

№ 39

2026

სექტემბერი
SEPTEMBER

სამართალი და მსოფლიო

ევროპის უნივერსიტეტის
სამართლის ინსტიტუტის
საერთაშორისო სამეცნიერო
რეზერირებადი ჟურნალი

LAW AND WORLD

INTERNATIONAL SCIENTIFIC
PEER-REVIEWED JOURNAL
OF THE EUROPEAN UNIVERSITY
INSTITUTE OF LAW

სამართალი და მსოფლიო – თქვენი გზამკვლევი სამართლის სამყაროში

LAW AND WORLD – Your Guide in Legal World

თბილისი
Tbilisi

www.lawandworld.ge

ჟურნალის საერთაშორისო აღიარება
International Recognition of Journal



გამოქვეყნებული სტატიის სიზუსტეზე პასუხისმგებელია ავტორი. მისი პოზიცია შეიძლება არ ემთხვეოდეს ჟურნალის სარედაქციო კოლეგიის შეხედულებებს.

ჟურნალი ფლობს საერთაშორისო ლიცენზიას CC BY-SA.

The authors of the articles published in this journal are each solely responsible for the accuracy of their respective articles. Their respective views do not necessarily coincide with the views of the Editorial Board.

The journal holds International license: CC BY-SA.

მთავარი რედაქტორი:
მმართველი რედაქტორი:
ინგლისური ტექსტის კორექტორი:
დაკაბადონება:

იოსებ კელენჯერიძე
სესილი შუთელია
კახა გოშაძე
თამარ ჭავჭავაძე

Chief Editor:
Managing Editor:
Proof-reader of English text:
Imposer:

IOSEB KELENJERIDZE
SESILI KUTELIA
KAKHA GOSHADZE
TAMAR QAVZHARADZE

გამომცემლობა „დანი“
Publishing „Dani“
ISSN 2346-7916

ჟურნალის ელექტრონული ვერსია შეგიძლიათ იხილოთ ჟურნალის ვებგვერდზე:
The online version of the journal is available on the website:



www.lawandworld.ge
E-mail: info@lawandworld.ge

EDITORIAL BOARD

EDITOR IN CHIEF

Ioseb Kelenjeridze – Doctor of International Law. Professor of European University, Director of the Institute of Law (Georgia)

Rostane Mehdi – Professor at the Faculty of Law and Political Science of the University of Aix-Marseille, Director of Sciences Po Aix (France)

Fabrice Picod – Professor, Panthéon Assas University (Paris II). Responsible for the Master 2 (European Union Law). Director of the “European Union Law” collection. Honorary President of the Association for European Studies (France)

Martin Collet – Professor of Law at Université Panthéon-Assas (Paris II) (France)

Anne Hamonic – Professor of the University of Rennes (1) (France)

Matthieu Meerpoel – Associate Professor in public Law at the Law Faculty of the Catholic University of Lille (France)

Otmar Seul – Professor Emeritus at the University of Paris Nanterre, French-German-European Studies in Law ; Founder of “Summer Universities” in law after the Eastern Enlargement of the EU; Doctor honoris causa of the Universities of Potsdam GER and Vilnius LIT (France)

Francesco Longubocco – Associate Professor of Private Law – MIUR qualification as Full Professor, Lawyer at the Higher Magistrates Department of Economics, Roma Tre University Erasmus Academic Coordinator (Italy)

Karol Karski – Ph.D. (Law), Dr. Hab. Iur., Professor of the University of Warsaw and the Head of the Department of Public International Law at the Faculty of Law and Administration, Doctor honoris causa of the European University in Tbilisi (Poland)

Abdelghani Benaired – Doctor of Law, Lawyer approved by the Supreme Court and the Council of State Approved Industrial Property attorney with IN-API Doctor of Laws – Aix-Marseille University (Algeria)

Eva Gotsiridze – Doctor of Law, Judge of the Constitutional Court of Georgia, Professor at St. Andrew the First-Called Georgian University. (Georgia)

Levan Jakeli – Doctor of International Law, the dean of Law and Social faculty at Batumi Shota Rustaveli State University, Professor (Georgia)

Gerhard Lingelbach – Professor, Doctor of Laws at Friedrich Schiller University Jena (Germany)

Patrick C. R. Terry – Ph.D. in international law, Professor of Law at the University of Public Administration Kehl, Dean of the Faculty of Law at Kehl University (Germany)

Patricia G. Benavides Velasco – Associate Professor of commercial Law at the University of Malaga

(Spain)

Josep Maria de Dios Marcer – Professor of Private International Law at the Autonomous University of Barcelona (Spain)

Robert Trachman – Professor, Doctor of Law, Attorney (USA)

William J. Watkins – Acting prosecutor of South Carolina (representative at the Appeal Court). Researcher of the independent Institute of Oakland (USA, California) (USA)

Manuela Tabaras – Associate Professor, Dean, Faculty of Law. Titu Maiorescu University of Bucharest (Romania)

Manuela Sirbu – PhD in Law, University lecturer, Faculty of Law, Titu Maiorescu University, Bucharest (Romania)

Aziz Tuffi Saliba – Professor of Public Law, Federal University of Minas Gerais (UFMG), President of the Brazilian Branch of the International Law Association. Member of the Hispanic-Luso-American Institute of International Law (Brazil)

Vitalii Demianchuk – PhD in Law, Professor. Rector, Academician Stepan Demianchuk International University of Economics and Humanities (IUEH) (Ukraine)

Merab Turava – Doctor of Law, Professor of Grigol Robakidze University. President of the Constitutional Court of Georgia (Georgia)

Roin Migriauli – Associate Professor of Iv. Javakishvili Tbilisi State University, Member of LEPL Georgian Bar Association, Advocate (Georgia)

George Khatidze – Doctor of Law, Professor, Dean of the Faculty of Law at the Caucasus International University (Georgia)

Kakha Goshadze – Doctor of Law, Associated professor of European University (Georgia)

Mamuka Shengelia – Academic Doctor of Law, Head of the Department of Law, Faculty of Business, Law and Social Sciences, Akaki Tsereteli State University, Professor (Georgia)

Giorgi Amiranashvili – Doctor of Law, Associate Professor at Guram Tavartkiladze Tbilisi Teaching University and Assistant Professor at Tbilisi Open University (Georgia)

Vanya Panteleeva – Doctor of Law, Associate Professor at the University of Ruse. Law Faculty, Department of Public Law (Bulgaria)

Archil Chochia – PhD, Senior Researcher, Department of Law, Tallinn University of Technology (Estonia)

Marieta Safta – Professor, Faculty of Law, Vice President of the Senate at Titu Maiorescu University (Romania)

Raimundas Jurka – Professor at Mykolas Romeris University, Law School (Lithuania)

მთავარი რედაქტორი

იოსებ კელენჯერიძე – საერთაშორისო სამართლის დოქტორი. ევროპის უნივერსიტეტის პროფესორი, სამართლის ინსტიტუტის დირექტორი (საქართველო)

როსტან მეჭიძე – ექს-მარსელის უნივერსიტეტის იურიდიული და პოლიტიკური მეცნიერებების ფაკულტეტის ასოცირებული პროფესორი, ინსტიტუტ Sciences Po Aix-ის დირექტორი (საფრანგეთი)

ფაბრის პიკო – პროფესორი, პანთეონ-ასას უნივერსიტეტი (პარიზი II). ევროპის სამართლის სამაგისტრო პროგრამის ხელმძღვანელი. გამოცემის „სამართალი და ევროკავშირის“ დირექტორი. ევროპული სწავლების ასოციაციის საპატიო პრეზიდენტი (საფრანგეთი)

მარტინ კოლე – Panthéon-Assas-ის (Paris II) უნივერსიტეტის პროფესორი (საფრანგეთი)

ანა ჰამონიკი – რენის უნივერსიტეტის (1) პროფესორი (საფრანგეთი)

მათიუ მერპოელი – საფრანგეთის ლილის კათოლიკური უნივერსიტეტის სამართლის ფაკულტეტის ასოცირებული პროფესორი საჯარო სამართალში (საფრანგეთი)

ოტმარ სეული – პარიზ ნანტერის უნივერსიტეტის ემერიტუს პროფესორი, ფრანგულ-გერმანულ-ევროპისტიკა სამართალში; ევროკავშირის აღმოსავლეთის გაფართოების შემდეგ, „საზღვრულ უნივერსიტეტების“ დამფუძნებელი სამართალმცოდნეობაში. პოცდამის (გერმანია) და ვილნიუსის (ლიტვა) უნივერსიტეტების „დოქტორი ჰონორის კაუზა“ (საფრანგეთი)

ფრანჩესკო ლონგობუკო – კერძო სამართლის ასოცირებული პროფესორი – MIUR სრული პროფესორის კვალიფიკაცია, იურისტი უმაღლესი მაგისტრატურის ეკონომიკის დეპარტამენტში, Roma Tre University Erasmus-ის აკადემიური კოორდინატორი (იტალია)

