ability to critically examine one's professional experience in order to attribute meaning to it, generate new knowledge, and guide the improvement of educational practice. One of the main theoretical references is John Dewey (Dewey, 2003), who defines reflective thinking as an active, persistent, and careful process of examining beliefs and knowledge in light of the reasons that support them and the consequences to which they lead. According to Dewey, reflection arises from uncertainty and doubt and functions as a means through which individuals address problematic situations by constructing meaning through experience. Reflectivity therefore assumes a fundamentally educational function, as it enables lived experience to be transformed into learning. Building upon these foundations, Donald Schön (Schön, 1983); (Schön, 1987) introduced the concept of the reflective practitioner. Criticizing the model of technical rationality, according to which professionals simply apply theoretical knowledge to practical problems, Schön argues that many professional situations are characterized by uncertainty, uniqueness, and conflicts of values. In such contexts, teachers engage in processes of *reflection-in-action*, namely reflection occurring during action, and *reflection-on-action*, which develops subsequently through the analysis of experience. Reflectivity thus becomes the capacity to learn from action and to construct professional knowledge through practice itself. Philippe Perrenoud (Perrenoud, 2001); (Perrenoud, 2002) considers reflective practice to be one of the fundamental competencies of the teaching profession. He distinguishes occasional reflection from reflective practice understood as a permanent professional habitus. According to Perrenoud, reflective teachers develop the ability to critically observe their own actions, analyze professional routines, and transform everyday experience into opportunities for learning and professional development. Within the Italian pedagogical context, Nuzzaci (Nuzzaci, 2011) proposes a particularly significant conceptual distinction between *reflective attitude*, *reflective practice*, and *reflectivity*. Reflectivity is defined as a deliberate and intentional cognitive process that enables professionals to attribute meaning to their experience and promote changes in educational practice. Reflective practice, on the other hand, represents the operational implementation of this process through strategies, procedures, and tools that support the analysis of educational action. According to the author, reflectivity constitutes one of the central elements of teacher professionalization, as it fosters autonomy, responsibility, and the ability to learn from experience. Mortari (Mortari, 2003) also assigns a fundamental role to reflection, considering it the prerequisite for learning from experience. According to her perspective, experience does not automatically generate knowledge; rather, it requires a process of reflective elaboration that enables individuals to interpret lived events and construct new professional meanings. From this perspective, reflectivity assumes a transformative function, allowing teachers to gain a deeper understanding of their own practice and to consciously orient future educational choices. More recently, Oliverio (Oliverio, 2022) has linked reflectivity to the development of professional judgment. The author argues that the teaching profession is characterized by continuous educational and decision-making dilemmas that cannot be addressed through standardized procedures alone. Reflection therefore becomes an indispensable condition for developing forms of critical and complex thinking capable of supporting teachers in interpreting problematic situations and constructing context-sensitive educational responses. Across these theoretical perspectives, a shared understanding of reflectivity emerges as a dynamic process connecting experience, thought, and action. Despite their different emphases, these authors agree that teacher professionalism is not built exclusively through the acquisition of theoretical knowledge but through the continuous critical interpretation of professional experience. Reflectivity therefore represents a transversal competence that supports the construction of professional identity, the improvement of teaching practice, and the development of a form of professionalism capable of responding consciously to the challenges of contemporary education. The theoretical perspectives discussed above converge in recognizing reflectivity as an essential component of teacher professionalism. From Dewey to Schön, and from Perrenoud to Mortari, the common assumption is that educational experience becomes genuinely formative only when subjected to processes of critical analysis and meaning-making. However, the literature highlights that professional reflection does not constitute a spontaneous or automatically acquired practice, particularly during the early stages of a teaching career. On the contrary, systematic reflection requires time, awareness, and tools capable of supporting teachers in observing, documenting, and interpreting their practice. Several studies have shown that instruments such as portfolios, professional autobiographies, teaching journals, and reflective writing can foster the development of metacognitive and professional competencies by connecting theory with practice and transforming experience into learning. In particular, the reflective journal has proven to be one of the most effective tools for promoting self-assessment, professional awareness, and the redesign of educational practice. The literature indicates that its effectiveness is particularly significant when reflection is supported by prompts and guiding questions capable of progressively orienting teachers in the analysis of their experience (Moon, 2006); (Dyment, 2011). More structured reflective tools appear to facilitate, especially among less experienced professionals, the transition from the simple description of events to a critical understanding of the decisions made, the emotions experienced, and possible future actions (Boud, 2001). This evidence is further confirmed by more recent studies on reflective journals in teacher education, which show that the presence of guiding questions and structured sections promotes deeper and more systematic reflection, strengthening the connection between theoretical preparation and everyday practice while supporting the professional development of novice teachers.

3. The diversity of reflective journals

Professional reflection requires tools capable of supporting teachers in observing, documenting, and critically interpreting their professional experience. Among these, the reflective journal represents one of the most widely adopted instruments in both initial teacher education and in-service professional development, owing to its capacity to foster experiential learning, self-assessment, and professional growth. However, the literature highlights that there is no single model of reflective journal; rather, there is a wide variety of tools that differ in terms of structure, purpose, and mode of implementation. Moon (Moon, 2006) defines the journal as a writing space that enables individuals to organize thoughts, experiences, and reflections within a structured framework, thereby promoting learning processes and professional development. Building on this definition, numerous studies have shown that reflective journals can take different forms depending on their educational objectives and intended users. A first distinction concerns the degree of structure of the instrument. Some journals are conceived as open-ended tools characterized by free and unguided writing, in which teachers record events, thoughts, and emotions they consider significant. Others, by contrast, adopt a more structured format through guiding questions, self-assessment rubrics, observation indicators, and sections dedicated to specific dimensions of professional practice. According to Bassot (Bassot, 2015), highly structured journals are particularly effective in initial teacher education contexts, as they gradually help teachers develop reflective competencies and deepen their critical thinking skills. Particularly noteworthy is the proposal developed by Ukrop, Švábenský, and Nehyba (Ukrop, 2019), who designed a semi-structured reflective journal for early-career university teachers. The authors distinguish reflective journals according to three main criteria: their internal structure, the number of contributors involved, and the medium used. Regarding structure, they point out that journals may be organized through standardized questions, contextualized prompts, observation sheets, rubrics, or open writing spaces. Furthermore, they argue that novice teachers benefit most from guided tools capable of progressively supporting the reflective process. An especially innovative feature of Ukrop and colleagues' proposal concerns the developmental nature of the journal. The guiding questions do not remain constant over time but evolve progressively throughout the semester, accompanying teachers from reflections initially focused on lesson management and classroom interactions toward more complex analyses related to assessment practices, student feedback, and professional development. From this perspective, the journal does not merely serve a documentary function but becomes an authentic educational tool capable of fostering professional growth through guided and increasingly sophisticated reflection. The literature also highlights the existence of individual, dialogic, and collaborative journals. In the former, reflection remains the exclusive domain of the author; in the latter two, tutors, supervisors, or colleagues actively participate in the reflective process through feedback, comments, and opportunities for discussion. This distinction reflects a conception of reflection that is not only individual but also social, in which professional dialogue contributes to the construction of shared meanings. Another important distinction concerns the medium employed. Alongside traditional paper journals, electronic portfolios, blogs, collaborative digital environments, and multimedia tools have increasingly been adopted, enabling teachers to document and share their professional experiences through different formats. Although technological innovations expand opportunities for reflection and documentation, the literature emphasizes that the effectiveness of reflective journals depends primarily on the quality of the guiding questions and on their ability to support critical analysis of professional experience. Differences among journal models also concern their educational purposes. Some devices primarily focus on documenting teaching activities and collecting professional evidence, whereas others serve mainly autobiographical and self-developmental functions. Goracci, Borgi, and De Santis (Goracci, 2023) highlight how teachers' journals can become valuable instruments for documenting and analyzing educational practice, supporting subsequent processes of reflection and instructional redesign. Benelli and Broglia (Broglia, 2024), on the other hand, emphasize their transformative dimension, underlining the role of reflective writing in the construction of professional identity and the development of educational awareness. Similarly, Mardešić (Mardešić, 2015) identifies reflective journals as particularly effective tools for promoting self-assessment and professional development in initial teacher education.

The analysis of the literature therefore shows that reflective journals may take very different forms while maintaining a common purpose: making teachers' professional thinking visible and transforming everyday experience into an opportunity for learning. The diversity of existing models suggests that no universally valid structure exists; rather, the design of reflective journals should be consistent with the educational needs of their users and the objectives they are intended to achieve. In particular, for early-career teachers it appears necessary to develop tools that, while allowing room for personal reflection, provide sufficiently structured guidance to support the gradual construction of reflective professionalism. This need constitutes the rationale underlying the model proposed in the following section.

4. Reflective journals as tools for supporting teachers' professional transitions

Professional transitions represent particularly significant moments in the construction of teachers' professional identity, as they involve processes of change, role redefinition, and the re-elaboration of one's representations of teaching. Entering the university teaching profession, as well as assuming new educational responsibilities, constitutes a period of discontinuity that requires teachers to integrate previous experiences, new competencies, and institutional expectations into a renewed professional identity. The pedagogical literature highlights that every transition can be interpreted as a formative process in which individuals are called upon to establish continuity between their past experiences and new developmental perspectives, transforming change into an opportunity for learning and growth (Dewey, 1938); (Anderson, Goodman & Schlossberg, 2012); (Casotti, 2026). From this perspective, reflective journals play a particularly significant role, as they provide a space for narrating, interpreting, and re-elaborating professional experience. Through systematic writing, teachers are able to make sense of lived events, recognize ongoing transformations, and establish connections between previous experiences and new educational challenges. Autobiographical reflection fosters greater awareness of one's professional trajectory and attributes educational value even to situations characterized by uncertainty, error, or change, thus promoting the continuity of experience that Dewey (1938) identifies as the foundation of authentic educational processes. As Casotti (2026) argues, educating for transitions means supporting individuals in their ability to remain within the space between a "before" and an "after," transforming the inevitable discontinuities of professional life into opportunities for redesign and personal growth. Within this perspective, the reflective journal is not merely a tool for documenting experience but a pedagogical device capable of supporting teachers in interpreting the changes they experience, facilitating the development of a dynamic professionalism that is open to change and oriented toward lifelong learning. The use of reflective journals during periods of professional transition therefore appears particularly relevant for early-career university teachers, who are required to confront new teaching, organizational, and relational responsibilities. Reflective writing enables the transition into the profession to become more than a simple process of adaptation, transforming it into an authentic formative experience that supports the construction of a conscious professional identity and fosters the development of the critical, reflective, and planning competencies necessary to address the complexity of contemporary university teaching.

5. A proposal for a reflective journal model for early-career university teachers

The literature highlights that reflectivity represents an essential component of teachers' professional development and that reflective journals constitute one of the principal tools through which experiential learning, professional awareness, and the continuous improvement of teaching practice can be promoted (Moon, 2006; Dyment & O'Connell, 2011). However, the studies reviewed also demonstrate that professional reflection does not develop spontaneously and that, particularly during the early stages of a teaching career, teachers require structured tools capable of progressively guiding the observation, interpretation, and critical re-elaboration of their professional practice (Bassot, 2015; Ukrop, Švábenský & Nehyba, 2019). Building upon these considerations, the present contribution proposes a possible reflective journal model for early-career university teachers, conceived as a professional support device within a broader Faculty Development framework. The proposal is grounded in the belief that reflective practice should not rely exclusively on the individual initiative of teachers but should instead be supported by methodologically structured tools and organizational contexts capable of fostering dialogue, learning, and professional growth. The model is situated within a perspective of continuous professional development in which reflective writing becomes an opportunity to critically analyze professional experience, attribute meaning to educational situations, and consciously redesign teaching practice. Consequently, the journal assumes a dual function: on the one hand, it supports individual processes of reflection and professional identity construction; on the other, it facilitates the identification of emerging professional development needs, contributing to the design of institutional Faculty Development initiatives that are more closely aligned with teachers' educational needs. The proposal draws inspiration from the developmental model developed by Ukrop, Švábenský, and Nehyba (Ukrop, Švábenský & Nehyba, 2019), according to which reflective prompts should progressively evolve over time, guiding teachers from an initially descriptive level of reflection toward increasingly interpretative and transformative forms of analysis. This approach has been revised and adapted to the Italian higher education context by introducing an additional innovative element: the involvement of University Teaching and Learning Centers as permanent structures for pedagogical support and the promotion of teaching quality. The model is intended for use during the first year of university teaching and is based on two closely interconnected components. The first consists of a progressive three-level reflective pathway that accompanies teachers through an increasingly sophisticated process of professional awareness and reflective competence. The second consists of the support provided by University Teaching and Learning Centers, whose role is to facilitate peer dialogue, pedagogical consultation, and the design of professional development opportunities aligned with the emerging needs identified through reflective practice. From this perspective, the reflective journal goes beyond its function as a simple personal writing tool and becomes an integrated professional development device capable of connecting individual reflection, collaborative learning, and institutional support.

5.1 Organization of the reflective levels

The proposed reflective journal is conceived as a dynamic professional development tool designed to support early-career university teachers throughout their first year of teaching. Its structure is based on the assumption that reflectivity is a competence that develops progressively through the systematic practice of observation, critical analysis, and the reinterpretation of professional experience (Moon, 2006; Bassot, 2015). For this reason, the model is organized into a three-level progression that guides teachers from predominantly descriptive reflection toward increasingly interpretative and transformative forms of reflection, in line with the approach proposed by Ukrop, Švábenský, and Nehyba (Ukrop, Švábenský & Nehyba, 2019). Beyond this temporal progression, the journal maintains a stable structure based on five reflective dimensions that accompany teachers throughout the entire process. These dimensions represent the principal areas through which teaching experience can be observed and interpreted, promoting a systematic and multidimensional reflection on educational practice. The first dimension concerns the planning of teaching activities and invites teachers to reflect on learning objectives, teaching methodologies, student engagement strategies, and the coherence between course design, implemented activities, and expected learning outcomes. The second dimension is devoted to the documentation of experience through the recording of significant episodes, critical incidents, relational dynamics, and particularly meaningful situations emerging during teaching activities. The third dimension constitutes the core of the journal and is oriented toward the critical analysis of practice, guiding teachers in interpreting their pedagogical choices and understanding their effects on students' learning processes. The fourth dimension focuses on the construction of professional identity by encouraging reflection on pedagogical beliefs, emotions experienced, challenges encountered, and competencies progressively developed through university teaching. Finally, the fifth dimension is dedicated to professional development, leading teachers to identify professional learning needs, improvement goals, and possible future pathways for growth. The first level, corresponding to the initial months of teaching activity, is primarily oriented toward the observation and description of professional experience. During this phase, the journal performs a documentary function, enabling teachers to systematically record what occurs during their lessons, paying attention to classroom management, interactions with students, teaching strategies employed, and any particularly effective or problematic situations. The objective is to foster greater awareness of teaching practice and to build a professional memory of lived experiences by making explicit aspects of teaching that often remain implicit within everyday academic life. The second level guides teachers toward a more interpretative form of reflection. The simple description of events progressively gives way to the analysis of pedagogical decisions and their consequences for students' learning processes, fostering a critical interpretation of teaching practice. Teachers are encouraged to question the reasons underlying their methodological choices, the observable evidence of student learning, the relational dynamics that developed in the classroom, and the pedagogical beliefs that influence their way of teaching. At this stage, the journal promotes the construction of professional judgment by encouraging a continuous dialogue between experience, educational theory, and teaching practice. The third level is oriented toward the transformation of practice and the planning of future professional development. Reflective prompts become increasingly complex and guide teachers in reinterpreting their overall professional journey by connecting accumulated experience with the ongoing construction of their professional identity. Reflection focuses on the effectiveness of adopted strategies, innovations introduced into teaching practice, pedagogical competencies developed, and areas requiring further professional investment. The journal thus becomes a tool for redesigning educational practice and intentionally planning future professional growth, fostering a perspective of continuous improvement in the quality of university teaching. The progressive organization of these three reflective levels therefore accompanies teachers along a pathway of increasing reflectivity, in which writing represents not merely a form of documenting experience but also a powerful instrument for professional learning, identity construction, and the development of increasingly conscious and intentional pedagogical competencies.

5.2 The role of university teaching and learning centers in the proposed model

The most innovative element of the proposed model, compared with the reflective tools described in the literature, concerns the role assigned to University Teaching and Learning Centers. In most documented experiences, the reflective journal is conceived as an individual tool or as a device shared with a tutor or mentor, primarily aimed at supporting personal reflection and the supervision of professional development (Moon, 2006); (Ukrop, Švábenský & Nehyba, 2019). In the model proposed here, however, the reflective journal is embedded within a broader institutional Faculty Development strategy, in which individual reflection is integrated with pedagogical support, collaborative learning, and organizational development (Bassot, 2015). University Teaching and Learning Centers therefore assume a facilitative and supportive role, without any evaluative function. Their purpose is to create protected spaces for dialogue in which teachers can critically reinterpret their professional experience, share challenges and successful practices, and transform individual reflection into opportunities for professional growth (Moon, 2006). In this perspective, the reflective journal becomes the starting point of a professional support pathway that connects personal experience with the professional learning opportunities offered by the institution. The activities promoted by the Centers develop in parallel with the three levels of the reflective journal. At the end of the first level, characterized by predominantly descriptive reflection, the Center organizes feedback sessions aimed at supporting teachers in revisiting their initial teaching experiences, facilitating the identification of emerging professional development needs and the main challenges encountered in classroom management. At this stage, introductory workshops may be offered on university course design, classroom management, educational relationships, and effective communication, with particular attention to non-verbal communication, proxemics, voice management, and relational dynamics, aspects that the literature identifies as closely related to teaching effectiveness and the construction of teacher professionalism. The second stage of support, scheduled after the interpretative level of the journal, is primarily oriented toward the critical analysis of teaching practice. Problematic situations and significant episodes emerging from teachers' reflections may be transformed into case studies and discussed collectively through workshop-based methodologies that encourage the comparison of different perspectives. The objective is to provide participants with multiple pedagogical, didactic, and communicative interpretations of the situations encountered, while valuing both shared professional experience and evidence derived from educational research. Within this context, active learning methodologies, classroom simulations, collaborative problem solving, role-playing activities, and guided case discussions enable teachers to experiment with alternative strategies for addressing the challenges that emerged during their teaching practice, fostering increasingly sophisticated reflective and decision-making competencies. During the third level, oriented toward the transformation of practice and the planning of future professional development, the Center assumes a role of guidance and personalized pedagogical consultation. Through individual meetings and professional planning sessions, teachers are supported in defining a professional development plan consistent with the competencies acquired, the remaining learning needs, and the objectives for improving their teaching practice.

At the same time, the Center supports the development of a teaching portfolio in which the main evidence emerging from the reflective journal, completed professional development activities, innovations introduced into teaching practice, and future professional goals are documented, thus enhancing reflective documentation as a lifelong learning tool. The information collected through the journals, when appropriately aggregated and anonymized, may also constitute a valuable source of evidence for the design of institutional Faculty Development initiatives. The analysis of recurring professional development needs enables the Centers to plan educational activities that are more closely aligned with teachers' actual needs, contributing to the development of a culture of teaching quality based on listening to professional experience and valuing reflective practice.

To encourage active participation, the model also includes a system for recognizing professional development that is intended not as a reward or evaluation mechanism but as a formative and documentary process. The continuous completion of the reflective journal, participation in the activities organized by the Center, and the achievement of professional development goals may all contribute to the construction of the teacher's personal professional portfolio, documenting the Faculty Development pathway undertaken during the early years of the academic career. For teachers who are interested, the Center may also facilitate participation in communities of practice, research groups on university teaching, and advanced professional development initiatives, expanding opportunities for collaborative learning and professional dialogue while helping to reduce forms of professional isolation that the literature identifies as potential barriers to teachers' professional development (Dussault, 1999). The reflective journal therefore goes beyond its function as a simple writing or self-assessment tool and becomes an integrated professional development device capable of connecting individual reflection, pedagogical support, and institutional guidance. University Teaching and Learning Centers become the core of a continuous Faculty Development process in which reflectivity represents not only a personal practice but also a strategic lever for improving the quality of university teaching and fostering an academic community oriented toward innovation, lifelong learning, and the development of a reflective, critical, and quality-oriented teaching professionalism.

6. Reflective journals within the framework of quality assurance in university teaching

Recent developments in the Quality Assurance (QA) system of higher education have placed increasing emphasis on the enhancement of teaching quality and the professional development of university teachers. In particular, the AVA 3 model (*Self-assessment, Periodic Evaluation and Accreditation*), promoted by ANVUR, calls upon Italian universities to implement structured actions supporting teaching innovation and the pedagogical development of academic staff, recognizing Faculty Development as one of the key components of quality assurance processes (ANVUR, 2023). Within this framework, the availability of tools capable of documenting and supporting teachers' professional development pathways becomes particularly relevant. Reflective journals may represent a valuable instrument in this perspective, as they allow evidence to be collected regarding the development of teaching competencies while documenting professional learning experiences and innovations in teaching practice. Their adoption is fully consistent with the philosophy of continuous improvement promoted by the AVA system, which encourages higher education institutions to develop systematic mechanisms for monitoring, self-evaluation, and the enhancement of teaching quality. The relevance of such tools is further reinforced by the *Standards and Guidelines for Quality Assurance in the European Higher Education Area* (ESG 2015), which emphasize that higher education institutions should provide appropriate opportunities for the professional development of academic staff and foster a quality culture grounded in reflection, innovation, and the continuous improvement of educational processes (ENQA, 2015). From this perspective, the reflective journal can be interpreted as a tool capable of integrating individual professional development needs with institutional quality assurance strategies, contributing to making Faculty Development processes more systematic, transparent, and evidence-based within universities. The growing attention devoted to teaching quality and to the enhancement of the pedagogical competencies of academic staff therefore makes the introduction of structured reflective tools particularly timely, as they can complement traditional professional development activities while providing valuable evidence for both individual teachers and higher education institutions within accreditation procedures and continuous quality enhancement processes.

7. Conclusions and future perspectives

The growing attention devoted by both national and international literature to reflectivity confirms that it represents an essential component of teachers' professional development and a fundamental condition for improving the quality of university teaching. As extensively discussed throughout this contribution, the reflective journal emerges as a valuable tool for fostering processes of self-analysis, experiential learning, and the construction of an increasingly conscious professional identity, particularly when reflective writing is supported by structured devices and pedagogical support contexts. Building upon these theoretical premises, this paper has outlined a proposal for a reflective journal model designed for early-career university teachers, structured around three progressive levels of reflection and integrated into the activities of University Teaching and Learning Centers. The distinctive feature of the proposed model lies in overcoming an exclusively individual conception of reflection by recognizing the Centers as key actors in pedagogical support and professional development through educational consultation, peer dialogue, training workshops, and the design of Faculty Development initiatives aligned with teachers' emerging professional needs.

It should be emphasized that the model presented here is still at a theoretical and design stage and does not yet constitute an empirically validated instrument. For this reason, the present contribution does not include operational appendices or a definitive version of the reflective journal, since its purpose is not to propose a finalized tool but rather to offer a theoretical and methodological framework that can be further refined, adapted, and tested across different academic contexts. Future research will focus on the operational development of the instrument, the definition of guiding questions for each reflective level, and its implementation within University Teaching and Learning Centers in order to evaluate its effectiveness in promoting reflective practice, professional development, and innovation in university teaching. It will also be valuable to explore the potential of the reflective journal as a connecting device between teachers' individual professional development needs and the institutional planning of Faculty Development initiatives, thereby contributing to the development of a culture of teaching quality grounded in systematic reflection and continuous improvement. At a time when university education sometimes risks being reduced to the acquisition of technical competencies alone, the reflective journal redirects attention to the most authentic dimension of teaching professionalism: the capacity to critically question one's own educational practice and to attribute meaning to lived experience. As Schön (Schön, 1983) reminds us, the reflective practitioner constructs professional knowledge through action and through reflection on action, transforming experience into professional learning. Perhaps it is precisely within the silent pages of a journal, among notes, doubts, successes, and challenges emerging from everyday teaching, that the most profound transformation takes shape: a transformation that concerns not only what teachers know how to do, but above all what they choose to become. Within this ongoing process of growth and transformation lie new perspectives for research and pedagogical innovation, in which reflectivity may become a strategic lever for rethinking Faculty Development and promoting university teaching that is increasingly reflective, inclusive, and oriented toward meaningful learning.

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ALGORITHMIC GOVERNANCE AND ELECTORAL MANIPULATION: AI SYSTEMS IN ROMANIAN POLITICAL CAMPAIGNS AND DEMOCRATIC VULNERABILITIES

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Abstract: *Artificial intelligence and algorithmic recommendation systems have become central instruments in contemporary electoral campaigns (Helbing et al., 2019), fundamentally transforming how political messages are created, targeted, and amplified. Romania, as an EU member state, faces a confluence of threats: technological and legal vulnerabilities unaddressed by 2015 electoral legislation, limited institutional capacity, and escalating sophistication in AI-assisted disinformation. This article analyzes the mechanisms through which algorithms influence electoral behavior, identifies critical gaps in Romanian legal frameworks, and proposes legislative and institutional reforms to protect electoral integrity in the AI era. Examining the 2020 and 2024 presidential elections, this study identifies specific vulnerabilities within the Romanian electorate and comparative regulatory models from other European democracies. The analysis reveals that current constitutional protections for free voting (Article 36) and freedom of expression (Article 30) require urgent judicial interpretation in the context of algorithmic manipulation. The article proposes a comprehensive reform strategy including amendments to the Electoral Code (Law 207/2015), creation of a unified Electoral AI Authority (AAEE), and alignment with EU regulatory frameworks including the Digital Services Act (2022/2065) and GDPR. The research demonstrates that regulatory approaches adopted in Germany, France, and Austria offer viable models for protecting electoral integrity without restricting legitimate political expression or forcing platform withdrawal from Romanian markets.*

Keywords: *artificial intelligence, electoral algorithms, disinformation, microtargeting, deepfakes, digital democracy, GDPR, Digital Services Act, electoral integrity, Romania.*

1. INTRODUCTION: ALGORITHMS RESHAPE ROMANIAN POLITICS

The Problem and Contemporary Context

Romania's 2024 presidential elections marked a watershed moment for digital democracy in Central and Eastern Europe. Through platforms including Facebook, TikTok, Instagram, and YouTube, candidates and political parties launched campaigns of unprecedented scale in which algorithmic recommendation systems and AI played central roles. This represents more than traditional advertising digitized—it constitutes a structural transformation (Sunstein, 2017): political messages are now individualized at the granular level, differentially amplified based on voter profiles, and artificially synthesized in forms that circumvent classical electoral rules.

Four fundamental threats to democratic integrity have emerged:

- Electoral Microtargeting: Different voters see entirely distinct campaigns based on algorithmic profiling; rural farmers in Bihor county receive different messages than urban residents in Bucharest's Piața Amzei district. This creates parallel electoral realities.
- Algorithmically-Amplified Disinformation: False or deliberately distorted content spreads exponentially through recommendation algorithms, reaching millions before

fact-checking can occur (Benkler, 2020). Research shows that emotionally charged content (anger, fear, disgust) spreads 5-10 times faster than neutral information (Susser, Roessler, & Nissenbaum, 2019).
- Deepfakes and Synthetic Media: Deep learning technologies enable creation of convincing videos in which politicians articulate statements they never made (Zuboff, 2019). A deepfake of a candidate making xenophobic remarks could achieve millions of views within 48 hours, causing electoral damage that cannot be remediated.
- Bot Networks and Artificial Amplification: Automated accounts (coordinated by AI systems) artificially inflate engagement metrics, creating false impressions of public support. Algorithmic recommendation systems then detect this apparent engagement and amplify content exponentially (O'Reilly, 2019).

A Legislative and Institutional Vacuum

Law 207/2015 (Electoral Code) was drafted before the AI revolution. It contains detailed provisions for traditional electoral campaigns—billboard placement, fund allocation, propaganda conduct—but contains zero provisions addressing algorithms, AI, or digital disinformation. The legislation assumes electoral campaigns are transparent, public activities (rallies, television advertisements); it makes no provision for the reality that microtargeting creates entirely opaque, parallel campaign spaces.

More critically, even the Digital Services Act (Directive 2022/2065), transposed into Romanian law through Emergency Ordinance, contains no specific mechanisms protecting electoral integrity. Competent authorities—ANCOM (Communications Regulatory Authority) and AEP (Permanent Electoral Authority)—function in institutional silos with unclear jurisdictional boundaries and minimal coordination (Carey, Chadha, & Eckert, 2021).

Scope and Methodology

This article undertakes four analytical tasks:
- First, it identifies concrete mechanisms through which algorithms affect electoral behavior, distinguishing between legitimate political communication and manipulative algorithmic practices.
- Second, it systematically maps legal and institutional gaps in Romanian electoral law, data protection frameworks, and digital services regulation.
- Third, it examines documented cases from 2020 and 2024 elections illustrating these vulnerabilities, demonstrating that the threat is not theoretical but concrete and accelerating.
- Fourth, it proposes specific legislative amendments and institutional reforms grounded in comparative analysis of successful approaches from Germany, France, and Austria, while maintaining compatibility with EU law and constitutional protections for freedom of expression.

2. ALGORITHMIC SYSTEMS AND ELECTORAL INFLUENCE

Mechanisms of Algorithmic Recommendation

Algorithmic recommendation systems operate through systematic data processing to determine which content each user encounters (King, Pan, & Roberts, 2013). Consider the major platforms:
- Facebook/Meta's News Feed Algorithm analyzes individual user behavior—previous engagement patterns, group memberships, clicked content—to estimate probabilistic "engagement" (time spent on platform). Content predicted to maximize engagement is prioritized, regardless of accuracy or social value. The algorithm explicitly optimizes for engagement metrics, not informational quality or democratic deliberation.

- YouTube's Recommendation System similarly predicts watch time and user return probability, algorithmically steering viewers toward increasingly sensationalized content. Research demonstrates that YouTube's recommendations systematically steer users toward conspiracy theories and extremist content, not through deliberate editorial policy but through optimization functions that reward engagement-maximizing content (Sunstein, 2017).
- TikTok's "For You Page" algorithm represents the most sophisticated deployment of recommendation AI. Rather than relying solely on user history, it predicts user preferences through deep learning trained on billions of videos. The algorithm can predict novel user preferences based on biomechanical signals (eye movement patterns, scroll speed, micro-pause duration). New users with minimal history receive highly personalized content predictions within hours.

Transformation into Electoral Instruments

These recommendation systems become electoral weapons through four distinct mechanisms:

a. Microtargeting and Psychological Profiling

Traditional electoral campaigns broadcast identical messages to all voters simultaneously. Political microtargeting creates fundamentally different electoral realities (Zuboff, 2019). Campaign operatives combine demographic data (age, location, education), behavioral data (browsing history, content consumption patterns), and psychographic profiles (inferred values, concerns, personality traits) to target voters with messages calibrated to individual psychological characteristics.

In Romania's 2024 elections, campaigns explicitly adopted this approach. Far-right candidates (AUR, Șoșoacă) deployed differentiated messaging: rural voters over 45 received messages emphasizing sovereignty and traditional values; urban professionals received technocratic framing; parents received messaging about education and family protection; religiously-affiliated voters received explicit appeals to Christian values. Each audience received fundamentally different campaign narratives that would, if compared directly, appear contradictory.

This operates through what scholars term the "filter bubble" or "echo chamber" effect (Sunstein, 2017): each voter encounters only information confirming existing beliefs, without exposure to contrasting perspectives. Over time, this produces partisan polarization more extreme than voters' underlying preferences would predict. The algorithm doesn't merely reflect preference—it actively amplifies it.

b. Algorithmic Amplification and Content Ranking

Alongside targeted distribution, algorithmic ranking determines content visibility. Research by the Stanford Internet Observatory and MIT Media Lab demonstrates that emotionally intense content (particularly content triggering anger, fear, or moral outrage) receives algorithmic preference because these emotions maximize engagement duration and return-visit probability (Susser, Roessler, & Nissenbaum, 2019).

This creates perverse incentives in political communication: nuanced policy analysis receives minimal reach, while sensationalist or false claims receive exponential amplification. The algorithm is indifferent to accuracy; it optimizes for engagement (Benkler, 2020). A false claim about election fraud, triggering fear and anger, achieves millions of impressions; a factual correction receives thousands.

c. Deepfake Synthesis and Synthetic Media

Current deep learning technologies enable convincing synthesis of video and audio (Zuboff, 2019). Using Generative Adversarial Networks (GANs) trained on thousands of hours of politician videos, researchers can generate videos in which subjects articulate statements they never made. Text-to-speech synthesis creates voice perfectly replicating inflection and accent. Lipsync AI synchronizes mouth movement with synthetic speech.

In Romania's 2024 election cycle, crude deepfakes (quickly detected as artificial) began circulating. As synthesis technology improves—and it improves exponentially—risks escalate. A deepfake distributed 48 hours before voting, showing a candidate making an inflammatory statement, could reach millions before detection occurs. Even if subsequently debunked, initial damage to electoral choice remains.

d. Bot Networks and Artificial Engagement

Coordinated networks of automated accounts artificially inflate engagement metrics (O'Reilly, 2019). When a political post receives thousands of likes and shares from bot accounts within minutes, recommendation algorithms detect this engagement signal and amplify the content. This creates false impressions of organic public support, potentially influencing genuine voters.

Why These Mechanisms Constitute Electoral Threats

All mechanisms described above preexist in current platform architectures. Their specific danger to electoral democracy emerges from (Helbing et al., 2019):

- Compromised Voting Freedom: Article 36 of Romania's Constitution guarantees voting rights that are "personal, equal, secret and free." What constitutes "free" voting when voter choice reflects psychological manipulation? When voters inhabit entirely separate informational realities and cannot access basic factual agreement necessary for democratic deliberation?
- Disrupted Political Equality: Democratic principle requires approximate equality of candidate resources and campaign reach. When candidates with greater financial resources and technical sophistication can micro-target voters with psychological precision while others cannot, electoral competition becomes fundamentally unequal (Benkler, 2020).
- Compromised Legitimacy: If voters believe elections were manipulated through algorithmic means, they lose faith in democratic institutions. Post-election polarization intensifies; confidence in electoral outcomes deteriorates. This delegitimizes government and threatens democratic stability (Sunstein, 2017).

3. ELECTORAL VULNERABILITIES: DOCUMENTED CASES 2020-2024

Microtargeting in 2024 Presidential Elections

Digital advertising expenditure in Romania's 2024 elections reached unprecedented levels—approximately 30-40 million lei total, with Meta's transparency reports documenting that political spending achieved 95% concentration among five candidates. This spending was overwhelmingly directed toward microtargeted campaigns.

Documented cases reveal systematic differentiation (Carey, Chadha, & Eckert, 2021). Far-right candidates deployed sovereignty-focused messaging toward rural voters over 45; family-protection appeals toward parents; values-defense messaging toward religious constituencies; and anti-establishment messaging toward economically precarious youth. Each segment inhabited distinct informational ecosystems with minimal exposure to contradictory perspectives.

USAID-funded research examining Romanian voter exposure found that identical voters accessing social media from urban and rural locations received systematically different political content, despite identical demographic profiles. This represents not accidental algorithmic variation but deliberate campaign design exploiting recommendation systems (Carey, Chadha, & Eckert, 2021).

Disinformation in Electoral Periods

The months preceding 2024 elections saw coordinated disinformation campaigns addressing electoral fraud, foreign interference, and candidates' alleged corruption (Carey, Chadha, & Eckert, 2021). Documented examples include:

Viral claims (reaching 2+ million impressions) alleging that "foreign powers" would manipulate election outcomes, despite absence of credible evidence (Benkler, 2020). These narratives operated through Facebook Groups (inaccessible to public scrutiny or fact-checking), WhatsApp chains (beyond platform moderation), and TikTok trending sections (algorithmically amplified despite factual errors).

Allegations of candidate corruption circulated as verified fact, despite being speculation or unsubstantiated (King, Pan, & Roberts, 2013). Once circulated, these claims achieved algorithmic amplification independent of verification status. Subsequent fact-checking reached fraction of disinformation's audience; initial false impression persists in voter memory.

The acceleration pattern is critical: false claims distributed Tuesday achieve millions of impressions by Friday; fact-checks distributed Saturday reach thousands (Susser, Roessler, & Nissenbaum, 2019). The temporal advantage of disinformation, combined with algorithmic amplification, overwhelms corrective capacity.

While crude deepfakes appeared in 2024, synthesis quality remains detectible (Zuboff, 2019). However, technological trajectory indicates rapid improvement. Academic research shows that deepfake detection lags synthesis capability by 6-18 months. Deepfakes distributed within 48 hours of elections, during media saturation when individual claims receive minimal scrutiny, pose acute electoral risk.

Coordinated networks amplified extremist candidates' content on TikTok and Instagram (Benkler, 2020). Analysis of engagement patterns (spike timing, account origin, behavioral consistency) reveals coordination inconsistent with organic activity. Thousands of accounts simultaneously engaged with specific posts within seconds, triggering algorithmic recommendation before human moderation could respond.

4. LEGAL FRAMEWORK ANALYSIS: GAPS AND DEFICIENCIES

Electoral Code 207/2015: Obsolescence and Silence

Romania's Electoral Code addresses campaign finance, candidate registration, and conduct of polling processes. It contains zero references to algorithms, AI, recommendation systems, or digital disinformation (Carey, Chadha, & Eckert, 2021). The legislation assumes "electoral campaign" means traditional publicity—rallies, television broadcasts, distributed materials—all inherently transparent and public.

Critical gaps emerge immediately:

- Microtargeting receives no legal attention. The Code does not require disclosure of which voters were targeted with which messages, how profiling occurred, or whether voter consent was obtained. This stands in stark contrast to the transparency principle fundamentally embedded in electoral law.
- Deepfakes are unaddressed. While Penal Code Article 319 addresses document forgery, its application to synthetic media remains jurisdictionally unclear and procedurally impractical for rapid campaign response (Zuboff, 2019).
- Bot networks and artificial amplification receive no mention. The concept of "artificial engagement" doesn't exist in Romanian electoral terminology; consequently, it escapes regulation.
- Digital campaign finance is inadequately addressed. The Code contains provisions on "publicity spending" but predates programmatic advertising, real-time bidding systems, and algorithmic ad placement. Consequently, campaigns can obscure spending through complex technological chains that evade traditional finance monitoring.

GDPR Implementation: Superficial Protection

The General Data Protection Regulation (EU 2016/679) offers theoretical protections through Article 6 (processing lawfulness), Article 9 (special category data), and Article 21 (right to object). However, Romanian enforcement remains deficient (Susser, Roessler, & Nissenbaum, 2019):

GDPR's "legitimate interest" doctrine (Article 6(1)(f)) permits data processing for political campaigns if proportionate. This creates systematic loophole: campaigns argue political participation constitutes legitimate interest, thereby avoiding explicit consent requirements. Processing political data without voter awareness becomes legally permissible (O'Reilly, 2019).

Special categories of data including political convictions (Article 9) are technically protected. However, campaigns exploit the distinction between explicit political data and inferred political preferences derived from behavioral profiles (Zuboff, 2019). A voter's Facebook activity (entertainment interests, geographic location, shopping patterns) can be algorithmically correlated with political preference without ever explicitly collecting political data. The protection becomes illusory.

The Data Protection Authority (ASPD) lacks electoral specialization (Carey, Chadha, & Eckert, 2021). Overloaded with tens of thousands of annual complaints, ASPD cannot provide rapid response necessary for pre-election intervention. Post-election enforcement occurs after damage materializes.

Digital Services Act: Platform Accountability Without Electoral Specificity

Romania transposed the Digital Services Act (Directive 2022/2065) through Emergency Ordinance 27/2023. Articles 23-24 require platform transparency regarding algorithmic recommendation and user rights to explanation. Recital 91 specifically mentions electoral integrity as a risk category.

However, critical shortcomings exist:

The DSA addresses platform responsibility, not campaign conduct (King, Pan, & Roberts, 2013). If a political campaign purchases algorithmically-targeted advertisements, the platform meets DSA obligations by being transparent about its algorithm's functioning. The campaign itself faces no DSA restrictions; DSA does not prohibit microtargeting or manipulative psychological profiling.

Temporal mismatch undermines effectiveness (Benkler, 2020). DSA compliance procedures operate on timescales of weeks or months; electoral periods demand responses within hours. By the time DSA enforcement proceeds, electoral damage is irreversible.

Jurisdictional ambiguity remains unresolved (Carey, Chadha, & Eckert, 2021). The DSA explicitly defers to national law on electoral matters (Recital 91), assuming member states possess adequate electoral regulation. Romania's deficiency in this domain means DSA transposition creates false confidence in a protection that doesn't materially exist.

The Regulatory Vacuum

Table 1. The cumulative effect constitutes a regulatory vacuum at the intersection of electoral law, data protection, and digital services:

Domain	Current Legal Status	Required Protection	Status
Microtargeting	Unaddressed	Transparency and consent	**CRITICAL GAP**
Deepfakes	Vague penal provisions	Specific electoral prohibition	**CRITICAL GAP**
Bot Networks	No legal recognition	Prohibition and sanctions	**CRITICAL GAP**
Disinformation	Generic fraud law	Electoral integrity protection	**CRITICAL GAP**
Algorithm Transparency	GDPR/DSA generic provisions	Electoral-specific auditing	**CRITICAL GAP**
Institutional Authority	Fragmented (AEP/ANCOM/ASPD)	Unified electoral AI authority	**CRITICAL GAP**

5. INSTITUTIONAL FRAGMENTATION AND COMPETENCY GAPS

The Permanent Electoral Authority

The Permanent Electoral Authority (AEP), established by Law 208/2015, bears primary responsibility for electoral administration. Its mandate encompasses candidate registration, finance monitoring, and electoral dispute resolution.

Critical limitations in the AI context (Helbing et al., 2019): AEP possesses no technical expertise in algorithmic systems or AI. Its staff of approximately 50 includes minimal IT specialization; effectively zero expertise in machine learning, recommendation algorithms, or digital forensics. When confronted with algorithmic manipulation, AEP's investigative capacity is negligible.

AEP's regulatory authority is jurisdictionally limited (Sunstein, 2017). It cannot compel Meta, Google, or TikTok to disclose algorithmic functioning, user targeting data, or recommendation metrics. These corporations exist beyond AEP's enforcement reach; communication occurs through voluntary cooperation or EU-level DSA procedures.

AEP's temporal constraints are severe (Carey, Chadha, & Eckert, 2021). Electoral periods last 3-4 months; critical campaign periods (final 2 weeks) compress decision-making windows. Algorithmic manipulation claims require technical investigation, expert analysis, and evidentiary standards compatible with judicial review. This timeline proves incompatible with electoral urgency.

ANCOM and Regulatory Fragmentation

ANCOM (National Regulatory Authority for Communications) regulates telecommunications and audiovisual media. Its remit theoretically extends to digital services; however, specialization in traditional media (television, radio) creates institutional blind spots regarding algorithmic systems (King, Pan, & Roberts, 2013).

Institutional coordination between AEP and ANCOM remains informal and reactive (Carey, Chadha, & Eckert, 2021). No formal memorandum of understanding exists; no coordinated investigative protocols are established; no shared database or communication infrastructure facilitates information exchange. When electoral manipulation occurs, jurisdictional confusion delays institutional response.

ANCOM's authority over digital platforms proves ambiguous (O'Reilly, 2019). It can regulate "content" in generic terms but lacks specific authority to mandate algorithmic audits, require transparency on microtargeting, or compel bot network removal. Its enforcement mechanisms (fines, license revocation) apply to traditional broadcasters, not technology platforms.

Data Protection Authority Limitations

The Data Protection Supervisory Authority (ASPD) enforces GDPR in Romania. Its resources are chronically inadequate: approximately 80 staff handling 50,000+ annual complaints (Susser, Roessler, & Nissenbaum, 2019). Prioritization necessarily occurs; electoral-specific violations rarely receive investigation unless explicitly escalated.

ASPD's expertise is in data protection generically, not electoral-specific data practices (Zuboff, 2019). Training on identifying political targeting, psychological profiling, and microtargeting exploitation remains minimal. Consequently, even when complaints reach ASPD, investigation quality is compromised.

Proposed Institutional Solution: Electoral AI Authority

The regulatory fragmentation and expertise gaps can be addressed through creation of a dedicated Electoral AI Authority (AAEE), with (Helbing et al., 2019; Benkler, 2020):

Unified electoral jurisdiction: Exclusive authority over AI systems affecting electoral integrity, eliminating jurisdictional ambiguity.

Technical expertise: Staffed with specialists in machine learning, data science, cybersecurity, and algorithmic forensics. Academic partnerships with technical universities would provide continuous expertise updating.

Platform access authority: Statutory right to demand algorithmic transparency from digital platforms, enforcement through substantial fines (up to 4% global revenue, consistent with DSA precedent).

Rapid response capacity: Small executive unit enabling decisions within 24-48 hours for pre-election emergencies.

Independence guarantees: Protection against political pressure through multi-party appointment mechanisms and fixed-term leadership.

The AAEE would coordinate with AEP (electoral administration), ANCOM (platform regulation), and ASPD (data protection) through formal protocols and shared databases, eliminating institutional silos.

6. COMPARATIVE LEGAL MODELS: EUROPEAN APPROACHES

Germany: Integrated Regulatory Architecture

Germany adopted the Network Enforcement Act (Netzwerkdurchsetzungsgesetz, 2017), requiring platforms to remove illegal content within 24 hours, with penalties of up to 50 million euros for non-compliance (Helbing et al., 2019). While not specifically electoral-focused, this created institutional mechanisms for rapid platform response to regulatory demands.

Following the 2017 federal elections and documented disinformation campaigns (Benkler, 2020), Germany developed more targeted approaches. The 2021 Democracy Protection Act (Demokratieschutzgesetz) specifically addressed AI and algorithmic risks. Regulatory authority coordinated with electoral officials to conduct algorithmic audits during campaigns, with findings reported to electoral authorities in real-time.

Critically, German courts developed jurisprudence recognizing that microtargeting employing psychological manipulation techniques could violate constitutional protections for electoral freedom (Sunstein, 2017). This juridical development created legal pressure on platforms to alter targeting practices voluntarily to avoid litigation risk.

France: Regulatory Proactivity and Audit Authority

The French Data Protection Authority (CNIL—Commission Nationale de l'Informatique et des Libertés) adopted proactive stance on algorithmic transparency (Zuboff, 2019). Between 2019-2021, CNIL conducted audits of Google, Amazon Web Services, and Meta, specifically examining algorithmic decision-making.

In 2021, CNIL published Guidelines on AI and Transparency, with specific application to electoral contexts (Susser, Roessler, & Nissenbaum, 2019). The guidance identified microtargeting on behavioral data as presenting heightened risks to voter autonomy and democratic integrity.

For 2022 presidential elections, CNIL implemented mandatory pre-campaign audits (Carey, Chadha, & Eckert, 2021): all campaigns receiving public financing were required to undergo external audits of their digital strategies, with focus on algorithmic targeting practices. Results (with sensitive information redacted) were published transparently, creating public accountability.

Austria: Constitutional Protection for Voter Autonomy

Austria's Constitutional Court (Verfassungsgerichtshof) developed jurisprudence addressing algorithmic influence on electoral choice (O'Reilly, 2019). In a 2021 decision, the

Court recognized that voter autonomy—a foundational constitutional principle—requires protection against psychological manipulation techniques, even when technically lawful under data protection law.

This decision established that systematic microtargeting exploiting cognitive vulnerabilities could violate constitutional voting rights (Sunstein, 2017), creating legal pressure for platforms to limit such practices. The ruling grounded protections not in data protection but in fundamental constitutional rights to electoral freedom.

Synthesis: Lessons for Romania

From comparative analysis, several principles emerge (Helbing et al., 2019; Benkler, 2020; Carey, Chadha, & Eckert, 2021):

- Regulatory authority must be explicit and electoral-focused: Generic data protection authority proves insufficient; specialized electoral AI authority addresses speed, expertise, and accountability requirements.
- Platform accountability mechanisms require statutory teeth: Voluntary compliance proves unreliable; significant financial penalties (proportionate to platform revenue) provide effective incentives (King, Pan, & Roberts, 2013).
- Judicial engagement with voter autonomy rights proves essential: Constitutional courts must interpret fundamental voting rights in light of algorithmic realities; this creates legal pressure beyond administrative enforcement (Sunstein, 2017).
- Pre-election transparency and audit requirements function effectively to publicize campaign practices, creating political accountability when unethical microtargeting occurs (Zuboff, 2019).
- Coordination between electoral authorities and data protection specialists proves operationally essential for rapid investigation and response (Carey, Chadha, & Eckert, 2021).

7. CONCLUSIONS

Artificial intelligence and algorithmic recommendation systems have fundamentally transformed electoral campaigns (Helbing et al., 2019). Romania's 2015 electoral legislation predates this transformation and cannot address resulting threats. Microtargeting, deepfakes, bot networks, and algorithmically-amplified disinformation threaten electoral integrity and voter autonomy (Benkler, 2020). Institutional fragmentation and expertise gaps prevent effective response (Carey, Chadha, & Eckert, 2021).

Romania's constitutional protections for free voting (Article 36) and electoral democracy require urgent interpretive development and legislative implementation to remain effective in algorithmic context (Sunstein, 2017).

Romania has opportunity to establish itself as leader in electoral AI governance within Central/Eastern European context—not through novel regulation but through coherent implementation of proven approaches (Helbing et al., 2019). This positions Romania as serious democracy committed to electoral integrity in technological era.

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AN EXAMINATION OF ACADEMIC WRITING PROFICIENCY: IMPLICATIONS FOR MILITARY PROFESSION

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Abstract: *The acquisition of academic writing competence represents the culmination of a structured learning process that is tailored to the educational environment and is facilitated through direct instruction or specialized procedures. This paper aims to explore academic writing within the context of the military profession to illuminate the multifaceted aspects involved in developing academic writing proficiency within a military academic framework. Furthermore, the primary objectives were to elucidate the key components of academic writing competence in military tertiary education, determine the fundamental aspects of the academic writing-learning process, and emphasize how the cultivation of academic writing proficiency enhances future professional endeavors. To fulfill the established objectives, not only descriptive research but also a literature review was conducted. The observation, analysis, description, and documentation helped to investigate the multifaceted aspects of developing proficiency in academic writing within the context of advanced military educational institutions. The results of the study highlight the strong connection between military professional requirements and academic writing competence, and the importance of adapting the learning process in accordance with future career requirements. Moreover, this investigation underscores the intricate relationship between professional requisites and academic writing aptitude, emphasizing the critical need to align educational processes with future career expectations. The study advances our comprehension of academic writing skill development within military educational field and provides valuable perspectives for subsequent research endeavors within the domain of military education.*

Keywords*: academic writing, military, higher education, learning process*.

Introduction

Academic writing competence is the result of a learning process. Despite appearances to the contrary, we are not born with this ability to write a structured, documented message using elevated language so that the product of our thinking and actions is clear, reasoned, rigorous and based on evidence or scientific argument. However, many of the demands of the professional environment require us to debate, argue, document or communicate, in writing, in a clear, coherent and structured form.

Thus, in order to gain knowledge about academic writing, to acquire it and to develop the ability to use it in practice, it is necessary to go through a learning process. This learning process needs to be structured and should be approached with specialist guidance. Motivating the learner by arguing the need for learning academic writing skills, explaining its importance and directly linking its benefits to the professional environment are prerequisites for positive learning outcomes.

As a result of the evolution of society and the changes in the requirements of the professional environment, university education has understood the need to develop, within the curricula, content that directly addresses the academic scientific text in order to train, develop or strengthen academic writing competence. Thus, the acquisition of academic competence can be addressed in a number of different ways at the level of educational programs at undergraduate level. Starting from the first level of undergraduate studies (bachelor studies), most higher education institutions have understood this requirement to support students with content specifically oriented towards academic writing, so that they are able to draft scientific communications, studies or scientific articles and, at the graduation stage, to be able to draft bachelor's / dissertation thesis. Graduation from a higher education institution is nowadays conditional on the writing of this type of scientific work which, in addition to being proof of in-depth knowledge of the subject matter, also validates the academic writing skills acquired throughout the study program.