კაროლ კარსკი – სამართლის დოქტორი, ვარშავის უნივერსიტეტის პროფესორი და სამართლისა და ადმინისტრირების ფაკულტეტზე საერთაშორისო საჯარო სამართლის დეპარტამენტის უფროსი, ევროპის უნივერსიტეტის საპატიო დოქტორი, თბილისი (პოლონეთი)

აბდელვანი ბენაირედ – სამართლის დოქტორი, უზენაესი სასამართლოსა და სახელმწიფო საბჭოს მიერ ასოცირებული ადვოკატი, დამტკიცებული სამრეწველო საკუთრების იურისტი INAPI-ში, დოქტორი – Aix-Marseille უნივერსიტეტი (ალჟირი)

ევა გოცირიძე – სამართლის დოქტორი, საქართველოს საკონსტიტუციო სასამართლოს მოსამართლე, წმიდა ანდრია პირველწოდებულის სახელობის ქართული უნივერსიტეტის პროფესორი (საქართველო)

ლევან ჯაყელი – საერთაშორისო სამართლის დოქტორი, ბათუმის შოთა რუსთაველის სახელობის სახელმწიფო უნივერსიტეტის იურიდიული და სოციალურ მეცნიერებათა ფაკულტეტის დეკანი, პროფესორი (საქართველო)

გერჰარდ ლინგელბახი – პროფესორი, სამართლის დოქტორი, ფრიდრიხ შილერის სახელობის იენის უნივერსიტეტი (გერმანია)

პატრიკ ტერი – საერთაშორისო სამართლის დოქტორი, კელის საჯარო ადმინისტრაციის უნივერსიტეტის პროფესორი, კელის უნივერსიტეტის სამართლის ფაკულტეტის დეკანი (გერმანია)

პატრიცია გ. ბენავიდეს ვალესკო – კომერციული სამართლის ასოცირებული პროფესორი, მალაგას უნივერსიტეტი (ესპანეთი)

ჟოზე მარია დე დიოს მარსერი – საერთაშორისო კერძო სამართლის პროფესორი, ბარსელონას ავტონომიური უნივერსიტეტი (ესპანეთი)

რობერტ თრეჟმენი – პროფესორი, სამართლის დოქტორი, ადვოკატი (აშშ)

უილიამ ბილ ვოტკინსი – სამხრეთ კაროლინას მოქმედი პროკურორი. ოუკლენდის (აშშ, კალიფორნია) დამოუკიდებელი ინსტიტუტის მკვლევარი (აშშ)

მანუელა ტაბარაში – ასოცირებული პროფესორი, დოქტორი, სამართლის ფაკულტეტის დეკანი, ბუქარესტის ტიტუ მაიორესკუს სახელობის უნივერსიტეტი (რუმინეთი)

მანუელა სირბუ – უნივერსიტეტის ლექტორი, PhD, იურიდიული ფაკულტეტი, ტიტუ მაიორესკუს უნივერსიტეტი, ბუქარესტი (რუმინეთი)

აზიზ ტუფი სალიბა – საჯარო სამართლის პროფესორი, მინას ჟერაის ფედერალური უნივერსიტეტი (UFMG), საერთაშორისო სამართლის ასოციაციის ბრაზილიის ფილიალი პრეზიდენტი. ჰისპანურ-ლუზო-ამერიკული საერთაშორისო სამართლის ინსტიტუტის წევრი (ბრაზილია)

ვიტალი დემიანჩუკი – სამართლის დოქტორი, პროფესორი. რექტორი, აკადემიკოს სტეფან დემიანჩუკის სახელობის ეკონომიკისა და ჰუმანитарულ მეცნიერებათა საერთაშორისო უნივერსიტეტი (IUEH) (უკრაინა)

მერაბ ტურავა – სამართლის დოქტორი, გრიგოლ რობაქიძის სახელობის უნივერსიტეტის პროფესორი. საქართველოს საკონსტიტუციო სასამართლოს თავმჯდომარე (საქართველო)

როინ მიგრიაული – ივანე ჯავახიშვილის სახელობის თბილისის სახელმწიფო უნივერსიტეტის ასოცირებული პროფესორი, საქართველოს ადვოკატთა ასოციაციის წევრი, ადვოკატი (საქართველო)

გიორგი ხატიძე – სამართლის დოქტორი, პროფესორი, კავკასიის საერთაშორისო უნივერსიტეტის სამართლის ფაკულტეტის დეკანი (საქართველო)

კახა გოშაძე – სამართლის დოქტორი, ევროპის უნივერსიტეტის ასოცირებული პროფესორი (საქართველო)

მამუკა შენგელია – სამართლის აკადემიური დოქტორი, აკაკი წერეთლის სახელმწიფო უნივერსიტეტის ბიზნესის, სამართლის და სოციალურ მეცნიერებათა ფაკულტეტის სამართლის დეპარტამენტის ხელმძღვანელი, პროფესორი (საქართველო)

გიორგი ამირანაშვილი – სამართლის დოქტორი, გურამ თავართქილაძის სახელობის თბილისის სასწავლო უნივერსიტეტის ასოცირებული პროფესორი და ღია სასწავლო უნივერსიტეტის ასისტენტ-პროფესორი (საქართველო)

ვანია პანტელევევა – სამართლის დოქტორი, რუსე უნივერსიტეტის ასოცირებული პროფესორი, სამართლის ფაკულტეტი, საჯარო სამართლის დეპარტამენტი (ბულგარეთი)

არჩილ ჩოჩია – დოქტორი, უფროსი მკვლევარი, სამართლის სკოლა, ტალინის ტექნოლოგიური უნივერსიტეტი (ესტონეთი)

მარიეტა საფტა – იურიდიული ფაკულტეტის პროფესორი, სენატის ვიცე-პრეზიდენტი, ტიტუ მაიორესკუს უნივერსიტეტი (რუმინეთი)

რეიმუნდა ჟურკა – მიკოლას რომერის უნივერსიტეტის სამართლის სკოლის პროფესორი (ლიეტუვა)

- 7** THE EMERGING LAW OF ARTIFICIAL INTELLIGENCE IN
AZERBAIJAN: Between National Strategy and European
Regulatory Frameworks
Natig Khalilov
- 21** STATE-GUARANTEED LEGAL AID AS A SOCIAL RIGHT
OF AN INFRASTRUCTURAL NATURE
Vadim Sukhov
- 35** LEGAL GOVERNANCE OF DISASTER RISKS UNDER
NEPAD: Establishing Contractual Responsibility
for Resilience and Sustainable Development
in Africa
**Khedidja Ziani, Hichem Makhoulf,
Mohammed Halim Limam**
- 64** FORECLOSURE AUCTIONS: Legal Consequences
and the Continuity of Rights in Comparative Perspective
Eter Burjanadze
- 80** THE SPECIFICITIES OF SEABED DISPUTES
IN LIGHT OF THE LAW OF THE SEA
Mohammed Hamli

97 THE SPECIFICITY OF CONSENT IN SMART CONTRACTS
IN THE CONTEXT OF ARTIFICIAL INTELLIGENCE
AND ITS IMPACT ON CONSUMER PROTECTION:
An Analytical and Comparative Study under Algerian
Legislation

Bessadi Noura



THE EMERGING LAW OF ARTIFICIAL INTELLIGENCE IN AZERBAIJAN: Between National Strategy and European Regulatory Frameworks

Natig Khalilov 

Ph.D in Law, Independent Researcher, Azerbaijan

 nkhalilov@alu.ruc.edu.cn

ARTICLE INFO

Article History:

Received	18.08.2026
Accepted	27.08.2026
Published	30.09.2026

Keywords:

Artificial intelligence law,
Strategy-led modularism,
AI governance, Public-sector
AI, EU AI Act

ABSTRACT

Azerbaijan is moving from a general digital-development policy toward a distinct but still fragmented legal and institutional framework for artificial intelligence (AI). This article examines that transition through doctrinal legal research and functional comparative analysis. It evaluates constitutional and personal-data safeguards, the Artificial Intelligence Strategy for 2025–2028, national AI standards, digital-government infrastructure, regulatory experimentation, public-sector AI applications and the binding synthetic-media rules adopted in 2026. The article characterises the emerging model as strategy-led modularism: strategic direction, technical standards, institutional coordination and issue-specific legislation develop incrementally rather than through a single comprehensive AI statute. Comparison with the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law and the European Union Artificial Intelligence Act identifies the principal gap as the absence of enforceable lifecycle duties for high-impact systems, particularly where AI affects individual rights or structures the exercise of public authority. The article proposes a proportionate Azerbaijani Responsible AI Framework based on functional risk classification, impact assessment,

documentation, meaningful human oversight, public-sector procurement controls, incident reporting, effective remedies and institutionally credible supervision. It argues for regulatory interoperability with European and international models without mechanical institutional transplantation.

INTRODUCTION

Artificial-intelligence regulation increasingly requires states to reconcile innovation policy with legal certainty, rights protection and institutional accountability. International practice has not converged on one model: the European Union has adopted a detailed risk-based regulation, the Council of Europe has established treaty-level principles, while many states rely on combinations of strategy documents, sectoral law, standards and experimentation mechanisms.¹ The relevant legal question is therefore not simply whether a jurisdiction has enacted an “AI law”, but whether its institutions, binding rules and remedies govern consequential AI uses coherently.

Azerbaijan is an instructive case because its governance architecture changed rapidly in 2025–2026. The Artificial Intelligence Strategy for 2025–2028 made AI development a state priority and expressly anticipated a normative framework for responsible and ethical AI.² Its implementation plan requires normative legal acts on responsible AI and separate rules for identifying and preventing personal-data risks during system design, deployment and use.³

National standards, high-level digital coordination, regulatory pilots and targeted legislation have since added concrete elements to that strategic layer.

This article describes the resulting model as strategy-led modularism. The term denotes an incremental arrangement in which strategy, existing law, technical standards, public-sector infrastructure and issue-specific legislation co-exist before a comprehensive horizontal regime is established. Modularity can reduce transition costs and allow regulatory learning, but it also creates a risk that deployment will outpace enforceable safeguards. The central argument is that Azerbaijan need not replicate the institutional architecture of the EU AI Act; instead, it should establish a binding rights-based regulatory core for high-impact AI systems, particularly those used in public administration.⁴

The Azerbaijani legal literature on AI remains relatively limited and has largely addressed discrete questions rather than the emerging governance architecture as a whole. Vadiya Alakbarzade, a lecturer at the Faculty of Law of Baku State University, examines privacy, profiling, discrimination, transparency and legal accountability from a human-rights perspective.⁵ Shahla Samadova, Professor and Head of the Department of Criminal Law and Criminology at Baku State University, addresses criminal-law responsibility for AI-related harmful

1 Smuha, N. A. (2021). From a ‘race to AI’ to a ‘race to AI regulation’: Regulatory competition for artificial intelligence. *Law, Innovation and Technology*, 13(1), 57–84. <https://doi.org/10.1080/17579961.2021.1898300>.

2 Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025–2028. (2025). Approved by Order of the President of the Republic of Azerbaijan of 19 March 2025. <https://president.az/az/articles/view/68365>.

3 Action Plan for the Implementation of the Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025–2028. (2025). Actions 8.1.3 and 8.1.4.

4 Pavlidis, G. (2026). The EU AI Act and the Rights-Based Approach to Technological Governance. *Review of European and Comparative Law*, 64(1), 117–132. <https://doi.org/10.31743/recl.19283>.

5 Alakbarzade, V. (2025). Artificial intelligence in the context of international law: Human-rights and legal-accountability challenges. *Azerbaijan Law Journal*, 1.

conduct.⁶ These contributions provide important issue-specific foundations, but they do not fully integrate the institutional and legislative changes that matured during 2025–2026. The novelty of this article lies in analysing those developments as a connected governance model and testing their regulatory functions against the Council of Europe AI Framework Convention and the EU AI Act.

International scholarship has developed considerably since the EU AI Act was first proposed. Raposo's early doctrinal assessment identified risk classification, accountability and transparency as central points of tension in the European model.⁷ Laux, Wachter and Mittelstadt later argued that regulatory claims of "trustworthy AI" should not be reduced to a technical judgment that risks are acceptable, because trustworthiness also depends on institutional conditions and continuing accountability.⁸ Palmiotto's process-tracing analysis of the final Act further shows that the level of fundamental-rights protection reflects legislative compromise, making implementation, enforcement and judicial interpretation especially significant.⁹ These debates inform the present article's functional comparative method: European instruments are treated as sources of regulatory functions and safeguards, not as institutional templates for mechanical transplantation.

The research addresses three questions: how Azerbaijan has moved from general dig-

ital and data regulation toward AI-specific governance; how far the current framework operationalises rights-based and risk-based safeguards reflected in European instruments; and which regulatory functions can be adapted to Azerbaijan without mechanically transplanting foreign institutional structures. The analysis therefore considers whether Azerbaijan can preserve the flexibility of its modular approach while adding a binding rights-critical core for high-impact AI systems. The article first explains the methodology and legal context, then examines Azerbaijan's emerging governance model and principal regulatory gaps, compares the Council of Europe and EU benchmarks, and concludes with a proportionate national framework.

METHODOLOGY AND COMPARATIVE FRAMEWORK

The study combines doctrinal legal analysis with a functional comparative approach. The doctrinal analysis examines the relevant Azerbaijani legal and policy materials, including the Constitution, personal-data legislation, presidential instruments, AI and digital-development strategies, national standards, electronic-government rules and the 2026 synthetic-media reforms. The principal external benchmarks are the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law and the EU Artificial Intelligence Act. The comparison is functional rather than transplant-oriented: it evaluates which regulatory mechanisms—such as risk classification, impact assessment, documentation, human oversight, procurement controls, remedies and supervision—could be adapted to Azerbaijan's legal and administrative context. The doctrinal method is appropriate because the inquiry concerns the content, interaction and normative implications of constitutional, statutory and administrative instruments. The functional comparative approach is used because Azerbaijan is not an EU Member State; the relevant question is therefore which reg-

6 Samadova, Sh. T. (2025). Artificial intelligence and criminal law: Problems of responsibility. Baku University News: Social and Political Sciences Series.

7 Raposo, V. L. (2022). Ex machina: Preliminary critical assessment of the European Draft Act on artificial intelligence. *International Journal of Law and Information Technology*, 30(1), 88–109. <<https://doi.org/10.1093/ijlit/eaac007>>.

8 Laux, J., Wachter, S., Mittelstadt, B. (2024b). Trustworthy artificial intelligence and the European Union AI Act: On the conflation of trustworthiness and acceptability of risk. *Regulation & Governance*, 18(1), 3–32. <<https://doi.org/10.1111/rego.12512>>.

9 Palmiotto, F. (2025). The AI Act roller coaster: The evolution of fundamental rights protection in the legislative process and the future of the regulation. *European Journal of Risk Regulation*, 16(2), 770–793. <<https://doi.org/10.1017/err.2024.97>>.

ulatory functions, rather than which institutional forms, are transferable. Together, these methods enable the article to distinguish between the description of Azerbaijan's emerging regulatory framework and the normative recommendations advanced for its further development.

FINDINGS AND DISCUSSION

1. AZERBAIJAN'S EMERGING AI GOVERNANCE MODEL

1.1. Constitutional, data-protection and standards foundations

AI governance in Azerbaijan does not begin from a legal vacuum. Articles 24, 25 and 32 of the Constitution protect dignity, equality and private life and are directly relevant when algorithmic systems mediate public authority or process information about individuals.¹⁰ The Personal Data Law adds a more specific safeguard: Article 7.3 permits a person to object where a decision resulting from technologically mediated personal-data processing infringes the person's interests, subject to a statutory exception, while Articles 7.4 and 9 preserve complaint, compensation, purpose limitation, proportionality and data-quality requirements.¹¹

These provisions provide useful rights infrastructure but do not amount to a contemporary AI-accountability regime. They do not themselves establish a general duty to conduct AI-specific impact assessments, maintain life-cycle documentation, explain consequential outputs or provide structured human reconsideration.

At the international level, Azerbaijan is bound by Convention 108 on automated processing of personal data,¹² but it has not accepted the modernized Convention 108+ frame-

work.¹³ The future AI regime should therefore complement, rather than assume the completeness of, existing data-protection law.

Technical standards are another important layer. Azerbaijan adopted national standards derived from ISO/IEC instruments and in July 2025 adopted AZS ISO/IEC 42001:2025 on AI management systems.¹⁴ Standards can organise governance, testing and risk-management processes, but they cannot determine whether a public authority may lawfully deploy a system, what information an affected person must receive, or which remedy follows from unlawful use. Their proper role is evidentiary and operational: legislation should define rights and duties, while recognised standards provide reusable compliance methods.¹⁵ Recent scholarship on AI Act standardisation similarly warns that technical standards can embed contested normative choices about fairness, transparency and accountability unless public institutions retain responsibility for those judgments.¹⁶

1.2. Public administration, infrastructure and experimentation

The administrative dimension intensified in 2026. A presidential decree established the

10 Constitution of the Republic of Azerbaijan. (1995). Articles 24, 25 and 32.

11 Law of the Republic of Azerbaijan on Personal Data. (2010). Articles 7 and 9.

12 Council of Europe. (1981). Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

13 Council of Europe Treaty Office. (n.d.). Chart of signatures and ratifications of Treaty 223: Protocol amending Convention 108—Azerbaijan entry. <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyid=223>.

14 Azerbaijan Standardization Institute (AZSTAND). (July 28, 2025). New national standard adopted in the field of artificial intelligence: AZS ISO/IEC 42001:2025. <https://azstand.gov.az/az/xeberler/olkede-suni-intellekt-sahesinde-yeni-dovlet-standarti-qebul-edilib>.

15 International Organization for Standardization & International Electrotechnical Commission. (2023). ISO/IEC 42001:2023 Information technology—Artificial intelligence—Management system. <https://www.iso.org/standard/42001>.