Academic scientific writing has become increasingly important as the results of scientific endeavors are being digitized and uploaded into internationally available databases. In addition, by imposing writing and formatting requirements for texts to be published in journals indexed in international databases, the establishment of such publication rigour is aimed at standardizing writing standards worldwide. These guidelines for the writing of an academic scientific text are based on general principles in terms of content, as well as from a formal and deontological perspective.

The new human resource currently going through the period of professional integration is made up of young people belonging to the **Z generation**. The basic characteristics that define these new members of the professional environment are centered on their tendency to use technology without significant discontinuities. Digital natives, accustomed to using elements of technology in their learning, work and socializing, have significantly reduced their ability to stay focused or the time they have to spend on certain aspects. Due to the tendency to engage in multiple tasks in a complementary or even simultaneous way, the potential to give meaning, structure, conciseness and fulfill the goals set at the beginning of the endeavor (be it learning or professional) has diminished. The intermingling of individual and technology-mediated learning, the immersion of artificial intelligence in the approaches to solving learning tasks throughout the educational journey, the tendency to give credence to all types of information conveyed online and the loss of interest in the study of primary and secondary scientific sources lead to vulnerabilities in relation to human personality development.

In the past, those who engaged in higher education were much more restricted in terms of numbers. Also, undertaking such an endeavor meant devoting one's entire personal time to it, which for the most part ruled out the idea of taking on professional activities while studying. Thus, the time available was significantly different from what young people today can identify. In this respect, we often encounter the tendency of new generations to turn to "semi-finished" scientific products. The transformation of such a product into a final product in accordance with the teacher's requirements becomes less time-consuming. Identifying a balance between the resources of young contemporary students and the workloads required to acquire the targeted competences is another challenge of the present.

The previous formal educational pathway completed by those entering university degree programs is different. The elimination of specific requirements that harmonize the student's previous education with the intended specialization (or at least with the field of study program chosen) leads to the need to prepare students of significantly different levels simultaneously. Thus, **the learning of academic writing may be perceived differently in terms of difficulty by a fine arts graduate compared to a philology or economics graduate**. There are not a few cases where students, prior to their undergraduate studies, have not consulted specialized works and have resorted to public libraries or those available in electronic format.

Personal experience in teaching activities with students has led to the following observation: students feel helpless to organize their thoughts and ideas. With great difficulty they manage to organize a material according to minimum requirements such as: structure, meaning, focus on essential content elements. Another difficulty observed repeatedly over the last three years has been the difficulty in expressing themselves freely in writing. The lack of free-thinking exercises and the limitation of vocabulary to a brief vocabulary, as well as the failure to pay adequate attention to the formation of specialized language in relation to the subject area, leads to uncertainty of expression, ambiguity in the transmission of information and, implicitly, a lack of meaning in the written text.

These challenges are only a segment of those encountered in the educational and professional environment today. However, by giving meaning and providing motivation to students in learning academic writing, its **practical-applied dimension** will allow capitalizing on the potential of the new generation. Moreover, academic writing is understood as a fulcrum on which other aspects of science depend (Murray, Moore, 2006: IX). Occupying such a position and having a determining role for the students' performance and success in their academic and further academic path, it is necessary to find ways adapted to the new generation's requirements to initiate them in the steps of successful writing of a specialized text.

In the above-mentioned sense, the formation of academic writing competence in the contemporary context is dependent on the requirements of the professional environment for which the educable is prepared, the characteristics of the educated generation, the specifics of the educational environment and the ability of the specialist to capitalize on the practical-applicative dimension of the theoretical notions related to academic writing.

Starting from these aspects, the present research endeavor explores academic writing associated with the military university educational environment with the aim of translating the requirements of the military professional environment into representative inputs throughout the process of formation of military students' academic writing competence.

Research Problem

A review of the specialized literature reveals a prevalent trend towards generalizing the academic writing learning process. While most approaches recognize the importance of guided instruction, they often overlook the unique characteristics of the specific scientific discipline in which learning occurs, as well as the professional field for which the educational program is tailored. In light of this, **the current research initiative seeks to shed light on the various aspects associated with acquiring academic writing skills within the context of a military academic setting**

Research Aim and Research Questions

This study aims to examine the unique aspects of academic writing instruction within the military university context. The research focuses on addressing three key questions:

1. What are the distinctive characteristics of academic writing education in military higher education institutions?

2. Which elements constitute the core of the academic writing learning process in the military university setting?

3. In what ways does the acquisition of academic writing skills contribute to future professional activities?

This study aims to address the current lacuna in research concerning academic writing within a specific professional context, while simultaneously exploring the correlation between the professional domain and academic writing proficiency.

Research Methodology

This investigation falls within the domain of qualitative research, with a specific emphasis on academic writing proficiency. This study, grounded in the descriptive research design paradigm (Dulock, 1993), aims to elucidate the principal attributes of academic writing competence acquisition within the realm of military higher education. Through observation, description, and documentation, this paper investigate the multifaceted aspects of developing proficiency in academic writing within the context of advanced military educational institutions. Additionally, the literature review contributes to a comprehensive understanding of the conceptualization and distinctive features of academic writing.

Literature review

First, the literature foregrounds academic competence from the angle of a requirement for career and academic success for scholars, researchers, and post-graduate students (Flowerdew, 2015). Later, it is seen as a learning process (Orfanò & Wingate, 2024) that enables the realization of numerous benefits. Other authors understand its approach through the lens of its specific characteristics (Maamuujav et al., 2021). Last but not least, academic writing takes the form of a necessary skill in both formal educational and professional environments. Its acquisition is the result of going through a stepwise learning process. The knowledge, skills and values acquired through learning provide the prerequisites for the successful performance of diverse and complex professional tasks.

Academic writing has taken on different definitions over time, but the main elements of content have been preserved in most definitions. According to Bocoș, academic writing is "*a way of constructing, expressing and transmitting in writing ideas, opinions, information, data, products of thought and action, results, solutions, etc., in a direct and intelligible manner, clearly, rigorously, argumentatively, based on evidence, scientific arguments, in a critical spirit, in an objective, rational, logical and impersonal manner"* (Bocoș et al 2021:137). Boc's view presents academic writing as *a text-writing activity carried out in compliance with a set of specific rules, techniques and methods of writing, with a high degree of standardization, and which is necessarily carried out within the scientific research process, instantiating the scientific finality in the creation of textual meaning"* (Boc 2022:57).

Authors such as Gerald Graff and Cathy Birkenstein, who have leaned their endeavors, towards concretely supporting students in acquiring academic writing skills by providing thematic textbooks in which they have developed useful writing templates, are of the opinion that academic writing has "*one basic feature: it is strongly grounded, in one way or another, in the views of others (...) a process of saying true or intelligent things in a vacuum".* (Graff, Birkenstein 2015:21).

Another local professor who has devoted works to this topic, Ilie Rad, admits that "*writing a literary, scientific, administrative or publicistic text is a complex process that requires a range of knowledge and skills"* (Rad 2023:53). Another approach to academic writing understands by this endeavor balanced writing about a certain investigated topic in relation to a certain audience (Plakhotnik, Rocco, 2000).

Based on the above-mentioned definitions and analyzing the way academic writing is understood by specialists in the field, it can be stated that academic writing is a rule-guided process by which a person constructs a scientifically grounded message and conveys it publicly in written form, aiming at the principles of clarity, honesty, objectivity and impersonality. There are some **defining elements** of this type of writing, namely:

- the presence of a previous documentation approach;
- the construction of the message/text in accordance with the imposed rules;
- observance of basic writing principles;
- the need to have a minimum competence in academic writing.

Thus, without knowing what a documentation process involves, without identifying the principles and rules to be followed, and without having specialized skills in this area, the generation of an academic text cannot be achieved. It must be admitted that academic writing is not only about knowing the previously systematized aspects, the complexity of the process and the variety of fields in which it can be applied significantly amplify the issues related to this field. However, given the context of the present research endeavor, the relevance of the four aspects mentioned as fundamental to academic writing is significant.

The documentation endeavor involves, in fact, two essential steps: planning the endeavor and actually carrying it out (implementing what has been previously planned). The setting of stages and their completion does not mean that the initial plan is to be followed uncritically, but the absence of a plan containing a logical sequence of activities directed towards a consciously established goal will not provide the necessary prerequisites for academic writing. The dynamics of documentation processes are contextually determined and the postponement of certain activities or the resumption of some of them is a natural part of them. However, the presence of the documentation approach is mandatory for any intention to write an academic text.

Among the activities that can be part of the documentation plan and, subsequently, of the documentation itself, we mention the following:

- a panoramic exploration of the bibliography centered on the subject chosen for documentation;
- identification of the main established authors who have studied the issue and of the main directions already addressed;
- establishing a possible orientation of the documentation direction;
- formulating a first variant of a title that will allow the most precise delimitation of the subject;
- bibliographical documentation;
- selecting the bibliography;
- going through the selected references;
- designing the plan of the future academic text;
- organizing the actual writing mode;
- writing the academic text.

The construction of the message consists in the actual conception of the text taking into account the required principles, rules and coordinates. In the construction of the message, the author will take into account the reader, so that the synthesis of information provided is clear, structured and coherent and the language used is in accordance with the particular requirements of the field addressed. The use of newly introduced concepts involves translating them into a language accessible to the reader.

Also, the construction of the message has two sides: one centered on the content and a second one that focuses on the final form of the academic text. Harmonization of the two will lead to a significant increase in the quality of the future academic text.

Adherence to the basic principles in academic writing starts from the need to prove similar research behavior in an international environment. Ethics, objectivism, rigor, conciseness or anchoring the text in verifiable data are some of the attitudes that researchers pursue in writing academic texts. In this way, the solutions, the results of the approaches undertaken or the proposals offered by these through publicly presented materials become relevant, the credibility offered by the public increasing significantly. Even if we encounter different rules that impose certain particularities on the texts we wish to publish in different journals, the fundamental principles are constantly invoked.

Research Results

The usefulness of academic writing through the lens of military professional activity

By analyzing the requirements of the military professional environment reflected in the current activities of military personnel and, in particular, of those pursuing undergraduate studies, we have identified a number of aspects that require that the person who carries out those activities possess at least minimally developed academic writing skills. Thus, below, we have systematized, without claiming an exhaustive approach, some of the relevant activities:

Table 1. Activities that require academic writing skills

The general context of the activity	**The activity**	**Additional remarks**
- challenging geopolitical situation generated by an unstable security environment	- substantiation of concept documents - the design of plans	- irrespective of the rank, military specialty of the military staff or the operational level at which they work
- establishing or maintaining links with national or international structures	- drawing up administrative documents - drafting and conducting professional correspondence	
- peacetime administrative responsibilities	- the design of plans and other similar documents which underpin the day-to-day running of the activity	All these are the result of previous content analysis, longitudinal monitoring of situations, systematization and analysis of information, formulation of solutions involving concepts or constructs from several fields
- administrative responsibilities in crisis situations	- designing plans and other similar documents underpinning the conduct of day-to-day activity	
- administrative responsibilities in conflict situations	- developing plans and similar documents underpinning day-to-day operations	
- belonging to hierarchical organizational structures organized on different decision levels	- drafting managerial documents	
	- involvement in decision-making processes	These require clarity of thinking, critical analysis skills and knowledge of mechanisms for using the known content to optimize the decision-making process.

It is also necessary to mention the generic objectives that can be met (in varying degrees of depth) by going through a structured process of learning to write academically:

- Human personality development;
- academic writing is a specific cultural activity;
- the practical-applicative dimension of academic writing
- academic writing at both content and formal level involves the acquisition of techniques, models and requirements (behavioral modeling, clarity)
- the correct use of information syntheses
- international standardization of academic writing (common norms)
- fitting into norms - correctness (writing rules, editorial rules)
- support the development of an objective attitude to drafting documents
- developing an ethical attitude towards the use of bibliographical sources.

Discussion

From the point of view of the benefits that the learning process of academic writing and the competences acquired as a result of it can offer to a future officer of the Romanian Army, they can be structured in two directions: skills related to the planning of an activity and skills related to the effective conception of solutions for different professional tasks.

The first category may include the following:

- Awareness of the need to plan any kind of activity. Lack of a coherent plan will lead to failure to achieve the set objectives.
- Identification of the main categories of resources and resource estimates underlying the design of the plan (time, space, information resources, etc.);
- Allocation of sufficient time in relation to the activity foreseen in the plan;
- prioritization of tasks according to the criteria identified;
- potential for optimization of activities following analysis of results.

With regard to the benefits reflected in relation to the actual realization of a professional activity, the following can be highlighted:

- The ability to identify documents relevant to a given issue;
- the ability to browse the content of specialized documents and to synthesize documents relevant to a given approach;
- use the information identified in concept documents;
- building up a documentation base useful for similar tasks;
- concision in the design of specialized documents;
- rigor in the appropriate use of specific rules;
- consistency of ideas in devising solutions to professional tasks;
- ability to structure the information provided.

The skills profile required by the military profession follows the dynamics of society and adapts to the requirements of the security environment, reconfiguring itself in the light of current challenges as well as those that may be foreshadowed as part of the future. In spite of historical and social determinations, the Romanian officer's model is repeatedly taking shape and imposing requirements on the military university education system.

If until recently, the attributes of the officer were directly dependent on validations of the current professional activity, today, the focus shifts to the understanding of the knowledge needs of the officer in relation to the requirements of the current security environment (Nicoară, 2023). This aspect can be translated into the types of specific tasks implied by the particularities of the military professional environment, in relation to the requirements imposed by the security environment.

Conclusions and implications

As can be observed, the need to acquire academic writing proficiency is being felt in more and more contexts of contemporary society and professional environments. If in the past, the formation of the skills to give meaning and expressiveness to words was associated with professions such as journalism or activities specific to the educational or, more specifically, the academic environment, academic writing skills are an increasingly common requirement in today's society. The first level of undergraduate studies validates, through the requirements formulated for the assessment of graduates at the end of their studies, the skills acquired in relation to this type of writing (Pavlenko, Bojan, 2014).

In order to assess the formation of academic writing competence, a number of instruments have been included in the literature, such as the didactic task of writing a fragment of an academic text, scientific article, scientific study, scientific communication, bachelor's and dissertation thesis, doctoral thesis, degree thesis, etc. At the same time, as can be seen, the performance of current work in the professional military environment at the required performance standards can also be a form of assessment.

While, in the short term, knowledge of academic writing serves the fulfillment of educational and research goals, in the medium and long term, academic writing proficiency is reflected in the professional work of individuals, many of the tasks and responsibilities in the military professional environment involve the use of minimal academic writing proficiency.

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THE IMPORTANCE OF ESTABLISHING AND DEVELOPING INTERNAL AUDIT IN HIGHER EDUCATION INSTITUTIONS IN BOSNIA AND HERZEGOVINA

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Abstract: *Higher education in Bosnia and Herzegovina faces significant challenges related to transparency, accountability, and governance quality. In this context, the development of internal audit systems has become an important mechanism for strengthening institutional integrity and improving overall performance. Internal audit contributes to the efficiency of processes, transparency in financial management, and compliance with legal and strategic obligations. However, its implementation remains uneven, and its role is often insufficiently recognized or integrated into governance structures.This paper examines the importance of establishing and developing internal audit in higher education institutions in Bosnia and Herzegovina, focusing on key challenges, systemic shortcomings, and areas for improvement. The aim is to analyse how internal audit principles, risk management practices, and alignment with European standards can enhance governance quality in the higher education sector. The study is based on empirical research exploring employees' perceptions of the role and importance of internal audit, its impact on institutional performance, and the level of trust in internal processes. The findings indicate a high level of awareness regarding the importance of internal audit, but also reveal challenges that limit its full development. Key weaknesses point to the need for stronger human and institutional capacities, improved standardization, and better alignment with European requirements. Overall, the results confirm that strengthening the establishment and continuous development of internal audit can significantly enhance transparency, accountability, and long-term sustainability in higher education, providing a foundation for modernization and more effective governance.*

Keywords*: internal audit, higher education, risk management, transparency*

1. Introduction

The modern system of higher education is characterized by increased demands for accountable management of public funds, compliance with the regulatory framework, and continuous improvement of the quality of teaching and administrative processes (European Commission, 2021). In Bosnia and Herzegovina, higher education institutions operate in a complex institutional and normative environment, which further emphasizes the need for efficient systems of internal controls and risk management. Internal audit represents one of the fundamental instruments of modern public management (IIA, 2023). Its function goes beyond the traditional control of legality and regularity of operations and includes the assessment of efficiency, effectiveness, and economy of business processes (Arena & Azzone, 2009). In the context of higher education, internal audit has the potential to contribute to strategic management, cost rationalization, and the improvement of institutional integrity. Although the regulatory framework in Bosnia and Herzegovina recognizes the obligation to establish internal audit in the public sector, practice shows that its development is not uniform, nor is it always fully integrated into the management system of higher education institutions. Previous studies have mainly focused on internal audit in the general public sector, while limited attention has been devoted to its role and effectiveness in higher education institutions, particularly in Bosnia and Herzegovina. Therefore, this study aims to examine the significance of internal audit in improving governance, financial discipline, and risk management within higher education institutions. The research also seeks to assess perceptions of the effectiveness of internal audit and its contribution to institutional accountability and operational improvement.

2. Theoretical basis of the research

2.1. Concept and Development of Internal Audit

According to the definition of The Institute of Internal Auditors (IIA, 2020), internal audit is an independent and objective assurance and consulting activity designed to add value and improve organizational operations through systematic evaluation of risk management, control, and governance processes. Historically, internal audit has evolved from a function primarily focused on financial control to a strategic function encompassing (Arena & Azzone, 2009):

- risk management assessment,
- evaluation of corporate governance,
- analysis of business process efficiency,
- advisory activities aimed at improving organizational performance.

The modern approach to internal audit is based on international professional standards, particularly the International Professional Practices Framework (IPPF), which emphasizes independence, objectivity, competence, and ethical conduct (Institute of Internal Auditors, 2023). In higher education institutions, internal audit plays a key role in ensuring accountability, transparency, and effective governance of public resources.

2.2. Internal Audit and the System of Financial Management and Control

Internal audit is an integral part of the financial management and control system, developed within the concept of Public Internal Financial Control (PIFC), promoted by the European Commission (European Commission, 2015). The PIFC framework is based on three pillars: financial management and control, internal audit, and central harmonization units. This system aims to strengthen managerial accountability for the use of public funds, while internal audit provides independent assurance on the effectiveness of control systems. In higher education institutions, this implies that management is responsible for establishing adequate internal controls, while internal audit evaluates their effectiveness and provides recommendations for improvement.

2.3. Specific Features of Internal Audit in Higher Education Institutions

Higher education institutions have a specific organizational structure characterized by (OECD, 2022):

- academic autonomy,
- decentralized decision-making,
- a combination of budgetary and own-source revenues,
- complex administrative and teaching processes.

In such an environment, internal audit must adopt a multidisciplinary approach and understand the specificities of the academic system.

Universities generally operate through organizational units (faculties, institutes, centers) that have a certain degree of financial and organizational autonomy. This increases the need for a coordinated and systematic approach to risk management (Sarens & De Beelde, 2006).

Key areas of audit interest in higher education institutions include:

- budget management and own-source revenues,
- public procurement,
- project management and international grants,

- recruitment and promotion of academic staff,
- asset and infrastructure management,
- the teaching delivery process,
- IT processes,
- scientific research activities.

These characteristics make internal audit particularly important in higher education institutions, where effective governance and risk management are essential for institutional performance.

2.4. Internal Audit and Risk Management in Higher Education

The modern concept of internal audit is closely linked to risk management. Risk management implies a systematic process of identifying, assessing, and mitigating risks that may threaten the achievement of an institution's strategic objectives (Sarens & De Beelde, 2006).

In higher education, risks may include:

- financial risks (inadequate planning and spending of funds),
- reputational risks (compromising academic integrity),
- regulatory risks (non-compliance with legal regulations),
- operational risks (inefficient administrative processes).

Recent empirical and bibliometric evidence further highlights the interconnected role of internal audit, governance, and risk management in strengthening organizational resilience (Bulău et al., 2024). Through risk-based audits, internal audit contributes to the rational allocation of resources and strengthening institutional resilience. Therefore, risk-based internal audit is essential for improving decision-making processes and strengthening institutional resilience in higher education.

2.5. Challenges in the Development of Internal Audit in Bosnia and Herzegovina

The development of internal audit in Bosnia and Herzegovina faces numerous challenges, including (Ministry of Finance and Treasury of Bosnia and Herzegovina, 2021):

- insufficient human resource capacities,
- limited budgetary resources,
- formal but not substantive understanding of the role of internal audit,
- insufficient integration of internal audit recommendations into decision-making processes.

In some cases, internal audit is still perceived as a control mechanism rather than a strategic partner of management. Such an approach limits its full developmental potential. Further development of internal audit requires (Transparency International BiH, 2020):

- continuous education of internal auditors,
- strengthening institutional independence,
- improving cooperation with management,
- alignment with European standards and practices.

2.6. Research Gap and Aim of the Study

Despite the increasing importance of internal audit in the public sector, limited research has examined its specific role within higher education institutions in Bosnia and Herzegovina, particularly in relation to governance, financial discipline, and risk management. Existing studies mainly focus on internal audit in the broader public sector, while universities as complex organizational systems remain insufficiently explored. This research gap highlights the need for a more detailed analysis of the contribution of internal audit to governance, financial discipline, and risk management in higher education institutions. Therefore, the aim of this study is to examine the role and significance of internal audit in improving governance, financial discipline, and risk management in higher education institutions in Bosnia and Herzegovina.

3. Methodology

3.1. Research Methods, Population and Sample

The empirical research was conducted with the aim of examining the role and importance of internal audit in the management system of public universities in Bosnia and Herzegovina, with a particular focus on employees' perceptions of its impact on transparency, risk management, quality of work, and the level of trust in institutional processes.

The research was designed as a comparative study covering public universities in Bosnia and Herzegovina, divided into two groups:

1. Group A – universities with an established internal audit unit
2. Group B – universities without a formally established internal audit

The target population consisted of employees from administrative, financial, and managerial structures of public universities, including:

- rectors and vice-rectors,
- secretaries general,
- heads of finance,
- coordinators for the financial management and control system ,
- internal auditors.

At universities where internal audit is established, internal auditors were included in the research, not as the only target group, but as part of a broader institutional perspective.

The questionnaire was distributed electronically to 64 email addresses of employees at public universities in Bosnia and Herzegovina between 1 January 2026 and 28 February 2026. Within the given timeframe, 36 properly completed questionnaires were received, representing a response rate of 56%. This response rate is considered satisfactory for research in the public sector. The sample was structured to enable comparison of perceptions between universities with and without established internal audit, ensuring the possibility of comparative analysis of institutional differences.

A limitation of this study is the relatively small sample size (36 respondents), which may limit the generalizability of the findings to the broader population of higher education institutions in Bosnia and Herzegovina. However, it should be noted that the sample includes employees from all public universities in Bosnia and Herzegovina, which provides a relevant institutional coverage despite the limited number of respondents.

3.2. Research Variables and Hypotheses

The following key variables were defined:

✓ **Independent variable:**
  - Existence of an established internal audit (yes/no)

✓ **Dependent variables:**
  - Perception of institutional transparency
  - Perception of the level of risk management development
  - Perception of accountability and legality of operations
  - Level of employee trust in institutional processes
  - Perception of the quality of internal controls

In accordance with the research objective, the following hypotheses were formulated:

- **H1:** There is a statistically significant difference in the perception of transparency and accountability between universities with established internal audit and those without it.
- **H2:** There is a statistically significant relationship between the perception of the importance of internal audit and the level of employee trust in institutional processes.

- **H3:** The perception of the development of risk management is positively related to the existence of internal audit.
- **PH1:** Established internal audit has a positive impact on the perception of management quality and institutional integrity.

The hypotheses were formulated in line with the theoretical framework based on the concept of Public Internal Financial Control (PIFC) and European standards of good governance.

3.3. Data Analysis Methods

Descriptive and inferential statistical methods were used in data processing. Descriptive statistics included:
- arithmetic mean,
- standard deviation,
- frequencies and percentages.

To test differences between two independent groups (universities with and without internal audit), the following were used:
- independent samples t-test (in case of normal distribution),
- Mann–Whitney U test (in case of deviation from normality).

To examine relationships between variables: Spearman's rank correlation coefficient was used.

For testing proportions: a one-sample proportion test was applied.
The level of statistical significance was set at 5% ($\alpha = 0.05$).

3.4. Research Limitations

A limitation of the research is reflected in the relatively limited number of universities with established internal audit, which may affect the generalizability of the results. Additionally, the research is based on respondents' perceptions, which implies a subjective assessment of institutional processes. However, the comparative approach enables a relevant overview of institutional differences and provides a basis for further, more extensive research in this field.

4. Results

The empirical research included 36 respondents from public universities in Bosnia and Herzegovina, of whom 18 (50%) come from universities with an established internal audit function, and 18 (50%) from universities without an established internal audit function.

Table 1 presents the descriptive statistics regarding respondents' perception of the quality of internal audit across the two groups.

Table 1. *Perception of the quality of internal audit*

Group	M	SD	N
Universities without internal audit	4,38	0,40	18
Universities with internal audit	4,77	0,25	18

Table 2 presents the respondents' perceptions of transparency and trust in institutions with and without internal audit.

Table 2 . *Perception of transparency and trust*

Group	M	SD	N
Universities without internal audit	4,01	0,33	18
Universities with internal audit	4,60	0,21	18

Table 3 provides a detailed overview of the descriptive statistics for all measured variables, including perceptions of governance, financial discipline, risk management, and institutional trust.