16 Laux, J., Wachter, S., Mittelstadt, B. (2024a). Three pathways for standardisation and ethical disclosure by default under the European Union Artificial Intelligence Act. *Computer Law & Security Review*, 53, 105957. <https://doi.org/10.1016/j.clsr.2024.105957>.

Digital Development Council to coordinate digitalization, e-government, AI and innovation at a high political level.¹⁷ The Digital Development Acceleration Action Plan for 2026–2028 envisages broader public-sector AI, virtual assistants, high-performance computing and a legal framework for AI solutions successfully tested through a regulatory sandbox.¹⁸ This creates a strong implementation capacity, but coordination and promotion should remain conceptually distinct from independent legality and rights supervision.

The Electronic Government Information System (EGIS) consolidates authentication, consent, data exchange and digital public-service delivery across interoperable state subsystems.¹⁹ Such infrastructure can support AI-enabled administration at scale. Yet general requirements on data protection, information security and complaint rights do not answer AI-specific questions concerning impact assessment, model limitations, explanation, human review or post-deployment monitoring. Public-sector AI therefore requires an accountability layer connected directly to digital-government infrastructure.

A separate 2026 instrument created rules for regulatory pilot projects used to test digital solutions in state bodies.²⁰ Sandboxes can produce evidence before wider deployment, but they should not function as zones of di-

minished rights. High-impact public-sector pilots should have a defined legal basis, testing criteria, human-oversight arrangements, incident procedures and a transparent decision on whether the system may proceed to ordinary deployment. International guidance similarly treats regulatory sandboxes as supervised and time-limited mechanisms rather than general exemptions from law.²¹ Comparative analysis of the AI Act's sandbox regime likewise shows that experimentation can support innovation, but only if legality, equality, liability and participant safeguards remain explicit constraints on testing.²²

Public legal-information systems illustrate the practical stakes. The E-qanun.ai platform, officially presented in September 2025, combines legal databases with AI-assisted search and analysis.²³ Research on specialised AI legal-research tools shows that retrieval-based systems may still generate inaccurate or unsupported legal information.²⁴ Public legal AI should therefore preserve direct access to authoritative sources, distinguish official text from generated analysis, document system versions and limitations, and evaluate performance specifically in Azerbaijani legal language.

17 Decree on certain measures to improve activities in the fields of digitalization, e-government, artificial intelligence and innovation in the Republic of Azerbaijan. (February 27, 2026). <https://president.az/ru/articles/view/71718>.

18 President of the Republic of Azerbaijan. (February 27, 2026). Action Plan for the Acceleration of Digital Development in the Republic of Azerbaijan for 2026–2028. <https://president.az/az/articles/view/71720>.

19 Regulation on the Electronic Government Information System. (August 12, 2025). Approved by Decree No. 472 of the President of the Republic of Azerbaijan. <https://e-qanun.az/framework/60355>.

20 Rules for the implementation of regulatory pilot projects for test-mode evaluation of digital solutions applied by state bodies and for determining the initial feasibility of electronic services organised by state bodies. (April 30, 2026). <https://president.az/az/articles/view/72251>.

21 Organisation for Economic Co-operation and Development. (2023). Regulatory sandboxes in artificial intelligence (OECD Digital Economy Papers No. 356). OECD Publishing.

22 Buocz, T., Pfotenhauer, S., Eisenberger, I. (2023). Regulatory sandboxes in the AI Act: Reconciling innovation and safety? *Law, Innovation and Technology*, 15(2), 357–389. <https://doi.org/10.1080/17579961.2023.2245678>.

23 Ministry of Digital Development and Transport of the Republic of Azerbaijan. (September 25, 2025). E-qanun.ai platform officially presented. <https://mincom.gov.az/en/media-en/news/e-qanunai-platform-officially-presented>.

24 Magesh, V., Surani, F., Dahl, M., Suzgun, M., Manning, C. D., Ho, D. E. (2025). Hallucination-free? Assessing the reliability of leading AI legal research tools. *Journal of Empirical Legal Studies*, 22(2), 216–242. <https://doi.org/10.1111/jels.12413>.

1.3. The 2026 synthetic-media reforms

The clearest move from policy to AI-specific hard law occurred in April 2026, when Azerbaijan amended criminal, procedural, information and media legislation. The reforms introduced criminal liability for specified non-consensual AI-enabled uses of a person's image or voice, including a separate offence concerning pornographic or sexual synthetic material. They also introduced disclosure duties for publicly displayed AI-generated photo, video or audio material and administrative liability for knowing dissemination without the required label.²⁵

The reforms are important because they show that Azerbaijan is already regulating AI through a modular combination of criminal, administrative, media and information law. Their limits are equally instructive. A future horizontal framework should supply common, technology-neutral definitions and coordinated principles for liability, transparency and enforcement. It should also clarify the treatment of legitimate journalism, satire, art, research and security testing without weakening protection against malicious impersonation or non-consensual sexual synthetic content.

2. THE PRINCIPAL REGULATORY GAPS

2.1. High-impact systems and lifecycle accountability

The principal gap is the absence of a binding cross-sectoral regime for systems that materially affect rights, essential services, significant opportunities or the exercise of public power. A high-impact category should therefore be defined functionally: it should cover systems that determine, recommend, rank, predict or sub-

stantially influence consequential decisions in fields such as public benefits, employment, education, credit, healthcare, policing, migration, biometric identification and the administration of justice. Systems that allocate public resources or determine inspection and enforcement priorities may also warrant this classification when their outputs structure public authority.

Lifecycle regulation is necessary because AI risk is socio-technical. Harm may arise from objectives, data selection, proxy variables, performance thresholds, deployment context, human-machine interaction or later system updates. Accountability must accordingly extend from design and procurement through deployment, monitoring, modification and retirement. End-to-end auditing scholarship similarly emphasises allocation of responsibility across development and organisational use rather than relying only on retrospective investigation after harm occurs.²⁶ Jonas Schuett, Senior Research Fellow at the Centre for the Governance of AI, analyses the AI Act's risk-management duty as a continuous process extending beyond initial classification and pre-deployment testing.²⁷ Gianclaudio Malgieri, Associate Professor of Law and Technology at the eLaw Center for Law and Digital Technologies at Leiden University, and Frank Pasquale, Professor of Law at Cornell Tech and Cornell Law School, likewise argue that high-risk AI may warrant ex ante justification rather than reliance solely on ex post liability.²⁸ Martin Ebers, Visiting Professor of Information

25 Law of the Republic of Azerbaijan on amendments to the Criminal Code, the Code of Criminal Procedure, the Law on Information, Informatization and Protection of Information, and the Law on Media. (April 21, 2026). <https://president.az/az/articles/view/72311>.

26 Raji, I. D., Smart, A., White, R. N., Mitchell, M., Gebru, T., Hutchinson, B., Smith-Loud, J., Theron, D., Barnes, P. (2020). Closing the AI accountability gap: Defining an end-to-end framework for internal algorithmic auditing. In Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency (pp. 33–44). Association for Computing Machinery. <https://doi.org/10.1145/3351095.3372873>.

27 Schuett, J. (2024). Risk management in the Artificial Intelligence Act. *European Journal of Risk Regulation*, 15(2), 367–385. <https://doi.org/10.1017/err.2023.1>.

28 Malgieri, G., Pasquale, F. (2024). Licensing high-risk artificial intelligence: Toward ex ante justification for a disruptive technology. *Computer Law & Security Review*, 52, 105899. <https://doi.org/10.1016/j.clsr.2023.105899>.

Technology Law at the University of Tartu, further argues that implementation of the AI Act should follow a genuinely risk-based approach, with regulatory obligations calibrated to the nature and intensity of the risks involved.²⁹

Providers should be responsible for design, testing, technical documentation, known limitations and material updates. Deployers should be responsible for lawful purpose, contextual suitability, operational monitoring and competent human oversight. Public authorities should remain legally responsible for decisions taken in their name even when the system is procured or accessed as a service from a private supplier. Outsourcing technology must not outsource constitutional or administrative accountability.

2.2. From objection to effective contestability

The Personal Data Law's right to object is a useful starting point but does not expressly guarantee AI-specific notice, case-specific reasons or meaningful human reconsideration. For a high-impact decision, the affected person should be told that AI materially contributed to the outcome, receive understandable information about the system's role and the principal factors relevant to the case, and have access to a reviewer with authority to disregard or reverse the system's output. Contestability does not require disclosure of source code; it requires enough information to identify possible errors and exercise legal rights. Guillermo Lazcoz, a legal researcher at the Spanish Biomedical Research Centre on Rare Diseases (CIBERER), and Paul De Hert, Professor of Law at Vrije Universiteit Brussel and Associate Professor at Tilburg University, treat human intervention as part of a broader accountability system rather than a formal checkpoint that can be satis-

fied merely by placing a person "in the loop".³⁰ Non-discrimination safeguards also require context-sensitive legal analysis, because statistical fairness metrics cannot automatically reproduce the substantive and evidentiary tests used in EU equality law.³¹

Impact assessment should also extend beyond conventional data protection. An AI or fundamental-rights assessment should examine purpose, necessity, proportionality, affected groups, error distribution, discrimination, institutional context and less intrusive alternatives. This broader model reflects scholarship calling for integrated human-rights, social and ethical assessment of AI and data-intensive systems.³² Recent work on fundamental-rights impact assessment under the AI Act demonstrates how rights analysis can be operationalised through structured contextual information, identification of affected rights and traceable evaluation criteria.³³

2.3. Procurement and institutional accountability

Public procurement is a central regulatory lever because public authorities may depend on external suppliers for AI models, software

29 Ebers, M. (2025). Truly risk-based regulation of artificial intelligence: How to implement the EU's AI Act. *European Journal of Risk Regulation*, 16(2), 684–703. <https://doi.org/10.1017/err.2024.78>.