Table 3. Universities with an established internal audit have higher average values across all measures

	mean	**std.**	**min.**	**max.**	**std.**
Internal audit (YES=1 / NO=0)	0,5	0,507	0	1	0,507
Internal audit plays an important role in improving university governance.	4,083	0,906	2	5	0,906
Internal audit contributes to strengthening financial discipline.	4,694	0,577	3	5	0,577
Internal audit contributes to reducing the risk of irregularities.	4,861	0,351	4	5	0,351
Internal audit recommendations contribute to improving the work of organizational units.	4,806	0,401	4	5	0,401
Internal audit represents an important mechanism of institutional control.	4,417	0,769	3	5	0,769
I have confidence in the transparency of decision-making processes at the institution.	3,75	1,079	2	5	1,079
I believe that financial processes are clearly defined and controlled.	4,444	0,652	3	5	0,652
Institutional procedures are consistently applied.	4,833	0,378	4	5	0,378
Management acts responsibly in resource management.	4,722	0,513	3	5	0,513
I believe that internal control mechanisms are effective.	3,778	0,7601	2	5	0,760
Do you believe that an established internal audit contributes to transparency and accountability	0,833	0,378	0	1	0,378

The results of the descriptive statistics show that respondents highly perceive internal audit as a significant mechanism for improving governance, financial discipline, and institutional control ($M > 4$), with relatively low response dispersion, while the level of trust in transparency and the effectiveness of internal controls is somewhat more moderate ($M \approx 3.7$–3.8), with 83% of respondents believing that internal audit contributes to transparency and accountability. The average overall perception of the importance of internal audit is 4.81, indicating a high level of agreement among respondents regarding the importance of internal audit in higher education institutions. The average overall perception of the impact of internal audit on transparency and accountability is 4.75, indicating a high level of awareness among employees of the positive contribution of internal audit to management quality and institutional processes.

Table 4 presents the results of the Mann-Whitney U test, used to examine statistically significant differences between universities with and without internal audit.

Table 4. Test of differences

	statistic	p_value
Internal audit plays an important role in improving university governance.	232	0,019574321
Internal audit contributes to strengthening financial discipline.	175	0,600730012
Internal audit contributes to reducing the risk of irregularities.	207	0,018795851
Internal audit recommendations contribute to improving the work of organizational units.	189	0,221475519
Internal audit represents an important mechanism of institutional control.	222	0,033255912
I have confidence in the transparency of decision-making processes at the institution.	288,5	3,28421E-05
I believe that financial processes are clearly defined and controlled.	216	0,057519178
Institutional procedures are consistently applied.	180	0,391213138
Management acts responsibly in resource management.	190,5	0,239639047
I believe that internal control mechanisms are effective.	239	0,008803417
Do you believe that an established internal audit contributes to transparency and accountability	216	0,008760706

Statistically significant differences between the two groups are most pronounced in the perception of the contribution of internal audit to improving governance, reducing risk, strengthening the transparency of decision-making processes, and institutional accountability, indicating that the presence of a formally established internal audit influences a more positive perception of management and control mechanisms.

Table 5 presents the results of Spearman's rank correlation analysis between the existence of internal audit and selected institutional variables.

Table 5. Spearman Correlation Coefficients

Variable	ρ (Spearman)
University governance improvement	0.397
Financial discipline	0.092
Risk reduction	0.402
Internal audit recommendations	0.211
Institutional control	0.363
Transparency of decision-making	0.705
Financial processes	0.324
Institutional procedures	0.149
Management accountability	0.202
Effectiveness of internal controls	0.446
Transparency and accountability	0.447

The results of Spearman's correlation analysis indicate moderate to very strong positive relationships between the existence of internal audit and perceptions of transparency, the effectiveness of control mechanisms, and institutional accountability. The strongest relationship is observed between the existence of internal audit and trust in the transparency of decision-making processes ($\rho = 0.705$). Furthermore, the perceived importance of internal audit in improving governance is strongly associated with perceptions of institutional control ($\rho = 0.735$) and the effectiveness of internal controls ($\rho = 0.675$), which supports the theoretical assumption of its systemic role in strengthening governance and control functions.

4. Discussion

Internal audit represents a key mechanism for strengthening transparency, accountability, and the efficiency of governance in higher education institutions. Its role in the modern public sector goes beyond traditional compliance and legality control and encompasses strategic advisory services, risk assessment and management, as well as the continuous improvement of governance and control processes. In the context of Bosnia and Herzegovina, the development of internal audit in higher education is normatively grounded within the relevant regulatory framework; however, its practical implementation remains insufficiently developed, indicating the need for further strengthening of institutional and human resource capacities, as well as its deeper integration into the governance system.

The results of the empirical research confirm that respondents from universities with an established internal audit function largely recognize its contribution to improving governance quality, strengthening financial discipline, and enhancing institutional accountability. A statistically significant positive relationship was identified between the perceived importance of internal audit and the level of employees' trust in institutional processes, further confirming its role as an important factor of institutional stability and credibility. In particular, the existence of internal audit is associated with higher levels of trust in decision-making processes and greater perceived institutional accountability.

The findings of this study are consistent with previous research emphasizing the positive role of internal audit in strengthening governance and accountability in public sector institutions (Arena & Azzone, 2009). Recent research further supports these findings, emphasizing that internal audit, when integrated with governance and risk management frameworks, contributes to improved transparency, accountability, and organizational resilience in public sector institutions (Bulău et al., 2024). These results confirm that internal audit should not be viewed solely as a compliance mechanism, but as a strategic function contributing to organizational resilience and decision-making quality. However, unlike studies that mainly focus on broader public administration systems, this research highlights the specific context of higher education institutions in Bosnia and Herzegovina, where governance structures are more complex and decentralized.

The main contribution of this study lies in providing empirical evidence on the role of internal audit in higher education institutions in Bosnia and Herzegovina, an area that has been relatively under-researched. The study also offers comparative insights between institutions with and without established internal audit functions, thereby contributing to a better understanding of its practical significance in improving governance, financial discipline, and risk management. Although the study provides valuable empirical evidence, its theoretical contribution is primarily confirmatory in nature, as the findings largely support existing literature on the positive role of internal audit in strengthening governance, accountability, and risk management in public sector organizations. However, the added value of this research lies in its specific focus on higher education institutions in Bosnia and Herzegovina, which represents an under-researched context and provides additional empirical validation of established theoretical assumptions.

At the same time, the results reveal certain limitations in institutions where internal audit is not formally established or is not fully functional. Lower scores on key indicators in these institutions suggest weaker governance and control mechanisms, which may negatively affect transparency and institutional efficiency. This further emphasizes the importance of a systematic and consistent approach to the development of internal audit in higher education institutions. The study is based on respondents' perceptions rather than objective performance indicators such as audit reports or institutional performance data. While this approach provides valuable insight into employees' views on internal audit, it also represents a limitation, as perceptions may not fully reflect actual institutional performance. In addition, access to internal audit reports is restricted, as they are prepared exclusively for internal institutional use and are not publicly available, which limits the possibility of incorporating objective audit findings into the analysis. Future research should therefore combine survey-based data with objective indicators, such as financial performance metrics, and compliance assessments, in order to provide a more comprehensive analysis.

Overall, the empirical results provide support for the research hypotheses. The findings confirm that internal audit is significantly associated with improvements in governance, transparency, risk management, and institutional accountability in higher education institutions in Bosnia and Herzegovina, while its relationship with financial discipline is positive but not statistically significant in all tests. Accordingly, H1 is supported, H2 is partially supported, and H3 is supported. The findings confirm that internal audit plays an important role in strengthening institutional integrity and improving governance practices in higher education. Its development should be supported through continuous professional education of internal auditors, strengthening their independence, and improving cooperation with management. Particular attention should be given to the alignment with international standards and best practices, which would enhance transparency, accountability, and overall institutional performance in higher education systems.

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CENSORSHIP IN THE AGE OF FREE SPEECH

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Abstract: In *the year 1989 there was a common celebration going on all around the world as the Berlin Wall fell and Western capital was crowned winner of the Cold War. One of the characteristics of the feared Soviet regime was of course censorship. The western mind would not perceive the idea of censorship as a reality in their geo-political hemisphere. However, as time went on the brave new world proved itself cowardly in other ways. In this article we will analyze how censorship worked in the west during the Cold War and how those tepid seeds grew into a new form of censorship.*

Keywords: censorship, cold, war.

I. Home is where the hatred is (Introduction)

What is censorship? This initial question may seem quite simple, however, there is a catch to this question. We are used to hear it so often from media figures, both mainstream and independent, however, do people understand the actual process and meaning behind censorship.

According to the Cambridge dictionary, censorship is an action by which one is prevented from seeing parts or the entirety of any communication as it is considered harmful, offensive or such things that are kept secret for political reasons (https://dictionary.cambridge.org/dictionary/english/censorship). Another definition by the same source indicates that censorship is a system of authority that limits ideas to be allowed to a wider public due to its support for certain ideas.

Purely by seeing these definitions we are hit with a tidal wave of questions. Who is doing the censoring? Why is it necessary? What are considered dangerous ideas and how dangerous can it be?

It's this first hurdle that we must overcome, what can be classified as censorship in a traditional sense? In a traditional sense, censorship is a system that spurs from a political context (Elliot Thomas Montagano, p.7). It spurs as a result of a regime that strictly forbids the existence of any dissenting opinions in order to preserve their existent power or in order to protect the public from perceived danger.

In ancient times even there were thinkers that preferred for censorship to exist as they already noticed the strength of such practices. Plato would even say that the state has to censor art in order to preserve the soul of the people that live in any and all states.

He goes as far as to call truth a state monopoly (Plato, pp.34-36) as lies offered by the government of any place is very much a medicine intended to south the souls of the citizen, be them children, soldiers or commoners. As such, Plato would prefer to expel artists that he calls polyphonic. If a person with too much talent may reach an audience, they might expose the lies of power. By polyphonic artists, Plato means those that may imitate many sounds belonging to people and natural phenomenon. This specific type of artist should not be welcomed in communities because they might convey truths that are not "suited" for the population.

As modernity came through, we had more nuanced takes in regards to the way censorship should be applied. If we are to look at the father of utilitarianism, John Stuart Mill, we see quite a libertine view on censorship.

He brings not only moral arguments in defense of free speech, he brings historical examples such as Socrates (Mill, p.25) who was executed for corrupting the youth. In regards to the moral argument, Mill proposes that any sort of censorship, regardless of which type of government is imposing it, is very much a crime against all of humanity.

The reason Mill is so categorical in regards to the nature of censorship is based on what he calls robing the posterity (Mill, p.19). If a truthful statement is censored, then humanity is deprived of hearing the truth but if a statement is deceitful, the human race is deprived of the opportunity to observe a lie.

A first step to free speech was taken by the foundation of America. As America won the Revolutionary War in 1776 and adopted the Constitution in 1788 the world was stricken by the first government that allowed for free speech. The first amendment of the constitution, ratified in 1791 has been widely interpreted as to protect free speech as a fundamental right of all American citizens.

A safety measure has been accepted by the Supreme Court of the US in the case of Schenck v. United States in 1919. In this famous judgement, Judge Oliver Wendell Holmes explained that free speech would not protect someone yelling fire in a crowded theatre as it would be a clear intent to cause harm to the auditorium. This grants us a clear limit to free speech in the style of Mill's utilitarianism.

In the 20th century we observe newer opinions, we will stop at analyzing the ideas of Herbert Marcuse and Noam Chomsky. In the eyes of Marcuse, tolerance of all points of view is very much an oppressive mechanism that allows dominant systems to hold on to power by maintaining oppressive and discriminatory systems.

His critique of a market of ideas as exposed by Mill is that a market under capitalism is manipulated by those who have bigger shares of the business (Marcuse, pp. 6-7). In his view, dominant systems present both stupid and intelligent points as equal in order to not progress societal views on any important topic.

The solution as presented by Marcuse is to censor right wing opinions as they stop and actively fight against progress. This notion can come under fire as it would indicate that Marcuse would like to have a dictatorship, his counterargument is that we already live under a dictatorship of capital.

Chomsky very much exists in a similar sphere as he still approaches free speech as an economical issue. Considering that most information goes through some sort of corporate media, the interests of the owner will be presented as factual, excluding any real dissent but allowing some forms of allowed opposition (Herman, Chomsky, p.13).

The difference come by way of solutions. Chomsky more so thinks that a solution to free speech would be to have local, communal, truly free and informed with accurate facts that discuss issues in order to achieve real changes (Herman, Chomsky, p.20).

Going back to our definitions, we observe that they are correct, however, the way censorship operates becomes different and so do perceptions of it.

II. Rasputin

We have answered the question of what censorship generally is and how it operates, now we can look at how censorship worked in the USSR and satellite states.

We don't have to ponder how or why all soviet states had some sort of censorship organism, be it Glavlit in the USSR or the CPT (The Committee of Press and Typography) in Romania, every communist state had some sort of censorship apparatus. From a capitalist perspective, there is an obvious reason for mass censorship. In order to preserve control, the state must forbid the population to read, hear, or see anything that could in any way or shape tell them the truth of their predicament.

From the standpoint of the communist party, there is a quite a bit of nuance to the issue. In reality, the mass ban on western exports had the purpose of not spreading anti-communist propaganda. It would be hard to rebuild or build anything if pamphlets critiquing the quality of all building materials fell from the sky.

Would the previous argument fall on its own? Yes, very much so. It would be ridiculous to claim that there is only a sincere motive behind the full ban of western art until the 1960-1970 period and even then, set art was censored, modified, used ideologically and permitted only through many checks.

There is a selfish aspect to how censorship worked in the USSR as all oligarchical powers will fight tooth and nail to maintain the power that is holden. What makes the prior argument relevant is the work done by the US during the Cold War in order to demolish the USSR.

If communism was certainly worse ideologically and the economic model was inferior, wouldn't capitalism win by simply existing? The answer would surely be yes, but the Western forces still did contribute to the fall of communism. It would be unfair to just state that the USSR fell, as many other communist movements fell, the most interesting of those is of course the Western flavors of Marxism that died.

III. Voulez vous….?

Another intricacy regarding the Cold War era was the birth of a strange, heterodox spirit of Marxist and Communist movements. In France we had a veritable intelligentsia of leftist thinkers such as Foucault, Albert Camus, Simone de Beauvoir, Deleuze, Georges Bataille and many others that formed what we can call a theoretical framework for western European Marxism has been shaped by the rebuilding of France after The Second World War and the slow crawl towards a proper capitalist structure of the French republic.

In that era, western Europeans were even tempted to emigrate towards the USSR as the West did not have public healthcare structures or even gave workers such benefits as the East in the early times of the post-war period.

In America, there was the Civil Rights movement which had socialist leanings that many historians tend to forget or hide. Martin Luther King had socialist leanings (https://inthesetimes.com/article/martin-luther-king-jr-day-socialism-capitalism), Malcolm X was a militant socialist with interests in global revolution (https://communist.red/malcolm-x-you-show-me-a-capitalist-i-ll-show-you-a-bloodsucker/), the Black Panthers had connections to North Korea and to Cuba and had a clear socialist agenda (https://jacobin.com/2016/03/black-panther-party-revolution-fred-hampton).

So how come that so many figures, essential to the evolution of the west and why such important facts relating to their ideological and political views tend to be omitted? It is because of censorship, but not in the classic means of applying such norms.

The Americans and more broadly, western countries have attempted to present such people as capitalist leftist or simply as intellectuals. The absence of these facts are part of a censorship mechanism that fits the definition but uses more subtle mechanisms to operate.

The land that birthed free speech as a practice has used mechanisms of censorship in order to "protect" the American population from dangerous ideologies that challenged economical models applied by the powers that be.

A first accounting of such censorship are the infamous McCarthy Trials. Starting from a relatively unknown senator, Joseph McCarthy, who held a speech in Parliament by which he condemned a number of people in the US state apparatus of being car carrying members of the American Communist Party and the danger they might pose in their positions.

This speech has given birth to the House Un-American Activities Committee (HUAC) which started a veritable witch hunt in order to purge the system from any danger that communists may pose. The hunt for communist sympathizers was not limited to the state employee, but it became a frenzy to find any and all communists in universities, Hollywood, manufacturing plants, and higher offices of the state.

There was no space that was not somehow affected by the McCarthy hearings from 1940 up to 1954. In that year, army lawyer Joseph Welch asked McCarthy *"Have you no sense of decency, sir, at long last? Have you no sense of decency?"*. At that point, public opinion started to go against the trials resulting in the formal censorship of the senator and his fall into political and historical obscurity (https://www.eisenhowerlibrary.gov/research/online-documents/mccarthyism-red-scare).

This is why there is some truth to the idea of soviet censorship due to protecting the socialist projects. The bastions of democracy applied censorship themselves in order to mold public opinion, why shouldn't the "bad guys" do it too?

Another clear example of how censorship worked in the West was George Orwell's book, *1984*. The authors is mostly known for *Animal Farm*, a novel in which he critiques Stalinism as a political ideology trough the power of fable. In the case of *1984* the inspiration is markedly different. In an interview, Orwell admitted that what inspired the dystopic novel was not communist censorship, but his brief stint as a journalist for the British Broadcasting Company (https://moidigital.ac.uk/blog/orwell-1984-and-ministry/).

A stranger question arises from protests that happened in America during the Civil Rights movement. Even if the protests were not art in themselves, they were a manner of exercising free speech, so the question arises, was the aggression shown by policemen in that era a form of political censorship?

The only fair answer is to say yes, because on both sides of the ideological barricade there were acts of forceful censorship in regards to protests and revolts. Even if the job of the police or military is to preserve public order, there is no reason to intervene in the case of peaceful protests such as the March on Washington or Tiananmen Square.

IV. *Team America*

So far, we have seen what censorship was and how it operated until the year 2000. From antiquity until the contemporary age, but we must come back to our initial time frame, the fall of the Berlin Wall. After 1989 censorship has left the confines of the Soviet Era and marked the start of an epoch of free speech, or at least it seems like that.

By the notion of the era of free speech we must understand a period of time by which all speech is free and it reaches the masses in pure forms combined with a certain optimism of the future.

The 2001 terrorist attacks have cut the optimism if the era as it gave birth to a new form of censorship. As time passed along and technology developed further new ways of communication spread like wildfire. The initial AOL and Yahoo Messenger software gave birth to instantaneous, portable and strictly chained to algorithms social networks.

Were these two points of history that intersect through the so-called Patriot Act as adopted by the US legislature in the year 2001. After the September 11 attacks, this law will allow the US government to spy on its population by monitoring all phone data, purchases, online searches, online comments, online conversations and any other possible data that is generated by the average American citizen.

Because of strong developments in technology, the average human started to live as much on the internet as it lives in the physical world. We exist as split subjects due to work, leisure, hobbies and worst of all, due to loneliness. Data generated by our digital lives becomes as much as our physical selves for both governmental and private apparatuses.

V. Toxic Garbage Island

Felix Guattari proposes that the idea of ecology is not strictly an issue of nature. In the original context, the author called for the creation of an ecological though as a philosophical imperative in order to solve the climate crisis that humanity has been facing since the 20th century. He argued that there are 3 ecologies, environmental, social and mental (Guattari, p.6)

We are going to extrapolate the notion of humans holding on to multiple ecologies in order to apply it to our current predicament, and we will add a fourth ecology, that is the digital ecology.

The reason that we cannot just fit our digital existence in either of those previous ecologies is rather simple. According to Guattari, the ecological crisis had strong effects even in 1989 on all ecologies and they required different solutions. In order to fix your mental ecology, you should resist conformism and standardization (Guattari, p.35), your social ecology is fixed by creating groups of people that dissent from artificial consensus (Guattari, pp.50-51) and environmental ecology has to be fixed by violent resistance against the companies and states that pollute the environment (Guattari, p.52).

Even if we do not condone violence, all solutions are reasonable in context. From the perspective of mass extinction humanity has to shift. In our current material context, we have to deal with a new dimension, the digital. The digital space occupied by most of humanity is originally forged by people that had to make everything by using electronics and coding for websites.

Currently, the internet is ruled by small thiefdoms such a Meta, Amazon, Netflix and other such companies that don't hold a monopoly but form a strange mirroring. Every feature that appears in any and all pieces of software. Short form content, messaging, AI integration, reactions and so on, have all been proposed by specific software programs and then they became standardized in all software programs.

Another aspect that allows us to call such companies thiefdoms is how they slowly eroded parts of all ecologies. We are facing a genuine crises due to climate change beyond having abnormal meteorological phenomena (https://wmo.int/news/media-centre/earths-climate-swings-increasingly-out-of-balance) more often. About 1000 species of animals (https://earthly.org/blog/how-many-species-are-extinct-due-to-climate-change) have fully disappeared between 1989, the date in which the article we are referencing was published, and 2026. Not all of these changes are due to the internet using up resources, but it did contribute and with the apparition of data centers around the globe it will continue to get worse (Manisha Bharambe, Poonam Ponde, Harshita Vachhani, Smita Ghorpade, Dipita Dhande, p. 3390).

Our social ecologies were fundamentally scrapped for the sake of capital. Due to the appearance of social media new forms of socialization became a divider of political views and currently an algorithmic trap of eco-chambers. Adding to this, there is a clear disappearance of tertiary spaces which require no money in order for people to exist there. By tertiary spaces we mean to say libraries, parks, coffee shops that don't require any purchase and even public squares which offer basic utilities such as water or electricity.

As for the psychological ecology, we don't need much explanations since we have seen a swift rise in mental health issues. We can attribute this rise from de-stigmatizing discussions about mental health, however, we cannot just ignore the growth of mental health issues to pure data.

The fourth ecology of digital existence is finicky to define and delimitate. The internet is used by all three ecologies as a tool, a new technology, however, it is also a thing in itself. We are faced with a strange intermezzo of tool and ecology. The digital space has influenced the ecological environment, the social environment and the psychological environment.

As hard as it is, we need to acknowledge that humanity has gained a new ecology that doesn't serve to enrich the human spirit as much as it serves to create an intermezzo, or a convoluted road system that crams elements of all these ecologies into a new dimension of human existence.

A good example of how this ecology operates is memetic humor. Even if the notion of memes was already an existing concept courtesy of Richard Dawkins and his book, *The Selfish Gene*, it entered mainstream consciousness with the advent of internet content that is remixed in order to gain new meaning. The reason this is a proof of an ecology is living beings. As art gains a life of its own so does internet content, remixed infinitely just as bacteria lives for seconds before it reproduces and dies leaving it's offspring to fulfill the sole function that it served. And just as bacteria, context gives it purpose.

While some memes end up giving fame and wealth to the original creator in some way, there are instances of memes that destroy lives or jokes that are taken to the extreme. As puerile as this notion may be, through memetic humor we have definitive proof of a new ecology that resides like bacteria inside and at the margin of all other 3 ecologies.

VI. Banned in D.C.

As far as it goes, this new digital ecology may be forgotten as a foreign and artificial mechanism, built by passionate people off the back of the infrastructure that evolved slowly. As generation Alpha is getting older, we have the first true iPhone babies that grew up connected directly to this 4^{th} ecology even before entering and forming the necessary 3 ecologies to which we adhere by growth.

The profiteers of such a new material predicament is the censor. As we have previously stated, these new technologies have invaded all ecologies. One aspect that we intentionally left out is the issue of privacy. Most social media apps are free to use and even may generate revenue for content creators. The cost of this specific new occupation is the footprint of one's digital ecology.

To put it in context, every single action done by a netizen is recorded by the parent company of the used website. This data forms a specific digital footprint that generates revenue for set company. To explain this in the best terms, it would be comparable with a person going to a doctor to solve an infectious disease, receive a prognostic, but instead of this analysis to be yours and your doctor's it would reach every big pharmaceutical company that makes medicine that may aid you in healing.

As soon as you reach your house, instead of just purchasing the proposed medicine, you would receive offers from each pharmaceutical company regarding the best prices and effects. This is fundamentally how these free pieces of software work. You don't pay anything to use, but a deep analysis of your digital ecology that is ultimately used to propose purchases and keep you socially isolated.

The censor is now a 2 headed serpent which bites in unison. This description is still in the spirit of Guattari and the double pincher (Guattari, p.29). the first head is the state and the second head is the represented power of global capital. The state will censor speech both in a traditional manner, by banning, limiting, forbidding and ostracizing people and the art or content generated by them. A new, more obtuse form of censorship, is now being used by the state even since the early days of 24/7 television programs or the apparition of written newspapers.

Nowadays, more than ye olden times, governments use the media machinery to manufacture consent in regard to the actions of the governments or individual political parties in the states. Chomsky proposed this idea firstly, but in our context, this is a new form of censorship. While traditional censorship is direct and clear, while this new form of media manipulation consists of manipulating what should be objective information being passed to the population by way of news.

What really happens, by producing this consensus towards the governing power or for a specific political party, you manipulate the audience in order to censor reality itself in the eye of the beholder as separated by many intersecting interests.

The second head of the snake, the representators of capital, have a silent and yet more venomous bite. What social media does through algorithmic is to extend censorship directly into the depth of the psychological ecology. Initially, social media was not optimized to promote anything specific, if you had an interest, you searched for it, you discovered content creators that speak or show elements of set interest.

Somewhere between 2011 and 2016 all social media platforms started developing recommendations algorithmically and started suggesting creators or to “befriend” people which you don’t know in real life. This shift has formed the current landscape of loneliness of isolation which is continuously infecting our ecologies, transforming the wildlife that once flourished or perished in our personal or public selves.

This is no longer a censorship that forbids you to speak or create, it is a censorship that annihilates the spark of creation in itself by coopting all creation to capital and its issues. Mill spoke of the censorship that degrades posterity, currently all futures become obsolete in the absence of truths that cannot be born by thought or art.

VII. In the Court of the Crimson King. (conclusion)

What used to be a simple, political mechanism meant to suppress descent since the days of Plato became a fully automated invasive species of thought that crawls into its own ecology to infect all others.

While traditional censorship could be fought against by force or by law this new form of censorship has become so obtuse and engrained in the public consciousness that we no longer understand a life in the absence of unread terms of service and media manipulation.

We lost the sense of liberty granted by socialization and popular strength and have bought a new false sense of community with strangers that we don’t quite know or understand, and worse of all, the spark of creation is slowly fading from the mind of the human. The spirit of creation that has led humanity to reach the moon, to build towards the sky and to revolt for what was given to them by the mere belonging to the human race is being strangled, censored before it can burst into the hearts of men to take physical form.

Free speech has become the apparent norm, but what is free speech when the thoughts cannot form to oppose what we may consider wrong? We received pleasure at the cost of beauty, and such dealings with the devil may cost whatever allowed us to be human in the first place.

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GENERATIVE DEBATE AS A PRACTICE OF INQUIRY IN THE AGE OF ARTIFICIAL INTELLIGENCE

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Abstract: *The rapid diffusion of artificial intelligence is transforming educational environments and raising new questions about the ways knowledge is accessed, interpreted, and discussed. While educational debates have often focused on technological innovation and AI literacy (Holmes et al., 2019; UNESCO, 2023), the growing availability of systems capable of generating explanations, summaries, and arguments invites a broader reflection on the educational role of inquiry and argumentation. In contexts where answers can be produced instantaneously, the challenge is no longer limited to accessing information but increasingly concerns the ability to critically interrogate the responses generated within AI-mediated environments. The paper introduces the concept of Generative Debate as a theoretical framework for rethinking the educational function of debate in the age of artificial intelligence. Drawing on studies in argumentation theory (Toulmin, 1958; Kuhn, 1991, 2005) and recent research on artificial intelligence in education (Lo, 2023; Cotton et al., 2024), the article argues that debate should be understood not merely as a means of developing communication or persuasive skills, but as a practice of inquiry through which learners critically examine interpretations, evidence, and knowledge claims.*
The article suggests that the educational value of argumentation lies increasingly in its capacity to transform the abundance of AI-generated responses into opportunities for investigation, deliberation, and reflective engagement with complex issues. From this perspective, Generative Debate is proposed as a pedagogical response to the challenges of contemporary AI-mediated educational environments, reaffirming the centrality of inquiry within processes of teaching and learning.
Keywords: *debate; argumentative inquiry; artificial intelligence; epistemic agency.*

1. Introduction

The rapid expansion of generative artificial intelligence is profoundly reshaping contemporary educational environments, raising new questions about the ways in which knowledge is produced, interpreted, and legitimized. Although digital technologies have long influenced teaching and learning processes, the emergence of systems capable of autonomously generating texts, arguments, and interpretations introduces a qualitatively different challenge, as these tools no longer merely facilitate access to information but actively participate in its production and dissemination (Holmes et al., 2019; UNESCO, 2023; Lo, 2023). This transformation brings renewed attention to issues concerning the relationship between information and knowledge, the critical understanding of content, and individuals' capacity to formulate informed judgments within increasingly complex informational contexts. Educational institutions are therefore confronted with challenges that extend far beyond the integration of new technological tools into existing pedagogical practices. As research on epistemic cognition has demonstrated, knowledge cannot be understood as a static body of information to be acquired; rather, it constitutes a dynamic process involving the evaluation of evidence, the justification of claims, and the development of criteria through which reliable knowledge can be distinguished from less trustworthy forms of information (Hofer & Pintrich, 2002; Chinn, Rinehart, & Buckland, 2014; Greene et al., 2016). The growing diffusion of algorithmically generated content makes these issues even more significant, since the educational challenge no longer lies solely in learning how to use artificial intelligence, but increasingly in developing the capacity to critically evaluate the information it produces and to distinguish between formal plausibility and epistemic reliability. Within this framework, argumentative practices acquire particular educational relevance because, as argumentation research has consistently shown, knowledge construction cannot be separated from the processes through which claims are discussed, justified, and subjected to critical scrutiny in relation to alternative perspectives (Toulmin, 1958; Kuhn, 1991, 2005). In this regard, Debate has progressively emerged not merely as a methodology aimed at enhancing communication skills, but as a pedagogical device capable of engaging students in processes of reflection and deliberation that require the analysis of evidence, the discussion of controversial issues, and the construction of reasoned judgments, thereby contributing both to the development of key lifelong learning competencies and to the promotion of democratic participation and active citizenship (Rapanta et al., 2013; Cinganotto, Mosa, & Panzavolta, 2021; Russo, 2022; Russo & Refrigeri, 2023). However, whereas these educational benefits have traditionally been associated with the capacity of debate to foster critical thinking and informed participation in public life, the increasing prevalence of informational ecosystems characterized by digital platforms, algorithmic systems, and generative artificial intelligence now calls for a further reconsideration of the educational functions historically attributed to argumentative practices. The challenge no longer concerns only the ability to support or refute a position; rather, it increasingly involves understanding the processes through which information is produced, interpreted, and legitimized within cognitive environments of growing complexity. Recent reflections on the relationship between argumentation and artificial intelligence have therefore emphasized the need to rethink the pedagogical significance of Debate in light of the transformations brought about by contemporary digital environments and the emergence of generative systems (De Conti, 2025).

Against this backdrop, the present contribution examines the evolution of debate from its historical roots in the tradition of disputatio to its reconfiguration within contemporary educational environments mediated by digital technologies. Particular attention is devoted to the theoretical proposal of Generative Debate, developed in this paper as an interpretative framework for understanding the transformations that generative artificial intelligence is introducing into processes of knowledge construction, evaluation, and discussion. Rather than referring to the simple integration of technological tools into debating activities or to the introduction of a new methodological format, Generative Debate is conceived here as a pedagogical and epistemological framework through which the role of argumentation can be reconsidered in contexts increasingly characterized by the presence of generative systems.

Drawing upon scholarship in argumentation studies, epistemic cognition, and artificial intelligence in education, this contribution explores how such a perspective may contribute to maintaining students' active involvement in processes of knowledge construction and evaluation, while fostering the development of epistemic agency (Wu et al., 2025), evaluative judgement (Bearman et al., 2024), and critical forms of AI literacy (Annapureddy et al., 2024).

2. From Disputatio to Generative Debate

The educational value attributed to argumentative engagement is rooted in a long cultural and pedagogical tradition that predates the emergence of contemporary educational systems. Long before debate became established as a structured instructional methodology, dialogue and argumentation served as privileged instruments for the pursuit of truth and the construction of knowledge. Throughout history, the possibility of confronting alternative interpretations, challenging established beliefs, and subjecting claims to critical scrutiny has represented one of the primary means through which human communities have produced, refined, and transmitted knowledge.

Among the most significant antecedents of contemporary argumentative practices is the medieval tradition of disputatio, which, far from being a mere rhetorical exercise, constituted a regulated space of intellectual inquiry in which the confrontation of opposing theses was directed toward the critical examination of contested issues and the progressive construction of knowledge (Leff, 1978; Weijers, 2013). Although situated within a historical and cultural context profoundly different from the present one, disputatio embodied a principle that remains highly relevant today: knowledge does not emerge through the passive acceptance of information but through dialogue, doubt, and the critical examination of evidence.

This conception of argumentation has traversed the history of modern educational thought, assuming different forms and meanings while progressively acquiring renewed significance within contemporary theories of learning. Over time, debate has ceased to be understood exclusively as a means of improving communication or persuasive abilities and has increasingly come to be recognized as a practice closely linked to knowledge construction. To argue is to engage with competing interpretations, justify claims, evaluate evidence, and examine the robustness of one’s own assumptions. Consequently, the educational significance of debate lies not merely in the ability to defend a position but in its potential to foster forms of reasoning through which individuals can interpret, problematize, and critically reconstruct reality (Toulmin, 1958; Kuhn, 1991, 2005; Rapanta et al., 2013).

This perspective acquires even greater relevance within educational environments characterized by the growing mediation of digital technologies, where argumentation extends beyond the expression and defense of a viewpoint and increasingly involves the capacity to navigate complex informational ecosystems in which information, interpretations, and meanings are continuously produced, reconfigured, and negotiated (Holmes et al., 2019).

Within such environments, the emergence of generative artificial intelligence represents a further stage in this evolution, as students and educators now interact daily with systems capable of producing texts, arguments, and interpretations that are linguistically plausible and often difficult to distinguish from those generated by human beings. As a result, educational priorities can no longer be confined to the effective use of technological tools; they must also encompass the development of critical capacities enabling individuals to understand how information is generated, selected, and progressively legitimized within contemporary knowledge environments (UNESCO, 2023).

It is within this context that recent reflections on Debate 4.0 acquire particular significance. Through this concept, De Conti (2025) describes the transformation of argumentative practices within educational settings increasingly shaped by technological mediation. Yet, if generative artificial intelligence is profoundly reshaping the ways in which knowledge is accessed, produced, and validated, it also becomes necessary to examine how such transformations redefine the very meaning of debate itself. Building upon the reflections of De Conti and Giangrande (2017) on the pedagogical value of Debate, as well as studies highlighting its role in the critical construction of knowledge (Russo, 2021), this paper introduces the concept of Generative Debate. This notion refers to an emerging evolution of argumentative practices within contemporary cognitive ecosystems, where generative artificial intelligence actively participates in the production and circulation of information. Under these conditions, structured debate can no longer be understood solely as a space for constructing and defending arguments; rather, it becomes an educational practice oriented toward the critical evaluation of knowledge, the examination of the processes through which knowledge is legitimized, and the development of increasingly sophisticated forms of epistemic responsibility.

2.1. The educational evolution of argumentative practices

The growing attention devoted to argumentative practices within educational research is closely linked to the increasing recognition that learning cannot be reduced to the mere acquisition of information but must instead be understood as a process through which individuals construct meaning, examine underlying assumptions, and critically evaluate the validity of knowledge claims. Within this perspective, argumentation acquires educational significance because it makes visible the justificatory processes that underpin knowledge construction, demonstrating that the value of a claim depends not simply on its formulation but on the quality of the evidence and reasoning through which it is supported. Knowledge is therefore understood not as a body of information to be transmitted and reproduced, but as the outcome of processes of inquiry, justification, and critical examination that require learners to engage actively with competing interpretations and alternative explanations (Toulmin, 1958).

Building on this understanding, educational research has progressively highlighted how engagement with different perspectives constitutes a particularly powerful condition for the development of reflective thinking, as it requires individuals to examine competing interpretations, evaluate alternative explanations, and reconsider their own assumptions in light of new evidence. Learning consequently assumes a dynamic and dialogic character, within which knowledge is not simply received from external sources but continuously reconstructed through processes of critical examination and revision. From this standpoint, argumentation functions not merely as a communicative activity but as a cognitive practice that enables learners to develop increasingly sophisticated forms of reasoning and understanding (Kuhn, 1991, 2005).

The educational significance of argumentation becomes even more evident when considering that reasoning does not develop exclusively at the individual level but emerges through participation in social contexts characterized by interaction, discussion, and deliberation. Engagement with alternative viewpoints enables individuals to subject their own beliefs to critical scrutiny, recognize the limitations of their interpretations, and construct shared meanings through dialogue, transforming disagreement from a potential obstacle into a valuable educational resource capable of fostering deeper forms of understanding and intellectual growth (Mercier & Sperber, 2011).

The educational evolution of argumentative practices therefore reveals that the value of debate extends well beyond the ability to defend a position effectively. Its significance lies in its capacity to engage students in processes of inquiry and deliberation through which knowledge is continuously examined, discussed, and reconstructed. It is precisely this progressive expansion of the educational functions attributed to argumentation that provides the theoretical foundation for understanding the transformations currently affecting debate within contemporary educational environments and for interpreting the emergence of new perspectives, such as Generative Debate, which will be explored in the following sections.

2.2. Generative Debate and the transformation of knowledge construction processes

The transformations currently affecting contemporary educational environments cannot be understood merely as the consequence of increased access to information or the introduction of new digital tools. Rather, the widespread diffusion of networked technologies has profoundly altered the conditions under which knowledge is constructed, discussed, and shared, giving rise to contexts in which the production and circulation of content are increasingly shaped by digital platforms, algorithmic infrastructures, and automated systems (Holmes et al., 2019).

It is within this broader context that De Conti's (2025) concept of Debate 4.0 acquires particular relevance. Through this notion, debate is reinterpreted in light of the growing technological mediation that characterizes contemporary informational ecosystems. From this perspective, argumentative engagement no longer develops exclusively through direct interactions among individuals but takes shape within environments where digital technologies actively influence the selection of information, the visibility of content, and the ways in which issues are represented, framed, and discussed.

The emergence of generative artificial intelligence, however, introduces a further discontinuity that appears to require an additional step in pedagogical reflection. While digital technologies progressively transformed the contexts in which arguments were constructed and circulated, generative systems intervene directly in the production of content itself, making available explanations, interpretations, and argumentative frameworks that can subsequently be adopted, revised, challenged, or expanded by users. For the first time, educational environments are confronted with tools that do not merely facilitate access to information but actively participate in the construction of discourse and the formulation of arguments, thereby reshaping the relationship between knowledge production, interpretation, and deliberation (Lo, 2023; Tlili et al., 2023; Cotton et al., 2024).

It is precisely in response to this transformation that the notion of Generative Debate is proposed in this paper. Rather than referring to a new debate format is conceived as a theoretical framework through which the role of argumentation can be reconsidered within contemporary educational environments. The central issue no longer concerns solely how individuals engage in discussion with one another, but also how they interact with content, interpretations, and arguments generated by artificial systems, thereby redefining the conditions under which knowledge construction processes take place. This shift constitutes the conceptual bridge between the reflections associated with Debate 4.0 and the theoretical proposal of Generative Debate, whose pedagogical implications will be explored in the following sections.

2.3. Generative Debate in Higher Education

Higher education currently represents one of the contexts in which Generative Debate may most fully express its pedagogical potential. Universities are increasingly expected not only to foster the acquisition of advanced disciplinary knowledge but also to cultivate students' capacity for independent judgement, critical thinking, and the evaluation of information and arguments within environments increasingly shaped by the diffusion of generative artificial intelligence. In a context where AI systems are capable of producing plausible explanations, syntheses, and interpretations with unprecedented speed, the distinctive competence of university students can no longer be identified solely with the ability to retrieve information, but rather with their capacity to analyse it critically, confront it with reliable evidence, and develop well-reasoned judgements (Bearman et al., 2024; UNESCO, 2023; Wu et al., 2025).

From this perspective, Generative Debate can be understood as an educational approach capable of transforming debate into a genuine process of inquiry, within which students are encouraged to interrogate available knowledge critically, engage with alternative interpretations, and reflect upon the processes through which knowledge is constructed, validated, and legitimised. The primary objective is not simply to defend a position, but to cultivate epistemic competencies that enable learners to distinguish between plausible information and adequately justified knowledge claims, thereby promoting forms of active

participation and critical responsibility in relation to content generated by artificial intelligence (Chinn et al., 2014; Greene et al., 2016).
At the same time, Generative Debate offers a second perspective of particular relevance to higher education, namely its contribution to academic teaching and professional development.

The integration of artificial intelligence into teaching and learning processes requires university instructors to reconsider their pedagogical practices, assuming roles increasingly oriented toward facilitating learning, designing inquiry-based educational experiences, and fostering meaningful argumentative engagement among students. Within this framework, Generative Debate may also be interpreted as a valuable instrument for faculty development, as it encourages the adoption of active and reflective pedagogies while promoting a conception of teaching centred on the collaborative construction of knowledge rather than on the transmission of content alone (Holmes et al., 2019; OECD, 2025).

The value of Generative Debate therefore lies in its capacity to address two fundamental challenges facing contemporary higher education simultaneously. On the one hand, it supports students in developing the critical and epistemic competencies required to navigate cognitive environments increasingly mediated by artificial intelligence; on the other hand, it encourages the evolution of academic teaching practices in ways that are consistent with ongoing transformations in higher education, contributing to the diffusion of pedagogical approaches that are more participatory, reflective, and oriented toward active learning.

3. New educational challanges in the era of Generative Debate

The emergence of generative artificial intelligence appears to have introduced an unprecedented condition within contemporary educational processes, transforming not only the tools available for learning but also some of the assumptions that have traditionally shaped the relationship between knowledge and education. For a long time, one of the central educational challenges was associated with the ability to access reliable information and identify appropriate sources through which problems could be investigated and interpretations developed. Contemporary learning environments, however, are increasingly characterized by a markedly different situation in which explanations, summaries, arguments, and a wide range of content can be generated and made immediately available through increasingly sophisticated artificial systems.

Within this context, the growing availability of responses does not diminish the importance of judgment; rather, it redefines its educational significance. As emphasized by UNESCO (2023), the diffusion of generative artificial intelligence requires educational systems to preserve human agency within learning processes while fostering the critical capacities necessary for individuals to interpret, evaluate, and contextualize the outputs produced by artificial systems, thereby avoiding forms of cognitive dependency or the uncritical acceptance of automatically generated information. Similarly, recent scholarship on artificial intelligence in education suggests that the most pressing pedagogical challenges no longer concern the mere use of technological tools but increasingly involve the criteria through which information is assessed, discussed, and recognized as trustworthy within contemporary knowledge environments (Holmes et al., 2019; UNESCO, 2023).

Against this backdrop, the following sections focus on two issues that appear particularly significant for understanding the educational implications of generative artificial intelligence. The first concerns the growing tension between plausibility and reliability in processes of knowledge evaluation, while the second addresses the reconfiguration of argumentative practices in contexts where the production of content and interpretations can no longer be regarded as an exclusively human activity.

3.1. *Plausibility, reliability and judgement*

The diffusion of generative artificial intelligence brings renewed attention to a longstanding issue that has always accompanied processes of knowledge construction: the difficulty of distinguishing between what appears convincing and what is genuinely well-founded. For a considerable period of time, access to information was regarded as one of the principal educational challenges. Today, by contrast, students and educators operate within environments where explanations, interpretations, and arguments are available in virtually unlimited quantities. Under such conditions, the central issue no longer concerns merely the possibility of obtaining answers, but rather the capacity to critically evaluate their quality, credibility, and epistemic status.

Generative artificial intelligence intensifies this challenge because it produces content characterized by high levels of linguistic coherence, rhetorical fluency, and contextual relevance, features that can easily be associated with impressions of authority and trustworthiness. As recent scholarship has shown, however, the plausibility of a response does not necessarily guarantee its reliability, since formally convincing outputs may incorporate inaccuracies, omissions, oversimplifications, or interpretations that lack adequate empirical grounding (Lo, 2023; Tlili et al., 2023; Cotton et al., 2024). The educational significance of this transformation therefore lies not only in the characteristics of generative systems themselves, but also in the ways individuals assign credibility to the information with which they engage.

From this perspective, the emergence of generative artificial intelligence highlights a question that has long occupied research on epistemic cognition: judgments about knowledge depend not solely on the availability of information, but also on the conceptions individuals develop regarding the nature of knowledge and the criteria through which knowledge claims can be justified (Hofer & Pintrich, 2002; Greene et al., 2016). Evaluating a claim necessarily involves examining the evidence that supports it, the quality of the sources from which it derives, and the procedures through which it has been constructed. Learning, therefore, cannot be reduced to the acquisition of information; rather, it entails the gradual development of forms of judgement capable of distinguishing between plausible assertions, reasoned opinions, and adequately justified knowledge claims.

Particularly relevant in this regard is the AIR model, according to which the evaluation of knowledge emerges from the interaction among epistemic aims, epistemic ideals, and reliable processes of justification (Chinn, Rinehart, & Buckland, 2014). Within environments increasingly populated by artificially generated content, this perspective draws attention to the importance of looking beyond the outcomes of knowledge processes and examining the procedures through which those outcomes are produced and validated. What becomes educationally significant is not merely whether a response is correct, but whether individuals are able to understand its origins, reconstruct the reasoning that supports it, and critically examine the assumptions upon which it rests.

Viewed in this light, the challenge posed by generative artificial intelligence cannot be understood as an exclusively technological issue. Rather, it concerns the formation of individuals capable of exercising autonomous judgement in contexts where the availability of information increasingly exceeds the capacity for its immediate evaluation. As UNESCO (2023) argues, the goal of education is not simply to facilitate access to emerging technologies, but to promote forms of critical participation that enable individuals to maintain an active role in the interpretation and evaluation of the knowledge with which they interact. It is precisely this centrality of judgement that makes it necessary to examine not only the quality of the information available, but also the transformations that artificial intelligence introduces into the processes through which arguments are constructed, discussed, and mobilized within educational environments.

3.2. The redistribution of argumentative labour

The impact of generative artificial intelligence on argumentative practices cannot be adequately understood by focusing exclusively on the quality of the content produced by artificial systems. A more profound issue concerns the redistribution of those activities that have traditionally accompanied the construction of arguments and that, for a long time, have represented significant opportunities for learning. Searching for information, selecting evidence, identifying possible objections, formulating counterarguments, and organizing lines of reasoning have historically constituted essential components of argumentative work through which students progressively developed the ability to analyse complex issues and construct well-founded positions. Today, many of these activities can be performed, at least partially, by generative systems capable of producing sophisticated arguments, comparative syntheses, and alternative perspectives within a matter of seconds.

Such a transformation does not necessarily imply a reduction in the educational value of argumentation; rather, it invites a reconsideration of the ways in which that value is constituted. If argumentative work can no longer be equated solely with the production of content, it becomes necessary to examine which activities continue to require the direct involvement of learners and what forms of learning may emerge from interaction with systems capable of contributing to the construction of the positions under discussion. The central pedagogical question, therefore, does not concern whether students should or should not use artificial intelligence, but rather which dimensions of argumentative activity cannot be fully delegated without compromising the formative potential of the learning experience itself.

From this perspective, attention progressively shifts from the production of arguments to their critical interpretation. When theses, supporting evidence, and potential counterarguments can be generated automatically, the learner's task increasingly consists in evaluating their relevance, identifying their limitations, comparing them with alternative interpretations, and determining which elements should be considered meaningful in addressing a particular issue. Argumentative activity does not disappear under these conditions; instead, it is relocated to a different level, one in which processes of selection, comparison, interpretation, and judgement acquire growing significance.

This transformation resonates with insights from argumentation research, which has long emphasized that the educational value of argumentative engagement lies not exclusively in the final outcome of reasoning but also in the processes of revision, negotiation, and reconsideration through which positions are developed and refined (Kuhn, 2005; Rapanta et al., 2013). In this sense, generative artificial intelligence does not eliminate the need for argumentation; rather, it makes even more visible the importance of those activities that cannot be entirely performed by artificial systems: determining what deserves to be discussed, assigning meaning to available evidence, evaluating the significance of competing interpretations, and ultimately assuming responsibility for the conclusions that are reached.

Argumentation therefore appears increasingly less as a process devoted exclusively to the construction of responses and increasingly more as an activity concerned with navigating critically among a plurality of responses that are already available. Within environments characterized by the abundance of artificially generated content, the educational challenge no longer stems from a lack of arguments but from the capacity to interrogate existing ones, examine their assumptions, and evaluate their implications. It is precisely within this reconfiguration of argumentative labour that the theoretical space emerges for the proposal of Generative Debate, conceived as a possible educational response to the transformations that generative artificial intelligence is introducing into processes of knowledge construction, discussion, and evaluation.

4. Generative Debate and the reconfiguration of educational inquiry

The reflections developed throughout the previous sections suggest that generative artificial intelligence is not merely transforming the tools available to students and educators, but is progressively reshaping the relationship between learning, knowledge, and inquiry itself. If access to information has long represented one of the principal conditions structuring educational processes, the growing availability of systems capable of generating explanations, syntheses, and arguments requires a reconsideration of which activities continue to constitute the educational core of learning experiences.

Within this context, the central educational challenge no longer lies in obtaining answers, but in making sense of the answers that are available, critically examining their assumptions, and identifying the questions that remain unresolved despite the apparent completeness of the information produced by generative systems. The diffusion of artificial intelligence makes increasingly visible a tension that has always accompanied educational processes: while answers become progressively more accessible, immediate, and abundant, the formulation of meaningful questions remains a distinctly human activity, closely connected to curiosity, problem framing, and the capacity to recognize what is worthy of investigation (UNESCO, 2023; Bearman et al., 2024).

It is precisely within this transformation that the proposal of Generative Debate is situated. Rather than identifying a methodology aimed at producing increasingly effective arguments, Generative Debate is interpreted here as an educational practice designed to preserve the space of inquiry within contexts where explanations and interpretations can be generated with unprecedented speed. Attention therefore shifts from the search for correct answers to the critical exploration of problems, from the construction of conclusions to the examination of the questions that make those conclusions possible in the first place.

From this perspective, the pedagogical significance of Generative Debate lies in its capacity to restore centrality to processes of inquiry, exploration, and investigation that risk becoming marginalized in environments characterized by the growing automation of content production. Debate is therefore conceived not as a mechanism for competing over predefined positions, but as a space in which students can critically interrogate available interpretations, explore alternative perspectives, and generate new avenues of inquiry from responses that may initially appear complete or definitive.

4.1. Beyond retorical performance

The diffusion of Debate within educational contexts has contributed significantly to the recognition of argumentation as a powerful means of fostering critical thinking, communication skills, and democratic participation (Cinganotto, Mosa, & Panzavolta, 2021; Russo, 2022; Russo & Refrigeri, 2023). At the same time, the adoption of structured and competitive formats has encouraged increasing attention to the quality of argumentative performance, which is often evaluated in terms of the ability to defend a position coherently, employ evidence effectively, and persuade an audience or adjudicating panel. Although these dimensions undoubtedly constitute important aspects of debating practice, an excessive emphasis on performance risks narrowing the educational significance of argumentation to the effectiveness of its final product.

This limitation becomes particularly apparent when debate is understood primarily as a competition between opposing positions. Under such conditions, success tends to be associated with the capacity to defend a claim persuasively, while the processes through which students explore the complexity of a problem, engage with uncertainty, or revise their interpretations in response to alternative perspectives become less visible. Yet the educational value of argumentation does not reside solely in the production of persuasive conclusions; rather, it emerges through the possibility of subjecting ideas, assumptions, and interpretations to ongoing processes of revision and critical scrutiny, within which disagreement functions as an opportunity for learning rather than merely as an obstacle to be overcome (Kuhn, 2005; Mercier & Sperber, 2011).

The emergence of generative artificial intelligence makes this tension even more evident. In contexts where the construction of rhetorically effective discourse can be supported by systems capable of generating sophisticated arguments, plausible counterarguments, and persuasive syntheses (Lo, 2023; Cotton et al., 2024), the quality of a performance can no longer be regarded, in itself, as a sufficient indicator of the depth of the cognitive processes that have made it possible. This does not diminish the value of argumentation; instead, it invites a reconsideration of the criteria through which educational significance is attributed to debate and of the purposes that argumentative practices are expected to serve in contemporary learning environments.