30 Lazcoz, G., De Hert, P. (2023). Humans in the GDPR and AIA governance of automated and algorithmic systems: Essential pre-requisites against abdicating responsibilities. *Computer Law & Security Review*, 50, 105833. <https://doi.org/10.1016/j.clsr.2023.105833>.

31 Wachter, S., Mittelstadt, B., Russell, C. (2021). Why fairness cannot be automated: Bridging the gap between EU non-discrimination law and AI. *Computer Law & Security Review*, 41, 105567. <https://doi.org/10.1016/j.clsr.2021.105567>.

32 Mantelero, A. (2018). AI and Big Data: A blueprint for a human rights, social and ethical impact assessment. *Computer Law & Security Review*, 34(4), 754–772. <https://doi.org/10.1016/j.clsr.2018.05.017>.

33 Bertaina, S., Biganzoli, I., Desiante, R., Fontanella, D., Inverardi, N., Penco, I. G., Cosentini, A. (2025). Fundamental rights and artificial intelligence impact assessment: A new quantitative methodology in the upcoming era of AI Act. *Computer Law & Security Review*, 56, 106101. <https://doi.org/10.1016/j.clsr.2024.106101>.

and cloud services. Azerbaijan's Law on Public Procurement provides a partial legal basis for incorporating AI-related safeguards into procurement procedures. Article 22 permits procurement specifications to include technical, quality, performance and testing requirements, while Article 23 allows suppliers' professional and technical capacity to be assessed. Tender documentation must also contain detailed technical requirements and the draft procurement contract.³⁴ These provisions give contracting authorities some scope to require documentation, testing, cybersecurity safeguards and supplier capabilities relevant to high-impact AI systems. The existing framework nevertheless contains important deficiencies when applied to AI. It does not expressly require fundamental-rights impact assessment, algorithmic auditability, human-oversight arrangements, lifecycle logging, notification of material model changes or serious-incident reporting. Moreover, Article 33.11 limits the assessment of the "most efficient offer" to operating, maintenance and repair costs, delivery or performance periods, functional characteristics and warranty conditions, while Article 33.12 requires the relevant criteria to be quantitatively assessable or capable of being expressed in value terms. This approach may underweight characteristics such as transparency, auditability, data governance and rights protection that are especially important when public authorities procure high-impact AI. Article 42 also generally restricts modification of contractual terms after the procurement contract has entered into force.³⁵ AI-specific safeguards should therefore be incorporated *ex ante*, including requirements concerning documentation, audit access, log retention, cybersecurity, model-change notification, incident reporting, data portability and supplier cooperation with supervisory authorities.

34 Law of the Republic of Azerbaijan on Public Procurement, No. 988-VIQ of 14 July 2023, Articles 22, 23 and 25.

35 Law of the Republic of Azerbaijan on Public Procurement, Articles 33.11–33.12 and 42.

The EU AI Act provides a useful comparative benchmark because accountability does not end with acquisition of the system. Article 26 imposes continuing obligations on deployers of high-risk AI systems concerning human oversight, monitoring, risk notification, serious incidents and cooperation with competent authorities; public-authority deployers are additionally subject to registration requirements. Article 27 requires specified public bodies and providers of public services to conduct a fundamental-rights impact assessment before deploying certain high-risk systems.³⁶ The relevant lesson for Azerbaijan is therefore not to reproduce the EU regulatory architecture, but to connect procurement requirements with continuing public-law obligations throughout deployment. A public authority should remain legally responsible for an AI-enabled administrative function even where the underlying technology is supplied by a private contractor.

From an administrative-law perspective, Oriol Mir, Full Professor of Administrative Law at Pompeu Fabra University, similarly examines the impact of the EU AI Act on public authorities when they develop, acquire and use AI systems. He argues that, despite certain limitations, the Act represents an important step towards addressing established problems associated with automated administrative decision-making and public-sector AI.³⁷

A public-sector AI register would complement these safeguards in Azerbaijan by identifying, for each high-impact system, the responsible authority, supplier where applicable, intended purpose and legal basis, deployment date, human-oversight arrangements and a summary of the relevant impact assessment. Legitimate confidentiality exceptions may be

36 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). (2024). Official Journal of the European Union, L 2024/1689. Articles 26, 27 and 49.

37 Mir, O. (2025). The AI Act from the perspective of administrative law: Much ado about nothing? *European Journal of Risk Regulation*, 16(1), 63–75. <https://doi.org/10.1017/err.2024.54>.

necessary, but non-disclosure should require justification rather than operate as the default.

3. COMPARATIVE BENCHMARKS

3.1. Council of Europe Framework Convention

The Council of Europe AI Framework Convention could be a particularly suitable benchmark because it is organised around human rights, democracy and the rule of law rather than a specific internal-market architecture. It requires principles of dignity, autonomy, equality, transparency, accountability, privacy and reliability to be supported by remedies, procedural safeguards and iterative risk-management measures throughout the AI lifecycle.³⁸ The Convention also requires oversight mechanisms to act independently and impartially and to possess appropriate powers and expertise. Vladislava Stoyanova, Associate Professor of Public International Law at the Faculty of Law of Lund University, argues that the Convention does not create a separate catalogue of AI-specific human rights; rather, it requires states to operationalise existing human-rights obligations across AI lifecycles through context-sensitive measures.³⁹

To date, Azerbaijan has not signed the Council of Europe AI Framework Convention.⁴⁰ Nevertheless, the Convention could serve as a useful outcome-based benchmark for the de-

velopment of domestic AI regulation. Its relevance lies less in institutional replication than in the regulatory questions it requires states to address: whether individuals can identify and challenge AI-supported decisions, whether risk assessments adequately consider fundamental rights and democratic institutions, whether public authorities remain accountable when AI systems are supplied or operated by private actors, and whether supervisory mechanisms are sufficiently independent and effective. These considerations are compatible with Azerbaijan's emerging modular approach and could inform the development of domestic safeguards without requiring the transplantation of institutional structures designed for the EU internal market.

3.2. EU Artificial Intelligence Act

The EU AI Act offers a more detailed comparator. It allocates duties among providers and deployers, regulates specified high-risk systems, establishes obligations concerning documentation, logging, transparency, human oversight, robustness and post-market monitoring, and creates separate rules for general-purpose AI. Particularly relevant to Azerbaijan are the fundamental-rights impact assessment for specified deployers, transparency duties for synthetic content, regulatory sandboxes and the right of certain affected persons to obtain explanations concerning consequential high-risk decisions.⁴¹

The July 2026 amendments postponed the application of key requirements for high-risk AI systems, principally to December 2027 for systems listed in Annex III and August 2028 for systems linked to the product-safety legislation listed in Annex I.⁴² The amendment expressly re-

38 Council of Europe. (2024). Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (CETS No. 225), especially Articles 3, 8–14 and 26.

39 Stoyanova, V. (2026). Council of Europe Framework Convention on Artificial Intelligence: Context, regulatory approach and scope of obligations. *European Journal of Risk Regulation*, 17(2), 536–565. <https://doi.org/10.1017/err.2025.10070>.

40 Council of Europe Treaty Office. (n.d.). Chart of signatures and ratifications of Treaty 225: Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law—Azerbaijan entry. <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyenum=225>.

41 Regulation (EU) 2024/1689, Arts. 13, 26, 27, 50, 51–57, 72–73 and 86.

42 Regulation (EU) 2026/1744 of the European Parliament and of the Council of 8 July 2026 amending Regulations (EU) 2024/1689, (EU) 2018/1139 and (EU) 2023/1230 as regards simplification of the im-

flects concerns about the delayed availability of standards, guidance and institutional capacity. This experience illustrates a broader regulatory lesson for Azerbaijan: substantive obligations are unlikely to operate effectively unless standards, testing capacity, complaint mechanisms and supervisory expertise are developed alongside them. Azerbaijan should therefore borrow regulatory functions rather than legislative volume and phase demanding obligations in parallel with the institutions required to implement and enforce them.