From this perspective, it becomes necessary to move beyond an exclusively performative conception of Debate, according to which argumentative engagement is valued primarily for the ability to defend a position or prevail over an opponent. The educational challenge is not to cultivate students who can merely produce increasingly effective arguments, but to create conditions in which they can engage critically with complex problems, competing perspectives, and situations characterized by uncertainty. Before serving as a means of identifying answers, debate must recover its function as a space for exploring and understanding problems, thereby laying the foundations for a different conception of the relationship between argumentation and learning.

4.2. Generative Debate as a practice of inquiry

What most clearly distinguishes Generative Debate from more traditional interpretations of debate concerns the role attributed to inquiry within learning processes. Whereas classical models of argumentation have frequently associated debating with the construction and defence of a position, Generative Debate places the progressive exploration of problems at the centre of the educational experience, treating inquiry not as a preliminary stage that precedes discussion but as its primary purpose. Argumentation is therefore valued not because it enables participants to reach conclusions efficiently or determine which interpretation should prevail, but because it provides a means of expanding understanding, illuminating overlooked dimensions of complex phenomena, and opening new directions for investigation.

This reinterpretation of inquiry acquires particular significance within educational environments increasingly shaped by generative artificial intelligence. The growing availability of automatically generated explanations, syntheses, and argumentative frameworks reduces the educational significance traditionally attached to the mere retrieval of information and redirects attention toward a different challenge: identifying problems worthy of investigation. Inquiry consequently shifts from the search for answers to the formulation of questions, requiring students to engage not only with what is already known, but also with what remains contested, incomplete, uncertain, or open to multiple interpretations.

Under these conditions, debate assumes a fundamentally heuristic function. The positions advanced by participants are no longer understood as conclusions to be defended at all costs, but as provisional interpretative tools through which hypotheses can be tested, evidence can be examined, and alternative readings of the same phenomenon can be explored. The objective is not to eliminate the uncertainty that inevitably accompanies processes of knowledge construction, but to mobilise that uncertainty as a resource for deepening analysis and expanding the range of possible interpretations. Research on argumentation has long demonstrated that engagement with competing perspectives promotes forms of conceptual revision and understanding that are difficult to achieve through transmissive models of learning, precisely because it requires individuals to confront alternative explanations, re-examine assumptions, and negotiate meaning through critical dialogue (Toulmin, 1958; Kuhn, 2005; Rapanta et al., 2013).

From this perspective, the originality of Generative Debate lies in its capacity to transform the abundance of artificially generated content into an opportunity to extend inquiry rather than to conclude it. Interpretations produced by artificial intelligence do not constitute the endpoint of the educational process; instead, they become intellectual resources to be questioned, discussed, challenged, and situated within broader interpretative frameworks. What acquires educational value is therefore not the availability of a plausible response, but the capacity to use that response as a starting point for further exploration, generating new questions, alternative hypotheses, and deeper forms of understanding.

The adjective generative thus refers not only to the presence of artificial intelligence within educational environments, but also to the capacity of debate itself to generate new lines of inquiry, new conceptual connections, and new possibilities for understanding. In this sense, Generative Debate can be interpreted as a form of inquiry-oriented argumentation that seeks not the closure of problems but their continuous reformulation, reaffirming the educational significance of inquiry as a central dimension of learning in the age of generative artificial intelligence.

5. Conclusions and future perspectives

The reflections developed throughout this paper originated from the observation that generative artificial intelligence does not simply introduce new tools into educational environments, but contributes to a broader transformation of the conditions under which knowledge is constructed, interpreted, and circulated. Within this evolving landscape, the most significant pedagogical challenges appear to extend beyond the acquisition of technical competencies or the effective use of generative systems, calling instead for renewed attention to the role that students and educators are expected to assume in contexts where information, explanations, and arguments are increasingly abundant and immediately accessible.

Against this backdrop, the paper has proposed the concept of generative debate as a theoretical lens through which the educational significance of argumentation can be reconsidered in the age of generative artificial intelligence. the intention has not been to introduce a new debate format or to define an alternative set of instructional procedures, but rather to develop a conceptual framework capable of illuminating some of the transformations affecting the relationship between learning, knowledge, and argumentative activity. From this perspective, debate is understood not primarily as a means of defending positions or producing persuasive arguments, but as a context in which competing interpretations can be critically examined, negotiated, and continuously reworked through the interaction of participants, evidence, and alternative perspectives (Toulmin, 1958; Kuhn, 2005; Mercier & Sperber, 2011; Rapanta et al., 2013).

The analysis further suggests that the growing presence of artificially generated content does not diminish the educational relevance of debate; rather, it makes more visible the need for spaces in which the meaning of information can be questioned, contextualized, and subjected to critical scrutiny. As the production of content becomes increasingly supported by artificial systems, the educational value of learning experiences appears to reside less in the availability of answers and more in the capacity to interpret those answers, examine their implications, and confront them with alternative perspectives, thereby preventing immediate explanations from prematurely closing processes of understanding. In this sense, Generative Debate is proposed as a practice aimed at preserving the dialogic, exploratory, and fundamentally provisional character of knowledge, reaffirming the role of argumentation as an experience of inquiry, revision, and shared meaning-making.

At the same time, the considerations developed in this paper open several promising avenues for future research. From an empirical perspective, it appears particularly important to investigate how the theoretical principles outlined here may be translated into educational practices across different levels of education and disciplinary contexts, examining how students and educators engage with generative systems during argumentative activities and exploring the forms of interaction that emerge when human contributions and artificially generated content become intertwined within processes of discussion and deliberation. Further developments may also concern the design of pedagogical approaches and assessment frameworks aligned with a conception of debate that values not only the quality of argumentative performances but also the capacity to investigate complex issues critically and engage productively with a plurality of interpretations.

Rather than representing the linear evolution of an established educational methodology, the transition from disputatio to Generative Debate can be understood as an attempt to rethink the role of argumentation in response to broader transformations in the cultural and epistemic conditions that characterize contemporary societies. While the tools through which knowledge is produced and disseminated continue to evolve at an unprecedented pace, the need remains to cultivate individuals capable of engaging with complexity, recognizing the provisional nature of interpretations, and participating thoughtfully in the ongoing processes through which knowledge is debated, revised, and reconstructed. It is within this broader perspective that Generative Debate finds its theoretical justification and its potential contribution to contemporary pedagogical discourse.

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ARTIFICIAL INTELLIGENCE AND TAX ADMINISTRATION IN NIGERIA: OPPORTUNITIES, CHALLENGES AND IMPLICATIONS FOR TAX COMPLIANCE

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Abstract: *The integration of Artificial Intelligence (AI) in tax administration has revolutionized tax collection, compliance enforcement, and taxpayer services. In Nigeria, the Federal Inland Revenue Service (FIRS) is exploring AI's potential to enhance tax administration, improve compliance, and increase revenue generation. This paper examines AI's transformative potential in Nigeria's tax administration, contributing to Sustainable Development Goal (SDG) 16 by reducing illicit financial flows and strengthening domestic resource mobilization. Using a doctrinal approach, this study analyzes AI's opportunities, challenges, and implications, highlighting benefits such as improved tax compliance, taxpayer experience, and revenue generation. The study reveals that AI can enhance tax compliance through personalized services, improved audit processes, and tax evasion detection. However, concerns about taxpayer rights, transparency, and accountability in AI-driven tax administration are noted. The paper recommends a comprehensive AI adoption strategy, infrastructure investment, and capacity building to ensure transparent, accountable, and fair tax administration.*

Keywords: *Artificial Intelligence, Tax Administration, Sustainable Development Goals, Tax Compliance.*

1. Introduction

Revenue generation is crucial to the success of any government as it is from this those other developments flow. It is the building of the economy of the country brick by brick. There are many means of generating revenue which include tax and Non-tax revenue. The non-tax revenue is categorized further into administrative revenues, commercial receipts and grants (Obiechina, (2010). Responsive and responsible government is interested in revenue generation since it is important for industrialization and economic growth and development. Responsible government all over the world provides development that could benefit the present and future generation (Amadi and Amadi, 2023). The government mandate to ensure development prompts the collection of tax which will aid the actualization of their mandates. The government has, through this source, seen an increase revenue generation from as the years roll. Between 2020 and 2021, we saw the internally revenue generated at the state level in Nigeria increased from #1.56 trillion to #1.90 trillion (National Bureau of Statistics, 2022).

Just as a super substitute in a football match, artificial intelligence is the game changer that has catalyzed many developments. It is the brainbox of technology as it has advanced technological developments in every sphere and made human activities a pleasure as it fasten delivery of tasks without stress. Built from data, hardware and connectivity, AI allows machines to mimic human intelligence such as perception, problem-solving, linguistic interaction or creativity. The invention of artificial intelligence dates back to 1956 conference in 1956 at Dartmouth College in the United States where McCarthy officially presented the model of artificial intelligence and it has since then been used in solving human problems.

Artificial intelligence has played active roles in bridging the gaps created by bottleneck bureaucracy system by helping to solve administrative problems in seconds. Despite the numerous developments that revenue generated through taxation has brought and the obvious yearly increase in revenue generation, data has shown that the government at all levels is losing out on revenue through tax evasion and avoidance. The Tax Justice Network's annual State of Tax Justice report, disclosed that of the $553, 986,512 billion lost to global tax abuse a year, two-thirds ($330 million) is lost to multinational corporations shifting profit offshore to underpay tax and the remaining third ($224million) is lost to wealthy individuals hiding their wealth offshore. This huge amount has deservedly called for urgent attention as revenue meant for developments are been lost on daily basis and its reactionary implication is seen in the small pace of Nigeria development and over dependence on debt from foreign countries. Factors contributing to these losses can be subdued with the assistance of artificial intelligence. The deployment of artificial intelligence will not only helped in curbing the excesses leading to the losses, it will also hasten the pace of revenue generation and a more accurate date for accountability purpose and adequately reduce the level of noncompliance (Cantens and Trounpe, 2025).

2. The Tax Administration and Artificial Intelligence Examined

The better understanding of the concept of taxation will serve as the foundation for the administration of it. Thus, administration of tax cannot be discussed in isolation of the concept of taxation. Taxation has been introduced as one of the ways government generates finances for developmental projects and running of the affairs of a state. Tax is any contribution imposed by government upon individuals, for the use and service of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name (Black's Law Dictionary, 2009). The use of 'impose' in the definition suggests its mandatory nature. It also suggests that it is determined by the government. Hence, if the amount will be determined, there should exist, an organized body and legislations, that will regulate the perimeters for determining the amount, how it should be paid, who should collect it and punishment for noncompliance – the concept of tax administration stems from there. Tax administration involves the registration, assessment, returns, collection, compliance monitoring, compliance enforcement, sanction, taxpayer's education and awareness and any other activities that can improve the efficiency and effectiveness of the taxation (Ugochukwu, 2024).

Prior to the enactment of the Nigeria Revenue Service (Establishment) Act, 2025, the administration of tax in Nigeria has been managed by the Federal Inland Revenue Service (FIRS) for the federal government (Federal Inland Revenue Service (Establishment) Act, 2007). The FIRS also legibly provided for the functions of the service which include the controlling and administration of the different taxes and laws specified in the First Schedule of Federal Inland Revenue Service (Establishment) Act or other laws made or to be made from time to time by the National Assembly or other regulations made there under by the Government of the Federation and to account for all taxes collected. However, under the new legislation, the Federal Inland Revenue Service has been changed to Nigeria Revenue Service (NRS).

The major functions of the NRS is captured by the objectives of the Service which includes collection or recovery of assessed tax, enforcement of payment of taxes and remit tax collected into designated accounts, administer all revenues accruing to the Government, in collaboration with the relevant Ministries and Agencies of Government, review the tax regimes and promote the use of taxation to develop, stimulate and grow economic activities, carry out examination and investigation exercises with a view to enforcing compliance with the provisions of this Act and any other tax law, make a determination of the extent of financial loss and such other losses by Government arising from tax fraud or evasion and revenue foregone arising from tax waivers and other related matters, adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion, in line with the provisions of this relevant laws, adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance with tax laws ,collaborate and facilitate exchange of information with relevant national or international agencies or bodies on tax matters ,establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions, and the perpetrators or other persons involved, provide and maintain access to up-to-date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of Government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud, maintain database, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating to tax waivers, fraud or evasion, undertake and support research or similar measures with a view to stimulating economic development and determine the manifestation, extent, and effects of tax waivers, fraud, evasion and other matters that affect Nigeria Revenue Service (Establishment) Act, 2025 2025 No. 4 A 235 effective tax administration and make recommendations to the Government on appropriate intervention and preventive measures, collate and continually review all policies of the Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies, liaise with the office of the Attorney-General of the Federation, any Government security and law enforcement agency.

Such other financial supervisory institutions in the enforcement and eradication of tax related offences, issue taxpayer identification or any other equivalent identity to every relevant taxable person in collaboration with tax authorities of States or Local Governments, or the Joint Revenue Board, carry out and sustain public awareness and enlightenment campaign on the benefits of tax compliance, undertake or collaborate with any person to provide training, continuous education, research, knowledge and capacity building in taxation (Nigeria Revenue Service (Establishment) Act, 2025).

2.1 Artificial Intelligence

Technological advancement has seen to the birth of the Artificial Intelligence (AI) that is posing to make life and its activities easier for human being. AI is a field of computer science that studies how machines can imitate the intelligence of their human counterparts. Over the last decade, definitions of the term have become quite loose and refer to just about any computerized or automated function (Sarmah, 2019). Artificial intelligence is an intellect that is much smarter than the best human brain in practically every field, including computer science and linguistic logic. "It is a modern method of machines which will do muscle work and illustrate complex questions in a "intellectual" manner. It is concerned with the basic and most important aspects in our life i.e. philosophy, computer science, mathematics, linguistics, biology, neuron science, sociology etc.

AI plays a very important role to exhibit intelligent behaviour, to learn, demonstrate and give advice to the user. Intelligence and machine learning combined together very frequently when the concepts like big data, data science and analysis comes in mind. Machine learning is very efficient solution to handle such a big data in multinational industries. They actually work like a super-computer (Rupali, & Amit, 2017). AI has been impactful hasten productivity in different areas like the medicine where deep learning is prevailing type of AI. Machine learning, often used in precision medicine, assesses patients' conditions and determines the appropriate treatment procedures based on their medical backgrounds. Application of artificial intelligence, in healthcare includes healthcare drug creation, treatment design, disease progression, health monitoring managing medical data and records (Akhere, A. D., Mark, A., & Ebruke,).

Also in law, different AI applications are being deployed like, Prime GPT and Primsol GPT; Law pavilion launched these AI tools for the Nigerian Legal system to embrace AI. The proposed Generative AI that will help in legal research and drafting which was officially unveiled at the NBA conference, 2023. The applications were developed for lawyers to leverage legal data from LawPavilion’s extensive legal resources. eBrevia was developed in 2012 by two Harvard Law School Graduates. It is like an ediscovery tool, used to find out relevant texts from various long and complicated legal documents and contracts within a very short period. This extracts text from a contract using powerful machine learning and artificial intelligence, then creates a summary report of that content (Giwa, and Kodjovi, 2023). Currently, there is no formal specific law directly regulating the use of Artificial intelligence in Nigeria. However, there are laws which extend to but not directly regulate the use of Artificial in Nigeria. Some of which include, but are not limited to Cybercrimes (Prohibition, Prevention, etc.) Act 2024, the Nigeria Data Protection Act 2023, the Security and Exchange Commission (SEC) Rules in Robo-Advisory Services, the Copyright Act 2022, the Nigerian Commission Communication Act 2003, among others (Okeke, Obianyo, and Ater, 2025).

The international legal frameworks that regulates the AI include but not limited to European Union Artificial Intelligence Act, 2024, General Data Protection Regulation 2018. The national laws and regulations also include the constitution of the Federal Republic of Nigeria 1999, Nigeria Revenue Service (Establishment) Act2025, Securities and Exchange Commission Rules on Robo-Advisory Services 2021, Draft National Artificial Intelligence strategy 2024. The institutional frameworks include the Nigeria Revenue Service, National Centre for Artificial Intelligence and Robotics, National Information Technology Development Agency (NITDA), Nigeria Data Protection Commission (Okeke, Obianyo, and Ater, 2025).

3. AI: Opportunities and Implications for Tax Compliance

The nexus between Taxation and Artificial Intelligence is the benefit the later offer than the former. Ordinary, AI poses to gain nothing but to assist human beings in their daily activities. However, by relying on the assistance provided by the AI, tax administrator has numerous opportunities to explore which will have positive implications on the tax administration. The Nigerian taxation system has been plagued by numerous challenges, including inefficiencies, non-compliance, and revenue leakages as highlighted in our preliminary remarks. However, the advent of Artificial Intelligence (AI) presents a potential solution to these challenges. AI has the potential to revolutionize tax administration in Nigeria, enhancing the efficiency and effectiveness of tax collection, and promoting economic growth and development (Bamikole, Folorunso, and Nwankwo, 2024).

Inefficiencies in tax administration also contribute to revenue leakage. The manual processes and lack of automation in tax administration can lead to errors, omissions, and delays in tax collection. AI can assist in the administration of tax by increasing tax authorities’ efficiency, enhance tax payer compliance, be a driving force for innovation, aid better decision making, save cost and improve customer experience. Automating routine, repetitive tasks with AI significantly boosts efficiency. AI streamlines data processing and offers actionable, data - driven insights. This enables tax professionals to make more informed decisions, based on up - to - date and accurate information, leading to improved overall decision - making. AI encourages innovation by enabling the development of new solutions, tools, and capabilities within tax departments. By embracing AI, companies can create more efficient systems and unlock new ways to address challenges in tax management. AI - powered tools, such as chatbots and virtual assistants, offer more personalized and responsive service to taxpayers and clients. This enhances customer experience by providing timely assistance and making tax - related processes more accessible. AI - driven automation boosts productivity, reduces the need for manual labor, and minimizes the need for outsourcing. These efficiency gains lead to cost savings, which positively impact the bottom line and contribute to higher profitability (Goyal, (2025).

AI improves the accuracy of tax processes, ensuring better adherence to regulations. By automating tasks, AI reduces the risk of human errors and ensures more consistent compliance with complex tax laws. There are many technologies and applications that are AI driven that effective for tax administration. Machine learning (ML) and predictive analytics are two of the most common AI technologies in the tax administration. By exploring large datasets and identifying patterns, these technologies enable tax officers and businesses to increase tax compliance, enhance reporting processes, and forecast future tax-related behavior. Machine learning algorithms can automate tax compliance by analyzing tax returns, business transactions, and financial data in real-time.

By identifying discrepancies or patterns that may indicate non-compliance or fraud, these systems allow tax authorities to proactively flag suspicious activities. The use of ML helps reduce human error, streamline audits, and ensure more accurate tax assessments. Predictive analytics plays a critical role in identifying potential tax fraud. This proactive approach not only helps detect fraud more quickly but also improves the allocation of audit resources, ensuring that the most high-risk cases are prioritized. Another key application of machine learning in tax systems is the analysis of taxpayer behavior. By examining past tax filings, payment patterns, and interactions with tax authorities, AI systems can generate insights into a taxpayer's likelihood to comply with tax obligations. These insights help authorities assess risk, target high-risk taxpayers, and optimize enforcement strategies. Predictive models can even suggest personalized compliance strategies for taxpayers, potentially reducing the need for intervention. For businesses, machine learning can be used to forecast potential tax liabilities based on trends and patterns, enabling more accurate planning and budgeting. This application is especially useful for businesses operating in multiple jurisdictions, where tax laws can vary significantly.

Natural Language Processing (NLP) is another crucial AI technology being applied in tax systems. NLP enables computers to understand and process human language, making it an invaluable tool for interpreting complex tax laws and regulations. Chatbots can guide taxpayers through the process of filing returns, explain tax law provisions, and even suggest personalized tax-saving strategies. Additionally, chatbots can operate 24/7, providing round-the-clock assistance and significantly enhancing taxpayer experience. This is particularly beneficial in the era of online and remote tax filing, where face-to-face interactions with tax professionals are less common.

NLP is also used to automate tax research and keep tax authorities, businesses, and professionals up-to-date with the latest regulatory changes. AI systems can scan vast amounts of tax literature, including laws, case rulings, and regulatory announcements, to extract relevant information. This process helps identify updates to tax codes or new interpretations of tax regulations, making it easier for tax professionals to stay informed and ensure compliance with the latest requirements. For businesses, this automation reduces the time spent on tax research and enables faster adaptation to changes in tax laws. With AI-powered research tools, businesses can access updated tax information almost instantaneously, improving decision making and ensuring that tax strategies remain compliant with evolving legal frameworks. Robotic Process Automation (RPA) is a technology that uses software robots to automate repetitive and rule-based tasks. In tax administration, RPA is revolutionizing many processes by replacing manual interventions with automated workflows that are faster and less prone to error.

RPA can be applied to streamline the tax return processing system. Software robots can automatically retrieve, validate, and categorize data from incoming tax returns, reducing the time spent by tax authorities on manual data entry and verification. Block chain technology, known for its decentralized and secure nature, is also making its way into tax systems. By ensuring the immutability of records and enhancing transparency, block chain offers a new avenue for improving tax compliance and reducing fraud. Smart contracts, powered by block chain, are transforming tax reporting and payment systems. These self-executing contracts automatically trigger tax payments when specific conditions are met, ensuring that taxes are paid promptly and accurately. Block chain's transparency also allows for real-time tracking of transactions, making it easier for both tax authorities and businesses to verify tax payments. Smart contracts can also automate the process of tax filing, ensuring that the correct amounts are reported and paid based on pre-established rules. This reduces human error and enhances compliance by removing manual intervention from the process (Ezeife, Kokogho, Odio, and Adeyanju, 2021).

The big accounting firms are taking strategic actions to adopt artificial intelligence in tax administration. PricewaterhouseCoopers (PwC), Deloitte, and KPMG are leading the way to adopt artificial intelligence in tax. PwC has proposed an integrated model that gathers finance and tax data from multiple sources and spreadsheets onto a common platform. This reduces the time needed to collect and assemble data manually, provides more clarity regarding the data, and reduces the data manipulation that can occur when traditional spreadsheets are used. PwC has also proposed a model for a future tax ecosystem that enhances productivity, improves data quality, and reduces risk by maintaining the flow of information among tax, finance, and third parties. KPMG has introduced a new Technology Enabled Compliance Solution for Tax, known as the KPMG solution. This is a fully automated tax process that allows corporations in the PRC to manage their tax obligations. In the PRC tax system, the policy is complex and changes frequently.

The manual tax process is time consuming, and traditional ways of fling taxes can give rise to diverse risks. Artificial intelligence helps tax auditors monitor the tax collection process and reduces the risk of tax fraud and evasion. It also increases the efficiency of tax collection and increases government revenue. In addition, Deloitte United States has developed a supervised machine learning tool that can extract clauses in contracts, using natural language processing and machine learning tools. This helps reduce bias and fraud in tax administration. As tax fraud is one of the most significant issues faced by many countries, causing billions of dollars in losses every year, the tax authorities of affected countries are continuously trying to detect it. Spain is one of the developed countries most profoundly affected by tax fraud, which exceeds 20% of Spain's total gross domestic. As tax is crucial for a country's economy, detecting tax fraud is a vital goal of tax authorities.

Many countries in Asia and the Pacific are introducing artificial intelligence in tax administration to lessen costs and prevent tax evasion. Artificial intelligence helps tax authorities detect fraud and efficiently analyze tax reporting. Machine learning tools, such as multilayer perceptron neural networks, support vector machines, and logistic regressions with harmony search using optimization algorithms, are the most efficient estimates of fraud detection. Tax authorities should develop a strong artificial intelligence base and implement the most relevant artificial intelligence and machine learning tools to detect tax fraud and evasion (Shakil, & Tasnia, 2022).

ML facilitates real-time updates to the classification schemes. Economic activities are dynamic and usually change due to market trends, changes in regulations, or changes in the circumstances of the taxpayer. Through constant monitoring of financial transactions and other related data, machine learning models can identify changes in behavior that may indicate a change in the business activity of the taxpayer. For example, a company transitioning from retail to an e-commerce business may undergo changes in transaction types, customer demographics, or supply chain behaviors-all of which can be captured by adaptive ML systems. These enable the tax authorities to proactively update their classification and avoid inaccuracies arising from fixed or stale approaches. Machine learning can drive virtual assistance systems that provide personalized advice to taxpayers. The systems are mostly deployed either as chatbots or interactive helpdesk portals using predictive algorithms in order to offer suggestions with respect to deductible expenses, given the profile of the taxpayer.

For instance, a taxpayer with considerable educational expenses may receive recommendations for either tuition tax credits or corresponding deductions. This level of guidance from ML systems limits the confusion of taxpayers while working their way through often-complicated tax codes. Moreover, these virtual proposals can be made to change dynamically with any change in the circumstances of the taxpayer. For example, if a taxpayer suddenly experiences a change in income, unexpected medical expenses, or assumes caregiving responsibilities, then machine learning models can change their predictions and provide updated recommendations. This adaptability not only makes sure that regulations are complied with but also enhances the perceived value of tax services (Rahman, Khan and Sirazy, 2024).

One of the significant challenges facing Nigeria's taxation system is revenue leakage. This occurs when taxes owed to the government are not collected, resulting in a loss of revenue. Several factors contribute to revenue leakage, including tax evasion, tax avoidance, and inefficiencies in tax administration.13Artificial intelligence (AI) can play a crucial role in curbing revenue leakage in Nigeria's taxation system. AI-powered systems can analyse large amounts of data to identify patterns and anomalies, helping to detect tax evasion and avoidance. Additionally, AI can help automate tax administration processes, reducing errors and inefficiencies. Tax evasion is a major source of revenue leakage in Nigeria. Taxpayers may evade taxes by underreporting income, over claiming deductions, or failing to file tax returns.