The EU model may also have practical relevance for Azerbaijani businesses because the EU AI Act can reach providers outside the Union when they place systems or general-purpose models on the EU market or when system output is used within the Union.⁴³ Greater regulatory interoperability in terminology, documentation, testing and incident reporting could therefore facilitate cross-border compliance and reduce regulatory fragmentation for firms operating across markets, while domestic law remains tailored to Azerbaijan's constitutional and administrative structure.⁴⁴

Taken together, the two European benchmarks perform complementary functions for the Azerbaijani context. The Council of Europe Convention supplies an outcome-oriented framework centred on human rights, democratic safeguards and institutional accountability, whereas the EU AI Act provides more detailed operational mechanisms for translating comparable concerns into lifecycle obligations for particular actors and categories of AI systems. Azerbaijan could therefore draw on the Convention for the normative core of its emerging framework while selectively adapting operational mechanisms from the EU AI Act where

they correspond to domestic regulatory needs and institutional capacity.

4. A PROPORTIONATE RESPONSIBLE AI FRAMEWORK FOR AZERBAIJAN

The Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025–2028 already provides a political mandate for responsible-AI legislation. In the author's view, a proportionate regulatory framework may translate that mandate into enforceable rules through five connected elements.

First, legislation should define AI systems and relevant actors in technologically durable terms and allocate responsibility according to actual control over risk.

Second, it should establish functional risk tiers, including narrowly defined prohibited practices and a high-impact category based on material effects rather than the supplier's label.

Third, every high-impact system should be subject to a documented lifecycle process. Before deployment, the responsible entity should establish the lawful purpose, affected groups, data sources, foreseeable misuse, performance limits and rights impacts. Testing should address accuracy, robustness, discriminatory performance, cybersecurity and suitability for Azerbaijani linguistic and institutional conditions. During operation, systems should produce proportionate logs, preserve material-change records and support competent human intervention. Serious incidents and complaints should trigger investigation, correction, suspension or retirement where necessary.

Fourth, public-sector use should attract heightened duties because government combines data access, scale and coercive or allocative authority. A public authority deploying high-impact AI should complete an impact assessment, publish registry information, apply standardised procurement clauses and preserve meaningful human review. These functions parallel safeguards found in the EU AI Act,

plementation of harmonised rules on artificial intelligence. (2026). Official Journal of the European Union, L 2026/1744.

43 Regulation (EU) 2024/1689. Article 2.

44 Gonzalez Torres, A. P., Ali-Vehmas, T. (2025). AI regulation: Maintaining interoperability through value-sensitive standardisation. *Ethics and Information Technology*, 27, 26. <https://doi.org/10.1007/s10676-025-09832-7>.

including impact assessment and explanation rights,⁴⁵ while remaining adaptable to Azerbaijani administrative procedure.

Fifth, supervision should be institutionally credible. Strategic coordination may remain with bodies responsible for digital development, but complaint handling, legality review and enforcement should be assigned to an authority or coordinated set of authorities with sufficient independence, expertise, investigatory powers and resources. This separation between promotion and supervision is consistent with the institutional logic of the Council of Europe Convention.⁴⁶ Remedies should include correction of unlawful processing or decisions, human reconsideration, suspension of unsafe systems and access to judicial or administrative review.

General-purpose AI requires a related but distinct layer. Model providers should disclose capabilities, known limitations, cybersecurity measures and material updates sufficient for downstream deployers to comply with their own duties. Enhanced obligations should apply only where scale, capabilities or demonstrated risks justify them. Azerbaijani-language public-service and legal systems should be evaluated on representative local-language data and tested for retrieval and citation accuracy rather than assumed reliable because of performance on English benchmarks.

Synthetic-content rules should likewise be supported by technical guidance on human-readable labels and, where feasible, machine-readable provenance. Open provenance standards can assist in recording origin and modification history, but they do not prove factual truth and cannot replace consent requirements, platform responsibility or remedies for harmful content.⁴⁷

Implementation should be phased. Immediate measures should include an inventory of

public-sector AI, interim impact assessments for high-impact procurements and pilots, standard contractual clauses, guidance for synthetic-media disclosure and documented evaluation requirements for public-facing AI assistants. The existing Digital Development Acceleration Action Plan makes these safeguards urgent because it already anticipates wider AI-enabled public services and regulatory experimentation. The next phase should enact the horizontal framework and operationalise supervision, incident reporting, complaint procedures and coordinated sectoral rules. A later statutory review should assess regulatory costs, complaint and incident patterns, innovation effects, supervisory capacity and the continuing suitability of risk categories.

CONCLUSION

Azerbaijan has moved beyond an AI policy consisting only of strategic aspirations. Constitutional and personal-data rules, national standards, digital-government infrastructure, regulatory pilots, institutional coordination and the 2026 synthetic-media legislation now form an emerging legal architecture. Its defining feature is strategy-led modularism: binding and non-binding elements are being assembled incrementally rather than through a single comprehensive statute.

The model is flexible but incomplete. The principal deficiency is not the absence of ethical principles; it is the absence of enforceable lifecycle obligations for high-impact systems and a corresponding structure for contestability, public-sector procurement, incident handling and independent supervision. Those gaps are especially important where AI materially affects individual rights, access to public services or the exercise of public authority.

Azerbaijan should therefore adopt a proportionate responsible-AI framework that preserves the advantages of modular development while adding a binding rights-critical core. International and European instruments should

45 Regulation (EU) 2024/1689. Articles 27 and 86.

46 Council of Europe AI Framework Convention (CETS No. 225), Articles 9–14 and 26.

47 Coalition for Content Provenance and Authenticity. (April, 2026). C2PA technical specification (Version 2.4). <https://spec.c2pa.org/specifications/specifications/2.4/specs/C2PA_Specification.html>.

be used as functional benchmarks: impact assessment, documentation, meaningful human oversight, remedies and credible supervision are transferable regulatory functions, while institutional structures specific to the EU internal market need not be copied. This approach would allow Azerbaijan to pursue regulatory interoperability without regulatory dependency

and to align AI-enabled public administration with legal accountability.

Future research should assess how these safeguards operate in practice as Azerbaijan implements the 2025–2028 AI Strategy, particularly in public-sector deployments and in the development of any subsequent horizontal AI legislation.

REFERENCES:

Scholarly Literature:

- Alakbarzade, V. (2025). Artificial intelligence in the context of international law: Human-rights and legal-accountability challenges. *Azerbaijan Law Journal*, 1. (in Azerbaijani);
- Bertaina, S., Biganzoli, I., Desiante, R., Fontanella, D., Inverardi, N., Penco, I. G., Cosentini, A. (2025). Fundamental rights and artificial intelligence impact assessment: A new quantitative methodology in the upcoming era of AI Act. *Computer Law & Security Review*, 56, 106101. <https://doi.org/10.1016/j.clsr.2024.106101>;
- Buocz, T., Pfothenauer, S., Eisenberger, I. (2023). Regulatory sandboxes in the AI Act: Reconciling innovation and safety? *Law, Innovation and Technology*, 15(2). <https://doi.org/10.1080/17579961.2023.2245678>;
- Ebers, M. (2025). Truly risk-based regulation of artificial intelligence: How to implement the EU's AI Act. *European Journal of Risk Regulation*, 16(2). <https://doi.org/10.1017/err.2024.78>;
- Gonzalez Torres, A. P., Ali-Vehmas, T. (2025). AI regulation: Maintaining interoperability through value-sensitive standardisation. *Ethics and Information Technology*, 27. <https://doi.org/10.1007/s10676-025-09832-7>;
- Laux, J., Wachter, S., Mittelstadt, B. (2024a). Three pathways for standardisation and ethical disclosure by default under the European Union Artificial Intelligence Act. *Computer Law & Security Review*, 53. <https://doi.org/10.1016/j.clsr.2024.105957>;
- Laux, J., Wachter, S., Mittelstadt, B. (2024b). Trustworthy artificial intelligence and the European Union AI Act: On the conflation of trustworthiness and acceptability of risk. *Regulation & Governance*, 18(1). <https://doi.org/10.1111/rego.12512>;
- Lazcoz, G., De Hert, P. (2023). Humans in the GDPR and AIA governance of automated and algorithmic systems: Essential pre-requisites against abdicating responsibilities. *Computer Law & Security Review*, 50, 105833. <https://doi.org/10.1016/j.clsr.2023.105833>;
- Magesh, V., Surani, F., Dahl, M., Suzgun, M., Manning, C. D., Ho, D. E. (2025). Hallucination-free? Assessing the reliability of leading AI legal research tools. *Journal of Empirical Legal Studies*, 22(2). <https://doi.org/10.1111/jels.12413>;
- Malgieri, G., Pasquale, F. (2024). Licensing high-risk artificial intelligence: Toward ex ante justification for a disruptive technology. *Computer Law & Security Review*, 52, 105899. <https://doi.org/10.1016/j.clsr.2023.105899>;
- Mantelero, A. (2018). AI and Big Data: A blueprint for a human rights, social and ethical impact assessment. *Computer*