According to a report by the Federal Inland Revenue Service (FIRS), tax evasion is estimated to cost Nigeria over N5 trillion annually. Tax avoidance is another source of revenue leakage. Taxpayers may exploit loopholes in tax laws or use aggressive tax planning strategies to minimize tax liabilities. This can result in significant revenue loss for the government. Inefficiencies in tax administration also contribute to revenue leakage. The manual processes and lack of automation in tax administration can lead to errors, omissions, and delays in tax collection. Artificial Intelligence (AI) can help curb revenue leakage in the Nigerian taxation system. AI-powered systems can analyze large amounts of data to identify patterns and anomalies that may indicate tax evasion or avoidance. AI can also help automate tax administration processes, reducing errors and inefficiencies. Furthermore, AI-powered chatbots can provide taxpayer support and education, improving tax compliance. In addition, AI can help identify and address tax avoidance schemes, such as transfer pricing and profit shifting. AI can also help optimize tax collection, identifying the most effective strategies for collecting taxes and reducing revenue loss (Bamikole, Folorunso and Nwankwo, 2024).

The resultant effects of the automation of the administration of tax in Nigeria will see to the reduction of the challenges facing the tax compliance in Nigeria. The monitoring of the tax payers, assessment of tax due to them, computation of necessary data, correspondences etc. will be easier for the tax authorities and the loss of revenue will be deliberately tackled and reduced. The new Nigeria Tax Act and the Nigeria Revenue Service (Establishment) Act envisage some objectives which will help the administration of tax in Nigeria and they will be considered succulently to marry the promises of AI with that of the laws and regulations objectives for desire result. . Nigeria has made progress in digitizing its tax system through initiatives such as the Integrated Tax Administration System (ITAS) and e-filing platforms for tax returns.

AI applications could be deployed in tax monitoring systems to predict non-compliant behavior and automate the flagging of suspicious transactions. Digital platforms like electronic payment systems and tax registration portals enhance compliance when combined with user training. AI improves accuracy and automation, its effectiveness in tax compliance relies heavily on users' digital literacy. Audit probability significantly influences compliance decisions, while the severity of penalties had limited effect. Thus, AI could enhance audit selection efficiency, making audit threats more credible and targeted.

More so, trust in government and religiosity positively influence tax compliance, while factors like culture and educational attainment had insignificant effects. AI tools can be deployed for maximum impact, particularly in low-trust societies like Nigeria. Inadequate tax knowledge and poor education levels are barriers to compliance in Nigeria. Therefore, effective implementation of AI-powered systems must be accompanied by targeted digital literacy programs and public education. It will help to detect fraud and non-compliance will be exposed (Onyekachi and Ihendinihu, 2025).

The AI has been seen to be an important innovation in the administration of tax to ensure compliance in Nigeria. However, like every other innovations, AI is facings many challenges in its efforts to ease the human of his stress. Conversely, the challenges range from data protection , knowledge gap, human factor, lack of political will, absence of comprehensive AI Legal framework, liability of AI systems, Data protection and privacy regulation, limitation of applicable regulatory frameworks, and limited AI expertise and institutional capacity (Okeke, Obianyo, and Ater, 2025). Data abuse practices, AI technology can be used in creating very convincing but fake content like videos and images that will look as good as the original to spread misinformation or even manipulate public opinion, such can also be a sophisticated ready tool for phishing. Data Collection and use by AI Technology like the various generative AI tools, especially ChatGPT, Stable Diffusion, or other tools being developed, which allow people's data such as articles, images, and videos, to be used, without their consent is a thing of serious worry. The risk of sharing personal information with sites like Google location tracker can compromise human securityusers' data without consent and authorization amounts to breach, invasion, or intrusion into the privacy of persons which violates their rights (Dashe, & Asada, 2023). The process of artificial intelligence application and taxation system needs to collect and analyze the basic data and economic behaviors of different groups of enterprises and individuals, which may cause leakage of public data information. The application of current big data technology can quickly calculate and analyze personal preferences and push relevant information by analyzing people's clickthrough rate. Artificial intelligence technology relies on big data support to identify, match, and predict data to achieve accurate tax payment services. As more and more data is collected, the privacy of personal information cannot be guaranteed, and the risk of information disclosure increases.

The literacy level in Nigeria has adversely affected the use of AI which could have been deployed to aid effective administration of the tax regime. While we have a reasonable number of educated citizens, we uninterestingly have an educated population that is terribly technologically illiterate. This has discourage the use of AI has it will affect collection of tax in rural places and the necessary relationship that ought to be built between tax authorities and tax payers will be affected due to the knowledge gap, especially with the new old generation. Factors such as educational level influenced the adoption of AI tools, highlighting various challenges in integration. Study indicated that the University of Ibadan, Nigeria lecturers exhibit a lack of understanding and unease with technology as the major barrier in their use of artificial intelligence. A study also revealed that college professors face challenges in integrating artificial intelligence into their teaching style which would result in a shift from their traditional style of teaching, also balancing the use of artificial intelligence to avoid overuse is another challenge faced by professors according to a study (Ogochukwu, Emiri, Ijiekhuamhen and Nwankwo (2024).

It is therefore recommended that tax authorities should enhance data management, upgrade technological infrastructure, strengthen cyber security measures, invest in human capital, establish regulatory frameworks and implement change management strategies to ensure the smooth running of an automated tax system.

4. Conclusion and Recommendations

Smart taxation has become an important development trend for tax collection and management in the future. We must face up to the changes brought by artificial intelligence technology to tax management, constantly explore technology, continuously develop application areas, and apply intelligent technology to more taxation services and tax management (Lingyan, 2019). The implementation of AI in taxation will not only increase revenue generation but also promote transparency and accountability. With AI, tax authorities can track and analyze tax expenditures, identify areas of abuse, and optimize tax collection processes. Furthermore, AI can help automate tax compliance processes, reducing errors and inconsistencies, and enabling authorities to focus on high-value tasks. Nigeria's path to improved revenue generation and transparency through AI is clear. By embracing AI technologies and fostering collaboration between government, industry, and academia, the country can unlock the full potential of AI in taxation. As Nigeria continues to navigate the challenges of taxation, AI will play a vital role in shaping a more efficient, transparent, and revenue-rich future.

Importantly, The SDGs recognize, among other things, that ending poverty must go hand in hand with strategies that improve health and education, reduce inequality, and spur economic growth. These objectives all require funds from different sources – tax being one of the most sustainable. The SDGs and Africa’s development Agenda 2063 both view tax as a key enabler of their attainment. Robust tax policy and its effective administration will therefore determine the success of both agendas (Baine, 2023). To achieve this goal, innovations, such as AI should be encouraged. If used correctly, artificial intelligence has the potential to eliminate human error, make certain services faster and more accessible, and advance global progress towards the Sustainable Development Goals. Artificial intelligence might be particularly useful in the SGDs of economic growth. The potential for economic growth in the upcoming years is huge. AI could double annual global economic growth rates by increasing labour productivity and innovation such as automation of the taxing system (Abbey, 2024).

- **Enhance Data Management:** A concerted effort to improve data collection processes, ensure regular updates, and implement rigorous data validation protocols is essential. This can be achieved through prioritizing the improvement of data quality and accuracy, implementing standardized data collection methods, regular data audits, and validation processes to ensure the reliability of information. Enhancing data management processes through the above would enable effective tax compliance monitoring and identification of tax evasion patterns.

- **Advance Technological Structure:** Developing a comprehensive IT infrastructure investment plan, possibly in partnership with private sector stakeholders and international organizations, can help bridge the existing gaps and pave the way for effective AI deployment in tax administration. This includes enhancing internet connectivity, ensuring a reliable power supply, and upgrading current computing facilities. Improved infrastructure will support advanced data analytics and real-time processing, which are vital for efficient tax management and service delivery.
- **Reinforce Cyber security Dealings:** Implementing advanced and robust cyber security measures to protect sensitive taxpayer data, including encryption, multi-factor authentication, and regular security audits, is imperative. Additionally, establishing rapid response teams to address potential breaches and conducting continuous monitoring can help mitigate risks. Ensuring data security is critical for maintaining public trust and safeguarding the integrity of AI systems. Strong cyber security measures will prevent unauthorized access, data breaches, and cyber-attacks, thereby preserving the confidentiality and integrity of taxpayer information.
- **Finance in Human Capital Development:** Government must invest in education and training programs focused on AI and data science. Partnerships with academic institutions, industry experts, and international organizations can help develop specialized curricula and certification programs tailored to the needs of tax administrators and taxpayers. Continuous professional development is also essential for maintaining a proficient workforce that can adapt to evolving AI technologies.
- **Institute Regulatory Frameworks:** Developing comprehensive and robust regulations that guide and govern the ethical use of AI in tax administration will prevent misuse, ensure transparency, prevent biases, and protect taxpayers' privacy. Amendment of the relevant tax statutes to recognize and include AI as a vital facility to be utilized in tax administration (Nwuzor, 2025).
- **Implement Change Management Policies:** Develop and implement effective change management strategies by constantly engaging all relevant stakeholders in transparent communication and open dialogue, demonstrating the benefits of the AI solutions in qualitative and quantitative terms, and providing support throughout the transition process. Building a culture that embraces innovation and continuous improvement is also crucial for the successful adoption of AI. An effective change management strategy will facilitate the acceptance of AI technologies and encourage collaboration among tax officials and taxpayer.
- **Expedite Integration with Existing Systems:** To ensure seamless integration of AI systems with existing tax administration processes and technologies, it is important to carry out thorough assessments of current workflows, identify areas for improvement, and implement necessary modifications. It is imperative to partner with other agencies such as the Nigerian Communications Commission, National Orientation Agency, telcos, media stations and even promoters to further the narrative and entrench a system to deepen the use of AI in taxation.

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ANALYSIS OF ROMANIA'S GDP DURING THE 2024–2026 PERIOD

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Abstract: *Gross Domestic Product (GDP) represents one of the most important indicators used in macroeconomic analysis to evaluate the economic performance of a country, reflecting the total value of final goods and services produced within an economy during a certain period of time. (Bodea, 2022). In the current economic context, characterized by global uncertainties, inflation, and structural transformations of the economy, the analysis of GDP evolution becomes even more relevant. Romania's economy has undergone significant transformations in recent decades, being influenced by the process of European integration, globalization, and technological development.*

Keywords: *GDP, convergence, process, macro-economic, development.*

1. Introduction

The importance of this indicator is determined by its essential role in analyzing economic evolution, supporting economic policies, and evaluating the level of development of an economy. GDP is used both by economists and governmental institutions to analyze economic dynamics, macroeconomic stability, and the standard of living of the population. (Urziceanu, 2022)

The period 2024–2026 is particularly relevant for Romania's economy because it marks the continuation of the economic convergence process with the developed states of the European Union. During this period, economic growth is influenced by factors such as public investments, the use of European funds, the development of the services sector, and international economic developments.

The purpose of this paper is to analyze the evolution of Romania's GDP during the period 2024–2026. In order to achieve this objective, the paper aims to:

- present the theoretical aspects regarding GDP;
- analyze the evolution of Romania's GDP during the analyzed period;
- identify the factors influencing economic growth.

The analysis is based on statistical data provided by the National Institute of Statistics, the National Bank of Romania, and the European Commission. (National Institute of Statistics, 2026; European Commission, 2026)

Theoretical Aspects Regarding GDP

1.1. The Concept and Definition of GDP

Gross Domestic Product (GDP) represents the total value of final goods and services produced within a national economy during a certain period of time, usually one year or one quarter, being the main indicator used to measure economic performance. (Bodea, 2022) GDP is considered a synthetic macroeconomic indicator because it concentrates the results of economic activity from all sectors of the economy into a single value. For this reason, it is widely used to evaluate economic performance and to analyze the evolution of the economy over time.

GDP can be analyzed from two main perspectives: nominal GDP and real GDP. Nominal GDP expresses the value of production at current market prices and is influenced by variations in the general price level. In contrast, real GDP eliminates the effect of inflation, providing a clearer image of actual economic growth. The difference between nominal GDP and real GDP is essential in macroeconomic analysis because it highlights real economic growth independently of price changes. Therefore, real GDP is frequently used to analyze economic evolution and to compare economic performance over time.

According to economic literature, GDP is a fundamental indicator for analyzing economic growth and business cycles, being used to identify periods of expansion, stagnation, or recession. Moreover, this indicator serves as the basis for the development of economic policies and strategic decisions at both national and international levels. (Urziceanu, 2022)

However, it is important to mention that although GDP provides a general overview of economic performance, it does not fully reflect the population's level of well-being. For this reason, the use of complementary indicators in economic analysis is necessary.

1.2. Methods of Calculating GDP

In macroeconomic analysis, three main methods are used to calculate Gross Domestic Product (GDP), each of them providing a different perspective on economic activity. Although the approaches are distinct, the final result obtained is the same, which confirms the coherent nature of this indicator. (Bodea, 2022)

1. The first method is the production method, which is based on calculating the gross value added generated by all sectors of the economy. Value added represents the difference between the total value of production and the cost of intermediate goods and services used in the production process. This method highlights the contribution of each economic sector to the formation of GDP.
2. The second method is the income method, which calculates GDP by summing the incomes generated during the production process. The main categories of income include employees' wages, company profits, interest, and rents. This method reflects the way in which the results of economic activity are distributed among the different participants in the economic process.
3. The third method is the expenditure method (and the most frequently used in economic analysis), which is based on analyzing the components of aggregate demand. This method expresses GDP as the sum of expenditures made within the economy, according to the following formula:

GDP = C + I + G + (X - M)

where:

C – final household consumption

I – gross investments

G – government expenditures

X – exports

M – imports

This method is particularly important because it allows the analysis of the structure of the economy and highlights the main sources of economic growth, such as consumption or investments. (Urziceanu, 2022)

The three methods of calculating GDP provide complementary perspectives on economic activity, contributing to a more complex understanding of how value is generated and distributed within the economy.

1.3. The Role of GDP in Macroeconomic Analysis

Gross Domestic Product plays an essential role in macroeconomic analysis, being one of the most widely used indicators for evaluating a country's economic performance. It allows the analysis of the evolution of the economy over time and provides relevant information regarding the dynamics of economic activity. GDP growth generally indicates an expansion of economic activity, reflecting increases in production, investments, and consumption. On the other hand, a decrease in GDP may signal the emergence of economic imbalances or even a recession, highlighting a reduction in economic activity.

Another important role of GDP is that it allows the comparison of the level of economic development between different countries or regions. In this regard, the GDP per capita indicator is frequently used to evaluate the standard of living and to analyze differences in economic development. (Bodea, 2022)

Within the European Union, GDP has particular importance, being used as the main indicator in analyzing the process of economic convergence among member states. Moreover, it serves as the basis for the allocation of European funds, contributing to the reduction of regional disparities and supporting economic development. (European Commission, 2026)

At the same time, GDP is used in the development of economic and fiscal policies, providing authorities with essential information for decision-making regarding macroeconomic stability and sustainable economic growth.

In conclusion, GDP represents a fundamental instrument in macroeconomic analysis, having a central role in evaluating economic performance, comparing levels of development, and supporting economic policies.

1.4. The Limitations of the GDP Indicator

Although Gross Domestic Product represents an essential indicator in economic analysis, it has a number of limitations that must be taken into consideration when interpreting it. First of all, GDP does not reflect income distribution within society. Therefore, an economy may record GDP growth without this necessarily leading to an improvement in the standard of living for all social categories. Economic inequalities are not highlighted by this indicator.

Secondly, GDP does not include informal economic activities or unpaid work, such as household activities or the underground economy. These activities may have a significant contribution to the population's well-being, but they are not reflected in the value of GDP. (Urziceanu, 2022)

Moreover, GDP does not take into account environmental impact. Economic growth may be associated with environmental degradation, yet this aspect is not reflected by the indicator, which can lead to an incomplete image of economic development.

Another important aspect is that GDP does not directly reflect the level of social well-being or quality of life. Indicators such as health, education, or social security are not included in GDP calculations, although they play an essential role in evaluating the development of a society.

For these reasons, the analysis of economic development requires the use of complementary indicators, such as the Human Development Index (HDI) or indicators of economic and social sustainability. (Bodea, 2022)

Although GDP remains a fundamental instrument in macroeconomic analysis, its interpretation must be carried out carefully and in correlation with other indicators that provide a more complete image of economic and social development. In addition, GDP does not fully reflect the underground economy, which may lead to an underestimation of the real size of economic activity.

1.5. Factors Influencing GDP and the Structure of GDP by Economic Sectors

The evolution of Gross Domestic Product is influenced by a series of fundamental economic factors that determine the dynamics of economic activity at the national level. Among the main factors influencing the evolution of Romania's GDP is household consumption, which represents one of the main engines of economic growth. Increasing incomes and improvements in the standard of living contribute to stimulating the demand for goods and services. (European Commission, 2026)

Another important factor is represented by public and private investments, which contribute to infrastructure development, economic modernization, and increased productivity. Investments are essential for ensuring sustainable economic growth in the long term. At the same time, exports play a significant role in Romania's economy, contributing to the development of the industrial sector and to the integration of the national economy into the international economic system.

Fiscal and monetary policies also play an essential role, influencing macroeconomic stability, the inflation rate, and the investment environment. In this context, economic stability represents a determining factor for attracting investments and maintaining economic growth. Furthermore, European funds are of particular importance for Romania's economy, contributing to the financing of infrastructure projects, regional development, and economic modernization. Regarding the structure of GDP, Romania's economy is formed through the contribution of several main economic sectors, namely the services sector, the industrial sector, agriculture, and construction.

The services sector represents the largest share in GDP formation, contributing more than 60% to the national economy. It includes activities such as trade, transport, financial services, telecommunications, and the IT sector. (National Institute of Statistics, 2026). The industrial sector occupies an important position, having a significant contribution to exports and economic development, especially through the manufacturing industry. Agriculture, although it has a smaller share in GDP compared to other sectors, remains important for certain regions and for food security.

The construction sector contributes to infrastructure development and plays an important role in supporting economic growth, especially in the context of public investments and European funds. The evolution of Romania's GDP is the result of the interaction between multiple economic factors and the contribution of different economic sectors, highlighting the complexity of the economic development process.

2 – Analysis of Romania's GDP Evolution During the Period 2024–2026

2.1 GDP Evolution and the Economic Growth Rate

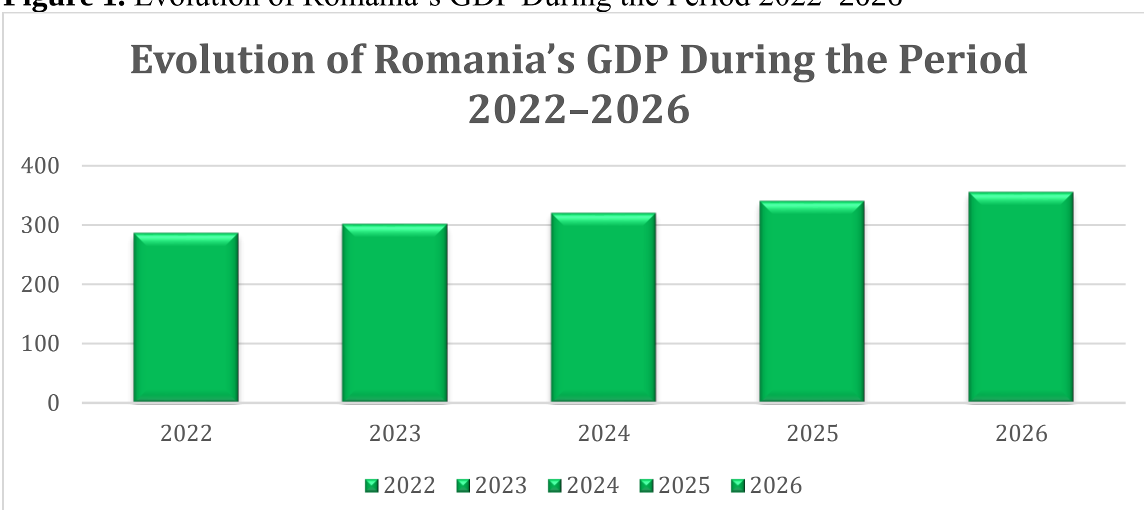
In order to better understand the dynamics of the Romanian economy, it is necessary to analyze the evolution of Gross Domestic Product in recent years, as well as the available data for the period 2022–2025 and the forecasts for 2026. This analysis makes it possible to highlight economic growth trends and the factors influencing the evolution of the economy.

Table 1. Evolution of GDP and Economic Growth Rate in Romania

Year	GDP (approximately)	Economic Growth Rate
2022	~286 billion euros	~4.1%
2023	~301 billion euros	~2.1%
2024	~320 billion euros	~2.5–2.8%
2025	~340 billion euros (provisional data)	~0.6–0.7%
2026*	~355 billion euros (forecast)	~3–3.5%

* Forecasts provided by European and national economic institutions were used.
(National Institute of Statistics, 2026; European Commission, 2026)

Figure 1. Evolution of Romania's GDP During the Period 2022–2026



Source: National Institute of Statistics (INS), own processing based on available data.

The graph highlights the upward trend of Romania's GDP, as well as the slowdown in the growth rate in 2025, followed by a possible recovery in 2026.

The analysis of the data shows that Romania's economy recorded a general growth trend during the analyzed period; however, the pace of economic growth experienced significant fluctuations. Thus, after a relatively high economic growth rate of approximately 4.1% in 2022, the growth rate slowed down in 2023 due to the unfavorable European economic context and inflationary pressures. In 2024, the economy continued to grow, but at a moderate pace, estimated at around 2.5–2.8%.

For the period 2025–2026, the data indicate a significant slowdown in the economic growth rate in 2025, followed by a possible recovery in 2026, supported by public investments and European funds.

The evolution of GDP also reflects the influence of important economic factors such as the level of domestic consumption, investments, the international economic context, and the economic policies implemented at the national level.

Romania's economy is characterized by positive but moderate economic growth, highlighting both the development potential of the economy and its vulnerabilities to external and internal factors.

2.2. GDP Evolution in 2024

In 2024, Romania's economy recorded moderate economic growth in the context of a European economic environment characterized by uncertainty, persistent inflation, and the slowdown of economic activity in several European Union member states.

According to data published by the National Institute of Statistics, Romania's Gross Domestic Product was estimated at approximately 1,766 billion lei at current prices, reflecting economic growth of approximately 2.5–2.8% in real terms compared to the previous year. This evolution indicates the continuation of the economic growth trend, although at a slower pace compared to previous years. (National Institute of Statistics, 2026)

GDP growth in 2024 was mainly supported by domestic consumption, which remains the main engine of the Romanian economy. The increase in population income, the rise in the minimum wage, and salary adjustments in the public sector contributed to maintaining a high level of consumption.

Another important factor supporting economic growth was represented by public investments, especially those financed through European funds, including the National Recovery and Resilience Plan (PNRR). These investments had a significant impact on infrastructure development and on activity within the construction sector.

From a structural perspective, the services sector continued to have the largest contribution to GDP formation, followed by industry and construction. Within the services sector, the field of information and communication technology recorded a positive evolution, contributing to the growth of service exports and to the modernization of the economy.

However, Romania's economy was also influenced by negative factors. Among these were the high inflation rate, which affected the purchasing power of the population, as well as the slowdown of the European economy, which reduced external demand for Romanian exports.

At the same time, macroeconomic imbalances such as the budget deficit and the current account deficit represented challenges for economic stability.

In conclusion, the year 2024 was characterized by positive but moderate economic growth, with Romania's economy demonstrating resilience in the face of a difficult economic context. This evolution confirms that the economy is on an upward trend; however, maintaining a sustainable growth rate depends on the continuation of investments and macroeconomic stability.

In the European context, Romania's economic evolution in 2024 can also be analyzed by comparison with the European Union average. According to estimates by the European Commission, the European Union economy recorded modest economic growth in 2024, estimated at approximately 1%. (European Commission, 2026)

Compared to this value, Romania recorded a higher economic growth rate of approximately 2.5–2.8%, indicating relatively good economic performance at the regional level. This difference reflects the growth potential of the Romanian economy, which is specific to economies undergoing a convergence process.

However, regarding the level of economic development measured by GDP per capita, Romania remains below the European Union average, highlighting the existence of significant economic disparities. Therefore, although the growth rate is higher, the absolute level of economic development is still lower compared to the developed states of the European Union.

2.3. GDP Evolution in 2025

In 2025, Romania's economy recorded a modest evolution within an economic context characterized by uncertainties at the European level and the persistence of macroeconomic imbalances. According to the available data, the economic growth rate was estimated at approximately 0.6–0.7% in real terms, indicating a significant slowdown in the growth rate compared to 2024. (European Commission, 2026)

This evolution reflects the impact of several internal and external factors on the national economy. Externally, the slowdown of the European Union economy affected the demand for Romanian exports, especially in the industrial sector, which contributed to the reduction of the economic growth rate. The relatively high dependence on external markets amplified these effects.

Domestically, household consumption continued to represent an important engine of the economy; however, its growth was limited by the effects of inflation from previous years and by the slower increase in incomes. At the same time, investments, although partially supported by European funds, did not have a sufficiently strong impact to compensate for the slowdown in economic activity.

Another relevant factor was represented by macroeconomic imbalances, such as the high budget deficit and the current account deficit, which negatively influenced economic stability and limited short-term growth potential.

In this context, the economic evolution in 2025 highlights the structural vulnerabilities of Romania's economy, such as dependence on consumption and external demand. At the same time, this period underlines the necessity of strengthening investments and implementing economic policies aimed at supporting sustainable economic growth.

In conclusion, the year 2025 was characterized by reduced economic growth, reflecting both the negative influences of the external economic environment and the internal limitations of the economy. This highlights the importance of adopting appropriate economic measures in order to relaunch economic growth. This evolution confirms that Romania's economy remains sensitive to external shocks and emphasizes the need to reduce dependence on consumption as the main engine of economic growth.

2.4. GDP Evolution and Economic Perspectives in 2026

For the year 2026, economic forecasts indicate the continuation of economic growth in Romania, although at a more moderate pace compared to previous years. According to the estimates of European institutions, GDP growth is expected to be around 0.6–0.7% in real terms, reflecting a trend toward economic stabilization. (European Commission, 2026)

However, the beginning of 2026 was marked by certain negative short-term developments. Economic data indicate that in the first quarter of 2026, GDP recorded a slight decrease compared to the previous quarter, which generated concerns regarding the evolution of the economy. This decrease does not necessarily indicate an annual economic contraction, but rather reflects conjunctural factors such as:

- the slowdown of economic activity at the European level;
- the reduction of external demand for Romanian exports;
- the delayed effects of inflation on consumption;
- adjustments in public and private investments.