- Law & Security Review, 34(4). <https://doi.org/10.1016/j.clsr.2018.05.017>;
- Mir, O. (2025). The AI Act from the perspective of administrative law: Much ado about nothing? *European Journal of Risk Regulation*, 16(1). <https://doi.org/10.1017/err.2024.54>;
- Palmiotto, F. (2025). The AI Act roller coaster: The evolution of fundamental rights protection in the legislative process and the future of the regulation. *European Journal of Risk Regulation*, 16(2). <https://doi.org/10.1017/err.2024.97>;
- Pavlidis, G. (2026). The EU AI Act and the Rights-Based Approach to Technological Governance. *Review of European and Comparative Law*, 64(1). <https://doi.org/10.31743/recl.19283>;
- Raji, I. D., Smart, A., White, R. N., Mitchell, M., Gebru, T., Hutchinson, B., Smith-Loud, J., Theron, D., Barnes, P. (2020). Closing the AI accountability gap: Defining an end-to-end framework for internal algorithmic auditing. In *Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency* (pp. 33–44). Association for Computing Machinery. <https://doi.org/10.1145/3351095.3372873>;
- Raposo, V. L. (2022). Ex machina: Preliminary critical assessment of the European Draft Act on artificial intelligence. *International Journal of Law and Information Technology*, 30(1). <https://doi.org/10.1093/ijlit/eaac007>;
- Samadova, Sh. T. (2025). Artificial intelligence and criminal law: Problems of responsibility. *Baku University News: Social and Political Sciences Series*. (in Azerbaijani);
- Schuett, J. (2024). Risk management in the Artificial Intelligence Act. *European Journal of Risk Regulation*, 15(2). <https://doi.org/10.1017/err.2023.1>;
- Smuha, N. A. (2021). From a 'race to AI' to a 'race to AI regulation': Regulatory competition for artificial intelligence. *Law, Innovation and Technology*, 13(1). <https://doi.org/10.1080/17579961.2021.1898300>;
- Stoyanova, V. (2026). Council of Europe Framework Convention on Artificial Intelligence: Context, regulatory approach and scope of obligations. *European Journal of Risk Regulation*, 17(2). <https://doi.org/10.1017/err.2025.10070>;
- Wachter, S., Mittelstadt, B., Russell, C. (2021). Why fairness cannot be automated: Bridging the gap between EU non-discrimination law and AI. *Computer Law & Security Review*, 41, 105567. <https://doi.org/10.1016/j.clsr.2021.105567>.

Normative Acts:

- Action Plan for the Implementation of the Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025–2028. (2025). Actions 8.1.3 and 8.1.4. (in Azerbaijani);
- Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025–2028. (2025). Approved by Order of the President of the Republic of Azerbaijan of 19 March 2025. <https://president.az/az/articles/view/68365>. (in Azerbaijani);
- Constitution of the Republic of Azerbaijan. (1995). (in Azerbaijani);
- Council of Europe. (1981). Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108);
- Council of Europe. (2024). Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (CETS No. 225);
- Decree on certain measures to improve activities in the fields of digitalization, e-government, artificial intelligence and innovation in the Republic of Azerbaijan. (February 27, 2026). <https://president.az/ru/articles/view/71718>. (in Russian);
- Law of the Republic of Azerbaijan on amendments to the Criminal Code, the Code of

- Criminal Procedure, the Law on Information, Informatization and Protection of Information, and the Law on Media. (April 21, 2026). <https://president.az/az/articles/view/72311>. (in Azerbaijani);
- Law of the Republic of Azerbaijan on Personal Data. (2010). (in Azerbaijani);
- Law of the Republic of Azerbaijan on Public Procurement, No. 988-VIQ of 14 July 2023. (in Azerbaijani);
- President of the Republic of Azerbaijan. (February 27, 2026). Action Plan for the Acceleration of Digital Development in the Republic of Azerbaijan for 2026–2028. <https://president.az/az/articles/view/71720>. (in Azerbaijani);
- Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). (2024). Official Journal of the European Union, L 2024/1689;
- Regulation (EU) 2026/1744 of the European Parliament and of the Council of 8 July 2026 amending Regulations (EU) 2024/1689, (EU) 2018/1139 and (EU) 2023/1230 as regards simplification of the implementation of harmonised rules on artificial intelligence. (2026). Official Journal of the European Union, L 2026/1744;
- Regulation on the Electronic Government Information System. (August 12, 2025). Approved by Decree No. 472 of the President of the Republic of Azerbaijan. <https://e-qanun.az/framework/60355>. (in Azerbaijani);
- Rules for the implementation of regulatory pilot projects for test-mode evaluation of digital solutions applied by state bodies and for determining the initial feasibility of electronic services organised by state bodies. (April 30, 2026). <https://president.az/az/articles/view/72251>. (in Azerbaijani).
- al standard adopted in the field of artificial intelligence: AZS ISO/IEC 42001:2025. <https://azstand.gov.az/az/xeberler/olkede-suni-intellekt-sahesinde-yeni-dovlet-standardi-qebul-edilib>. (in Azerbaijani);
- Coalition for Content Provenance and Authenticity. (April, 2026). C2PA technical specification (Version 2.4). https://spec.c2pa.org/specifications/specifications/2.4/specs/C2PA_Specification.html;
- Council of Europe Treaty Office. (n.d.). Chart of signatures and ratifications of Treaty 223: Protocol amending Convention 108—Azerbaijan entry. <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=223>;
- Council of Europe Treaty Office. (n.d.). Chart of signatures and ratifications of Treaty 225: Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law—Azerbaijan entry. <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=225>;
- International Organization for Standardization & International Electrotechnical Commission. (2023). ISO/IEC 42001:2023 Information technology—Artificial intelligence—Management system. <https://www.iso.org/standard/42001>;
- Ministry of Digital Development and Transport of the Republic of Azerbaijan. (September 25, 2025). E-qanun.ai platform officially presented. <https://mincom.gov.az/en/media-en/news/e-qanunai-platform-officially-presented>;
- Organisation for Economic Co-operation and Development. (2023). Regulatory sandboxes in artificial intelligence (OECD Digital Economy Papers No. 356). OECD Publishing.

Other Supplementary Materials:

Azerbaijan Standardization Institute (AZ-
STAND). (July 28, 2025). New nation-



STATE-GUARANTEED LEGAL AID AS A SOCIAL RIGHT OF AN INFRASTRUCTURAL NATURE

Vadim Sukhov 

Ph.D in Law,

Lecturer at Comrat State University, Republic of Moldova

 vadim_suhov@yahoo.com

ARTICLE INFO

Article History:

Received	23.06.2026
Accepted	16 .07.2026
Published	30.09.2026

Keywords:

State-guaranteed legal aid,
Social rights, Access to justice,
Positive obligations of the
state, Legal infrastructure

ABSTRACT

This article examines the legal nature of state-guaranteed legal aid and substantiates its classification as an autonomous social right of an infrastructural character. While legal aid has traditionally been regarded as a mechanism for ensuring access to justice and the effective exercise of the right to a fair trial, contemporary legal developments demonstrate that its significance extends far beyond judicial proceedings. In increasingly complex legal systems, access to qualified legal assistance has become an essential condition for the practical exercise of a wide range of rights and legitimate interests.

The study analyses the principal doctrinal approaches to legal aid developed within the European legal tradition, including procedural, human rights, and socio-legal perspectives. Particular attention is devoted to the relationship between legal aid and the state's positive obligations in the field of human rights protection. The article also explores European institutional models of legal aid and the role of international standards in shaping national systems of legal assistance.

The research argues that legal aid should not be viewed merely as a derivative procedural safeguard or as an instru-

ment of access-to-justice policy. Rather, it performs an independent social function by compensating for structural legal inequality and enabling individuals to make effective use of the legal opportunities available to them. Because legal aid creates the conditions necessary for the exercise and protection of rights across different spheres of law, it is characterised as a social right of an infrastructural nature. This approach contributes to the further development of social rights theory and contemporary understandings of the social state.

INTRODUCTION

In contemporary states governed by the rule of law, the effective protection of human rights and freedoms depends not only on their formal recognition but also on the existence of mechanisms that enable their practical exercise. The mere legal recognition of subjective rights does not in itself guarantee their realisation if individuals lack the means necessary to understand legal procedures, protect their interests, and interact effectively with public institutions. In this context, state-guaranteed legal aid has emerged as one of the key mechanisms for ensuring genuine access to law.

Traditionally, legal aid has been viewed as an element of the right to a fair trial and as a means of securing access to justice. While this understanding remains important, it no longer fully captures the place of legal aid within the contemporary relationship between the state, law, and the individual. The increasing complexity of legal regulation, the expansion of state intervention into various spheres of social life, and the persistence of social inequalities have made access to qualified legal assistance a necessary condition for the exercise of a wide range of rights extending well beyond the sphere of judicial protection.