At the same time, macroeconomic imbalances such as the budget deficit and the current account deficit continued to place pressure on the economy, influencing the pace of economic growth. Nevertheless, in the medium term, Romania's economy maintains its growth potential, supported by infrastructure investments, European funds, and the development of the services sector, especially the IT field.

In the European context, the European Union economy is estimated to record modest growth of approximately 1–1.5% in 2026, which keeps Romania in a favorable position in terms of economic growth rate. Therefore, even if short-term fluctuations occur, such as the decrease in GDP during the first quarter, the general trend of the Romanian economy remains positive. (European Commission, 2026)

In conclusion, the year 2026 is characterized by moderate economic growth influenced by both internal and external factors, as well as by the existence of short-term economic risks. The evolution of the Romanian economy highlights the necessity of maintaining macroeconomic stability and continuing investments in order to support sustainable economic growth. In the medium term, the recovery of economic growth depends on the economy's capacity to capitalize on investments and maintain macroeconomic stability.

4. Conclusions and Proposals

The analysis of the evolution of Romania's Gross Domestic Product during the period 2024–2026 highlights the fact that the national economy recorded positive growth, although characterized by significant fluctuations in the economic growth rate.

Thus, the year 2024 was marked by moderate economic growth, mainly supported by domestic consumption and public investments, while the year 2025 highlighted a significant slowdown in the growth rate due to the European economic context and macroeconomic imbalances. In 2026, forecasts indicate a possible recovery of economic growth supported by investments and the use of European funds. (National Institute of Statistics, 2026)

The analysis also highlighted the fact that Romania's economy is strongly influenced by factors such as household consumption, investments, exports, and economic policies, as well as by the international economic context. At the same time, the structure of GDP, dominated by the services sector, reflects the process of modernization and transformation of the Romanian economy.

Compared to the European Union average, Romania records a higher economic growth rate; however, the level of economic development, expressed through GDP per capita, remains below the European average, highlighting the existence of economic disparities.

In order to ensure sustainable economic growth and reduce the gaps compared to the European Union, the following measures may be proposed:

- stimulating private investments and attracting foreign direct investments;
- developing infrastructure, especially in the fields of transport and energy;
- efficiently using European funds for the modernization of the economy;
- supporting the productive sector and increasing the competitiveness of the economy;
- developing human capital through investments in education and professional training;
- maintaining macroeconomic stability through balanced fiscal and monetary policies;
- ensuring political stability and a predictable legislative environment that contributes to increasing investor confidence and supporting long-term economic development.

In conclusion, Romania's economy is undergoing a process of economic convergence characterized by significant growth potential, but also by the necessity of managing macroeconomic imbalances in order to ensure long-term stability and development.

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THE EVOLUTION OF UNEMPLOYMENT IN ROMANIA DURING THE 2024–2026 PERIOD

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Abstract: *The study of unemployment is of particular importance because this phenomenon affects both economic and social life. In this regard, analysing unemployment contributes to a better understanding of labour market mechanisms and of the way in which the economy responds to internal and external changes. This paper aims to analyse unemployment from both theoretical and practical perspectives. The first chapter presents the main theoretical aspects of unemployment, namely its concept, characteristics, causes, classification, effects, and measures aimed at reducing it.*
Keywords: *unemployment, labour, market, Romania.*

Introduction

Unemployment is an economic and social phenomenon specific to market economies, reflecting the imbalances that exist between the supply and demand of labour. It constitutes an important indicator of labour market performance and the level of economic development, being closely linked to the dynamics of economic activity and the structural transformations taking place within society.

The second chapter is dedicated to analysing the evolution of unemployment in Romania during the period 2024–2026, based on the available statistical data, with the objective of highlighting the main trends and changes recorded during this period.

Through this paper, the importance of unemployment as an economic and social phenomenon is emphasised, as well as the necessity of continuously analysing it within the context of the contemporary economy.

1. Theoretical Aspects of Unemployment

1.1. The Concept of Unemployment

Unemployment is a complex economic and social phenomenon specific to market economies, reflecting the existence of imbalances within the labour market. It occurs when the supply of labour exceeds the demand for labour generated by economic agents, leading to the inability of a segment of the active population to engage in productive activities (Bodea, 2022, p. 110).

Employment and unemployment represent two opposing states of the labour market, determined by the relationship between labour demand and labour supply. Thus, when the economy fails to provide a sufficient number of jobs for the active population, unemployment emerges, reflecting a significant macroeconomic imbalance (Turcu, 2006, pp. 82–83).

Unemployment should not be analysed solely as the absence of a job, but also as an expression of the way in which the labour market functions within an economy. From this perspective, it highlights the interdependence between economic and social processes and indicates the extent to which the economy is capable of integrating the available labour resources (https://store.ectap.ro/articole/894_ro.pdf, accessed on 25.03.2026).

Furthermore, unemployment may be interpreted as a form of underutilisation of available labour resources, generating significant economic losses and negatively affecting the population's standard of living. In this sense, unemployment has both economic and social implications.

The most widely used definition of unemployment is that developed by the International Labour Organization (ILO), according to which an unemployed person is an individual aged over 15 years who does not have a job, is capable of working, is available for work, and is actively seeking employment (https://stec.univ-ovidius.ro/wp-content/uploads/2017/07/3.OCUPAREA-SI-SOMAJUL.pdf, accessed on 25.03.2026).

In Romania, according to Law No. 76/2002 on the unemployment insurance system and employment stimulation, an unemployed person is defined as an individual who cumulatively meets several conditions, including: being in search of employment, being at least 16 years old and not yet meeting the retirement requirements, being fit for work, not having a job, earning no income or earning income below the level of the Social Reference Indicator, and being available to start work within a short period of time. This definition has a legal character and forms the basis for the official registration of unemployed persons in Romania.

From a macroeconomic perspective, unemployment represents a surplus of active population relative to the economy's capacity to integrate individuals into productive activities, thus constituting an important indicator of labour market performance and overall economic efficiency (https://www.revistadestatistica.ro/wp-content/uploads/2014/02/rrs_06_2013_a3ro.pdf, accessed on 25.03.2026).

Therefore, unemployment constitutes an essential indicator of labour market functioning and economic performance.

1.2. Characteristics of Unemployment

Unemployment, as an economic and social phenomenon, has a series of characteristics that allow it to be analysed from multiple perspectives, namely its level, intensity, duration, and structure. These characteristics provide an overall picture of the magnitude and complexity of unemployment within an economy and contribute to the development and implementation of labour market policies.

The level of unemployment represents one of its most important characteristics and is expressed both in absolute terms, through the total number of unemployed persons, and in relative terms, through the unemployment rate. The unemployment rate is calculated as the percentage ratio between the number of unemployed persons and the active population and constitutes an important indicator for assessing labour market conditions (Bodea, 2022, p. 111).

An important concept associated with the level of unemployment is that of full employment, which does not imply the complete absence of unemployment but rather the existence of a level considered normal, known as the natural rate of unemployment. In market economies, the natural unemployment rate is generally estimated to range between 3% and 5% of the active population.

Based on the concept of natural (equilibrium) unemployment, different labour market situations can be identified. Underemployment occurs when the actual unemployment rate exceeds the natural unemployment rate, indicating the existence of an imbalance and a surplus of unused labour resources. Conversely, overemployment occurs when the actual unemployment rate falls below the natural unemployment rate, a less common situation in practice, characterised by a high degree of labour resource utilisation. Therefore, the concepts of full employment, underemployment, and overemployment facilitate the analysis of labour market conditions at a given point in time (Urziceanu, 2022, p. 133).

Another important characteristic of unemployment is its intensity, which reflects the extent to which individuals are affected by job loss or by a reduction in work activity. From this perspective, several forms of unemployment can be identified, including total unemployment, which involves the complete cessation of work activity; partial unemployment, characterised by a reduction in working hours and income; and disguised unemployment, encountered particularly in less developed economies, where employment is apparent and productivity remains low. Thus, the intensity of unemployment highlights the degree to which labour resources are utilised or, conversely, underutilised within an economy.

The duration of unemployment refers to the period during which an individual remains unemployed, from the moment of job loss or reduction in work activity until re-employment under normal conditions. This period varies from one individual to another depending on employment opportunities and prevailing economic conditions. In order to analyse the phenomenon at a broader level, the average duration of unemployment is often used, providing an indication of the difficulty of finding employment during a given period.

The structure of unemployment refers to the categories of population affected by this phenomenon and enables its analysis according to various indicators such as age, gender, qualification level, occupation, or field of activity. This characteristic demonstrates that unemployment does not affect all social groups equally but manifests differently depending on labour market conditions and the economic and social particularities of a given country.

In this regard, analysing the structure of unemployment makes it possible to identify the most vulnerable population groups. Statistical data indicate that women are generally more affected by unemployment than men, while, in terms of age, young people—particularly those under the age of 25—and individuals over the age of 50 face greater difficulties in integrating into the labour market (https://stec.univ-ovidius.ro/wp-content/uploads/2017/07/3.OCUPAREA-SI-SOMAJUL.pdf, accessed on 25.03.2026).

Therefore, analysing the structure of unemployment represents a fundamental tool for designing employment policies tailored to the specific characteristics of the labour market.

1.3. Causes of Unemployment

The emergence of unemployment is determined by a series of economic and social factors that influence the balance between labour demand and labour supply, as well as the economy's capacity to provide employment opportunities for the active population (Bodea, 2022, p. 110).

In practice, unemployment frequently occurs during periods of economic stagnation or recession, when business activity declines, leading to workforce reductions. In this context, cyclical unemployment emerges as a consequence of fluctuations in economic activity.

Another important cause of unemployment is technological progress, which brings about significant changes in production processes. The introduction of new technologies and the automation of activities reduce the demand for labour in certain sectors, generating technological unemployment. This type of unemployment particularly affects individuals with low levels of qualification or with skills that no longer correspond to the current requirements of the labour market (Bodea, 2022, p. 113).

Structural changes within the economy may also lead to structural unemployment, which is caused by a mismatch between the professional qualifications of the labour force and the requirements of the labour market. This type of unemployment is especially common during periods of economic restructuring or the development of new sectors of activity, when certain skills become obsolete while others are increasingly demanded.

In addition, the process of searching for employment gives rise to frictional unemployment, which is considered inevitable in a dynamic economy. It occurs during transition periods between jobs or when individuals are seeking their first employment opportunity, resulting from the time required to find a suitable position.

The seasonal nature of certain economic activities leads to seasonal unemployment, which is characteristic of sectors in which activity is not carried out throughout the entire year, such as agriculture, construction, and tourism. In such cases, labour is employed only during specific periods, while workers may become unemployed during the remainder of the year.

Depending on individuals' behaviour and labour market conditions, a distinction can be made between voluntary and involuntary unemployment. Voluntary unemployment occurs when individuals refuse to accept available jobs under existing conditions, whereas involuntary unemployment refers to situations in which individuals are willing to work but are unable to find available employment opportunities.

1.4. Classification of Unemployment

Unemployment can be classified according to several criteria, highlighting both the complexity of this phenomenon and the diversity of its forms of manifestation. Such a classification is useful because it facilitates a clearer understanding of unemployment and contributes to the identification of appropriate labour market intervention measures.

A first classification criterion is based on the theoretical approaches developed by economists who have analysed unemployment. From this perspective, a distinction can be made between classical unemployment, explained by labour market imbalances and high wage levels, and Keynesian unemployment, associated with insufficient labour demand resulting from weak demand for goods and services.

Another important criterion concerns the causes of unemployment. According to this criterion, unemployment may be involuntary, when individuals are willing to work but cannot find employment, or voluntary, when they refuse to work under existing conditions. This category also includes frictional unemployment, which is characteristic of transition periods between jobs; exclusion unemployment, which affects disadvantaged groups; and structural unemployment, caused by discrepancies between the existing socio-professional structure and the needs of the economy.

Based on recurrence, unemployment may be classified as repetitive, in the case of individuals who experience multiple episodes of job loss, or singular, when it occurs as an isolated event. This criterion highlights the frequency with which individuals encounter unemployment.

Depending on the degree of underutilisation of working time and labour capacity, a distinction can be made between complete unemployment, where work activity ceases entirely, and partial unemployment, where individuals continue to work only part of the normal working schedule. This classification reflects the intensity with which professional activity is affected.

According to the seasonal nature of work, unemployment may be classified as typical unemployment and seasonal unemployment. Seasonal unemployment is characteristic of activities that depend on particular periods of the year, such as construction and tourism, and is generally temporary in nature.

Another classification criterion is based on economic fluctuations. From this perspective, Bodea distinguishes between cyclical unemployment, also referred to as conjunctural unemployment, and chronic unemployment, which becomes a persistent and difficult-to-eliminate feature of the economy.

Furthermore, according to factors related to the production process, a distinction can be made between technical unemployment, caused by interruptions or difficulties in production activities, and technological unemployment, generated by the introduction of new equipment and technologies.

Finally, based on the authenticity of the unemployment situation, a distinction can be drawn between genuine unemployment and false unemployment. The former refers to actual situations in which individuals lack employment, whereas the latter concerns individuals who seek to benefit from social protection measures without genuinely being unemployed (Bodea, 2022, pp. 111–113).

1.5. Effects of Unemployment

Unemployment has significant effects on both the economy and society, influencing the population's standard of living and overall economic stability. Its impact is felt at the individual, social, and macroeconomic levels, making it one of the most important challenges faced by contemporary economies.

From an economic perspective, unemployment leads to a reduction in national output and income because a portion of the available labour force remains unused. Under such circumstances, human resources are wasted, and a country's economic potential is not fully utilised. Moreover, unemployment results in lower public revenues due to decreased tax collections and social security contributions, while simultaneously increasing public expenditure through unemployment benefits and other forms of social assistance.

At the individual level, job loss has direct consequences for the financial situation of affected persons, leading to reduced income and a decline in living standards. At the same time, unemployment may have negative psychological effects, generating stress, anxiety, and a loss of self-confidence. In the long term, unemployed individuals may experience a deterioration of their professional skills, which reduces their chances of successful reintegration into the labour market.

From a social perspective, unemployment contributes to increasing inequality and heightens the risk of poverty and social exclusion. Particularly among young people and vulnerable groups, the lack of employment opportunities may lead to marginalisation and difficulties in achieving social integration. Furthermore, high levels of unemployment can generate social tensions and instability.

In conclusion, the effects of unemployment are multiple and interconnected, affecting both the economy and society as a whole. For this reason, reducing unemployment remains an important objective of economic and social policies, requiring the implementation of effective measures aimed at promoting employment and labour market participation.

1.6. Measures for Reducing Unemployment

Reducing unemployment represents an important objective of economic and social policy, requiring the implementation of measures aimed at increasing employment levels and promoting a balanced labour market.

Measures designed to reduce unemployment can be broadly divided into two main categories: active measures and passive measures.

Active measures are intended to facilitate the integration or reintegration of individuals into the labour market. These include vocational training and retraining programmes, support for entrepreneurship, incentives for employers through subsidies, and the creation of new employment opportunities. Their primary purpose is to enhance employability and to ensure that the labour force is better aligned with the evolving requirements of the economy.

Passive measures are designed to protect individuals affected by unemployment by providing them with a minimum income during periods in which they are without work. These measures include unemployment benefits and other forms of social assistance, thereby helping to maintain a minimum standard of living.

In conclusion, reducing unemployment requires a combined use of both active and passive measures in order to ensure not only social protection for unemployed individuals but also their effective reintegration into the labour market. The effectiveness of these measures depends on their alignment with existing economic and social realities.

2. Study on the Evolution of Unemployment in Romania during the Period 2024–2026

2.1. The Evolution of Unemployment In 2024

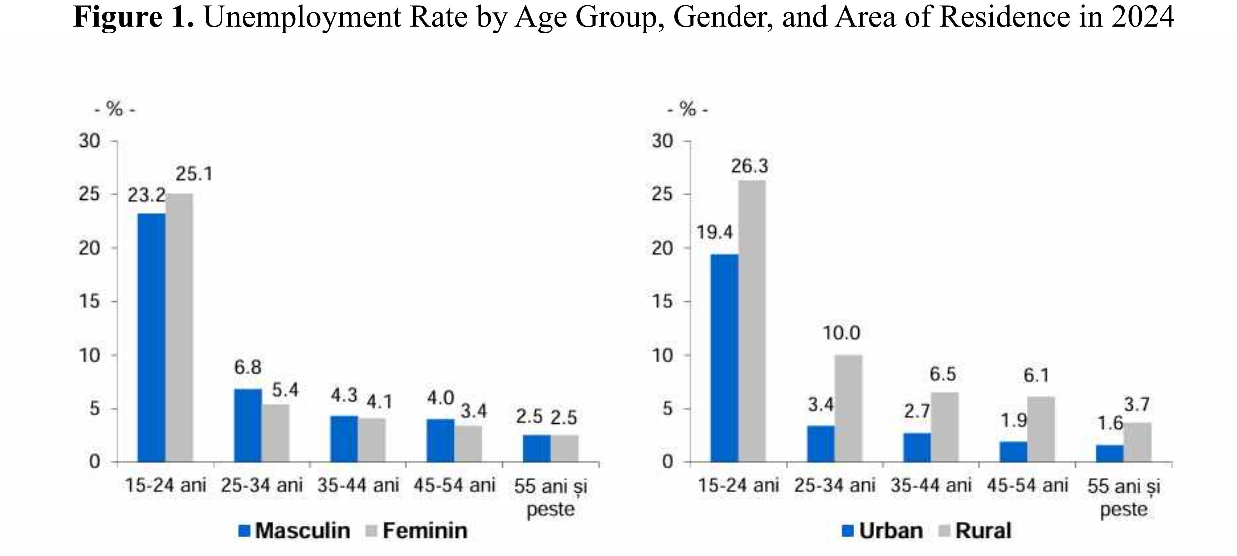
In 2024, the evolution of unemployment in Romania was characterised by a relatively stable level, with the unemployment rate standing at approximately 5.4%, according to data provided by the National Institute of Statistics.

This figure indicates a slight improvement compared to the previous year, reflecting a favourable development of the labour market and an increase in the employment rate. Although monthly fluctuations in the unemployment rate were recorded throughout the year, these variations were not significant, remaining within the range of approximately 5% to 6%.

The analysis of the data highlights that unemployment does not affect all population groups equally. Young people aged between 15 and 24 recorded the highest unemployment rates, exceeding 20%, which indicates significant difficulties in entering the labour market.

Furthermore, notable differences can also be observed between urban and rural areas, as well as across educational levels, with individuals possessing lower levels of qualification being more exposed to the risk of unemployment.

Figure 1. Unemployment Rate by Age Group, Gender, and Area of Residence in 2024



(Source: https://insse.ro/cms/sites/default/files/com_presa/com_pdf/somaj_2024r.pdf)

In conclusion, the year 2024 was characterized by a relatively stable evolution of unemployment, with a moderate unemployment rate and no major fluctuations, indicating a balanced functioning of the Romanian labour market.

2.2. The Evolution of Unemployment in 2025

In 2025, the evolution of unemployment in Romania revealed a slight upward trend compared to the previous year, although remaining within moderate limits and without indicating major imbalances in the labour market. According to data published by the National Institute of Statistics, the unemployment rate averaged approximately 5.7%–5.8%, displaying a gradual increase throughout the year.

At the beginning of the year, the unemployment rate stood at approximately 5.6%. However, over the following months, it recorded slight increases, reaching around 5.8% during the period from May to July and approximately 5.9%–6% between August and December. This development suggests a slight deterioration in labour market conditions as a result of slower economic growth and ongoing structural adjustment processes.

Figure 2. Unemployment Rate by Age Group Gender in 2025

	2024	2025											
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.[P]	Nov.[P]	Dec.[P]
Total													
15-74 years	5,7	5,9	6,0	6,0	6,0	6,1	6,0	6,0	6,1	6,1	5,9	6,0	6,0
15-24 years	26,3	24,8	24,8	24,8	23,5	23,5	23,5	26,9	26,9	26,9	...	...	...
25-74 years	4,3	4,7	4,8	4,9	4,8	4,9	4,9	4,7	4,8	4,7	4,6	4,7	4,6
Male													
15-74 years	5,9	5,9	5,9	5,9	6,0	6,0	6,0	6,2	6,4	6,3	6,0	6,1	5,9
15-24 years	26,3	22,2	22,2	22,2	22,4	22,4	22,4	27,2	27,2	27,2	...	...	...
25-74 years	4,4	4,8	4,8	4,8	4,8	4,9	4,9	4,8	4,9	4,8	4,7	4,8	4,6
Female													
15-74 years	5,3	5,9	6,1	6,2	6,0	6,2	6,0	5,6	5,8	5,8	5,8	5,9	6,1
15-24 years	26,3	28,7	28,7	28,7	25,0	25,0	25,0	26,3	26,3	26,3	...	...	...
25-74 years	4,1	4,6	4,7	4,9	4,8	4,9	4,9	4,6	4,5	4,4	4,5	4,6	4,5

(Source: https://insse.ro/cms/sites/default/files/com_presa/com_pdf/somaj_bim_decembrie25r.pdf)

Nevertheless, unemployment remained within a moderate range, suggesting that the Romanian economy continued to absorb a large share of the available labour force. Furthermore, the structure of unemployment indicates that certain population groups, particularly young people, remained more vulnerable, recording unemployment rates significantly higher than the overall average.

In addition, it should be noted that the unemployment rate calculated by the National Institute of Statistics is higher than the rate reported by the National Agency for Employment because it includes all individuals seeking employment, not only those officially registered as unemployed.

In conclusion, 2025 was characterised by a slight increase in unemployment compared to 2024, but without significant fluctuations, indicating the maintenance of a relatively balanced labour market.

2.3. The Evolution of Unemployment in 2026

In 2026, the evolution of unemployment in Romania indicates the continuation of a relatively stable trend, with values similar to those recorded during the previous year. According to the data available at the beginning of 2026, specifically for January, the unemployment rate stood at 6%, reflecting a slight increase compared to 2024 but a stabilisation relative to the developments observed in 2025 (https://insse.ro/cms/sites/default/files/com_presa/com_pdf/somaj_bim_ianuarie26r.pdf).

This evolution reflects the fact that the Romanian labour market is experiencing a period of relative equilibrium, characterised by moderate fluctuations in unemployment. Although the unemployment rate remains slightly higher than in previous years, it does not signal a significant deterioration in economic conditions but rather an adjustment to the prevailing economic environment.

In conclusion, the data available for the beginning of 2026 indicate a relatively stable evolution of unemployment, with the rate remaining around 6%, reflecting the overall stability of the Romanian labour market.

2.4. Comparative Analysis and Trends

An analysis of unemployment trends in Romania during the period 2024–2026 reveals a relatively stable evolution of this phenomenon, characterised by moderate variations and the absence of major fluctuations.

In 2024, the unemployment rate stood at approximately 5.4%, reflecting a balanced labour market situation. In 2025, a slight increase was recorded, with the unemployment rate reaching approximately 5.7%–5.8%, mainly as a result of factors such as slower economic growth and structural adjustments within the labour market. At the beginning of 2026, the available data indicate a stabilisation of unemployment at around 6%, maintaining the moderate upward trend observed during the previous year.

Comparatively, it can be observed that the analysed period was not characterised by abrupt changes but rather by a gradual evolution, with unemployment increasing slightly from one year to another without reaching high levels. This development indicates that the Romanian labour market has remained relatively stable and has continued to demonstrate its capacity to absorb a large share of the available labour force.

At the same time, the analysis highlights the persistence of certain structural imbalances, particularly regarding the integration of specific population groups into the labour market, as reflected by the high unemployment rates among young people. This situation underscores the need for active employment policies focused on skills development and facilitating access to employment opportunities.

Overall, the general trend of unemployment during the period 2024–2026 can be described as one of moderate growth followed by stabilisation, indicating the labour market's adaptation to current economic conditions. Therefore, although unemployment does not currently represent a major concern, its evolution should continue to be closely monitored, and effective employment policies should be implemented accordingly.

Conclusions

From a theoretical perspective, unemployment is a complex economic and social phenomenon that reflects existing imbalances within the labour market and the economy's ability to integrate the active population into productive activities. The theoretical analysis conducted in this paper highlights the fact that unemployment cannot be reduced merely to the absence of a job but should be understood as an important indicator of labour market performance and overall economic development.

Unemployment can be examined through its concept, characteristics, causes, classifications, effects, and measures aimed at reducing it. The analysis of these dimensions demonstrates that the phenomenon manifests itself in various forms and is influenced by economic, social, technological, and structural factors. At the same time, its effects extend to the economy, individuals, and society as a whole through reduced income, increased inequality, and a higher risk of social exclusion.

The analysis of unemployment trends in Romania during the period 2024–2026 reveals a general pattern of relative stability, accompanied by a slight increase from 5.4% in 2024 to approximately 5.7%–5.8% in 2025, followed by its maintenance at around 6% at the beginning of 2026. This evolution indicates that the Romanian labour market has remained relatively balanced, without major fluctuations, although certain structural imbalances continue to persist.

Furthermore, the findings of the analysis indicate that unemployment affects population groups differently, with young people representing one of the most vulnerable categories. This aspect highlights the need for tailored policies aimed at facilitating labour market integration and reducing the risk of social exclusion.

Recommendations

In order to reduce unemployment and improve the functioning of the Romanian labour market, the following measures may be considered:

- developing vocational training and retraining programmes in accordance with current labour market requirements;
- supporting young people in their transition into employment through internships, work placement programmes, and career counselling services;
- encouraging employers through subsidies and incentives designed to promote the creation of new jobs;
- supporting entrepreneurship and local economic initiatives, particularly in areas with limited employment opportunities;
- improving the alignment between the education system and the actual needs of the labour market in order to reduce skill mismatches and labour market disparities;
- continuously monitoring unemployment trends and adapting public policies in response to economic and social developments.

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