A substantial body of scholarship has examined access to justice, positive state obligations, social citizenship, and institutional models of legal aid provision. Nevertheless,

state-guaranteed legal aid continues to be analysed predominantly as an instrument for implementing other rights or as a component of specific legal procedures. Considerably less attention has been paid to whether legal aid itself should be recognised as an autonomous social right with its own normative content and institutional guarantees. Such an approach offers a different perspective on the place of legal aid within the broader framework of human rights and on the criteria by which state reforms in this field should be assessed.¹ Recent scholarship has further expanded the understanding of access to justice by linking it to legal capability, legal needs, and people-centred justice, thereby shifting attention from formal procedural guarantees towards the practical ability of individuals to exercise and protect their rights in everyday legal relations.² These developments indicate a gradual transition from viewing legal aid solely as a procedural safeguard to recognising it as an institutional mechanism that

- 1 Sukhov, V., Gîlca, N. (2026). Legal aid as an element of social citizenship and an instrument of access to justice. *Vector European*, (1), 112-120. https://ibn.idsi.md/ro/vizualizare_articol/249860.
- 2 Pleasence, P., Balmer, N. (2025). Legal capability and access to civil justice. In Bloom, A., Engel, D. M., Jolly, R. L. (Eds.), *Research handbook on civil justice* (pp. 213–231). Edward Elgar Publishing. <https://doi.org/10.4337/9781035314584.00026>; Organization for Economic Co-operation and Development. (2025). *Making justice systems more effective and people-centred: Advancing a responsive rule of law*. OECD Publishing. <https://doi.org/10.1787/e02fd90b-en>.

enables the effective exercise of rights. At the same time, the question of whether state-guaranteed legal aid constitutes an autonomous social right with its own normative content and infrastructural function remains insufficiently explored in contemporary legal doctrine.

This article proceeds from the premise that state-guaranteed legal aid cannot be reduced solely to the function of ensuring access to justice and should not be regarded merely as a derivative procedural safeguard. Its broader significance lies in its role in compensating for structural legal inequality and facilitating the effective exercise of subjective rights. These characteristics invite a reconsideration of legal aid through the broader framework of social rights theory.

The article's original contribution lies in substantiating the view that state-guaranteed legal aid should be understood not merely as a means of securing access to justice but also as an autonomous social right possessing its own normative content, minimum standards of implementation, and institutional guarantees.

METHODOLOGY

This article aims to provide a theoretical justification for classifying state-guaranteed legal aid as an autonomous social right. To achieve this objective, the article examines the principal doctrinal approaches to legal aid, analyses its relationship with the state's positive obligations in the field of human rights, and explores the institutional forms through which the state fulfils its responsibility to provide legal assistance.

The methodological framework combines doctrinal and comparative legal analysis with an institutional approach and selected insights from the sociology of law. This combination makes it possible to examine legal aid simultaneously as a legal institution, a mechanism for the implementation of human rights, and an element of state social policy.

FINDINGS AND DISCUSSION

1. DOCTRINAL APPROACHES TO LEGAL AID IN THE EUROPEAN LEGAL TRADITION

Within the approach that viewed state-guaranteed legal aid exclusively as an instrument for securing access to justice, its significance was determined by its capacity to overcome the economic barriers that hinder access to courts and participation in judicial proceedings. This position found its most systematic expression in the work of M. Cappelletti and B. Garth, who identified legal aid as one of the principal mechanisms of the first "wave" of the access to justice movement.³

The importance of this approach can hardly be overstated. It facilitated a shift from a formal understanding of the right to judicial protection towards recognition of the need for active state involvement in ensuring access to legal procedures. At the same time, viewing legal aid exclusively through the prism of judicial proceedings left unresolved the question of its role beyond procedural relationships. If the primary function of legal aid is merely to facilitate participation in court proceedings, its significance inevitably remains derivative of the right to judicial protection itself.

As legal systems became more complex and the scope of legal regulation expanded, this understanding increasingly attracted criticism. In his later work, Cappelletti shifted the focus from formal access to procedures towards the ability of legal institutions to secure the effective enjoyment of rights by socially disadvantaged groups.⁴ This development reflects a gradual broadening of the original procedural approach and laid the theoretical foundations for a more comprehensive understanding of legal aid.

The subsequent evolution of academic de-

3 Cappelletti, M., Garth, B., Trocker, N. (1976). Access to justice: Comparative general report. *Rabels Zeitschrift für ausländisches und internationales Privatrecht / The Rabel Journal of Comparative and International Private Law*, 40(3–4), 673–676.

4 Cappelletti, M. (1989). The judicial process in comparative perspective. Clarendon Press, 8–11.

bate was marked by growing attention to the human rights dimension of legal aid. Within this approach, the significance of legal aid derives not so much from facilitating participation in judicial proceedings as from creating the conditions necessary for the effective enjoyment of human rights. Scholars who examine legal aid through the lens of the state's positive obligations argue that, in certain circumstances, the absence of legal assistance renders the exercise of subjective rights impossible despite their formal recognition.⁵

However, this approach also falls short of fully defining the independent legal status of legal aid. By treating it primarily as a means of implementing other rights, it leaves unresolved the question of whether legal aid possesses its own normative content or whether its significance is entirely exhausted by serving other legal institutions.

A distinctive place in contemporary scholarship is occupied by the socio-legal approach. In the work of H. Sommerlad, legal aid is understood as a mechanism for integrating individuals into the legal order and as an element of social citizenship.⁶ This idea has been further developed in more recent studies exploring the relationship between legal aid, access to justice, and social citizenship in the context of the transformation of the welfare state.⁷

Unlike the procedural approach, legal aid is viewed here not merely as a means of resolving specific legal disputes but as an institution that influences the distribution of legal resources within society. The focus shifts to an individual's ability to make effective use of the

law regardless of their financial circumstances or social status.

In our view, it is this approach that comes closest to conceptualising legal aid as an autonomous socio-legal institution. Nevertheless, even within the framework of social citizenship theory, the question of whether legal aid should be classified as an autonomous social right remains insufficiently explored. Most studies concentrate on the social function of legal aid without directly addressing its place within the broader system of social rights.⁸

It follows that contemporary European legal scholarship identifies at least three principal approaches to understanding legal aid: the procedural approach, the human rights approach, and the socio-legal approach. Each captures important aspects of the phenomenon under consideration, yet none provides a comprehensive answer to the question of legal aid's place within the system of social rights. This, in turn, necessitates further examination of legal aid through the lens of the state's positive obligations and the theory of social rights.

Recent scholarship has further developed these doctrinal approaches by moving beyond the traditional focus on access to courts towards broader concepts of legal capability, legal needs, and people-centred justice. Rather than assessing legal aid solely as a procedural guarantee, contemporary research increasingly examines its contribution to enabling individuals to understand, exercise, and effectively enforce their rights in everyday legal life. This shift reflects the emergence of a more user-centred conception of justice, in which legal aid is viewed as part of a wider institutional framework designed to respond to people's legal needs rather than merely to facilitate judicial proceedings.⁹

5 Chicu, M. (2013). The right to legal aid in non-criminal matters through the glance of the human rights rationale (Doctoral dissertation). Central European University, 61-63.

6 Sommerlad, H. (2004). Some reflections on the relationship between citizenship, access to justice, and the reform of legal aid. *Journal of Law and Society*, 31(3), 345-347. <https://doi.org/10.1111/j.0021-8553.2004.00299.x>.

7 Sukhov, V., Gilca, N. (2026). Legal aid as an element of social citizenship and an instrument of access to justice. *Vector European*, (1), 112-120. https://ibn.idsi.md/ro/vizualizare_articol/249860.

8 Sommerlad, H. (2004). Some reflections on the relationship between citizenship, access to justice, and the reform of legal aid. *Journal of Law and Society*, 31(3), 345-347. <https://doi.org/10.1111/j.0021-8553.2004.00299.x>.

9 Pleasence, P., Balmer, N. (2025). Legal capability and access to civil justice. In Bloom, A., Engel, D. M., Jolly, R. L. (Eds.), *Research handbook on civil justice* (pp.

2. STATE-GUARANTEED LEGAL AID IN THE CONTEXT OF THE STATE'S POSITIVE OBLIGATIONS

The development of contemporary human rights doctrine has been accompanied by a gradual reassessment of traditional understandings of the state's role in securing subjective rights. Whereas the classical liberal approach primarily emphasised the state's duty to refrain from interfering with individual freedom, contemporary conceptions of human rights are increasingly associated with the need to create the conditions necessary for their effective enjoyment. The focus has shifted from the mere legal recognition of rights to the actual ability of individuals, situated in different social and economic circumstances, to exercise them in practice.

This understanding is reflected in the concept of the state's positive obligations. At its core lies the recognition that the formal existence of a right does not in itself guarantee its effective realisation. An individual may possess a right in normative terms, yet the absence of adequate resources, information, or institutional support may render its exercise practically impossible. In such circumstances, the state is viewed not only as a guarantor of non-interference but also as an actor responsible for creating the conditions necessary for the effective enjoyment of rights.

Significantly, the development of this concept has been accompanied by a gradual departure from the rigid distinction traditionally drawn between civil and political rights on the one hand and social rights on the other. As Fredman observes, the effective enjoyment of virtually every right requires some degree of positive state action. Even rights traditionally regarded as requiring only state restraint depend upon the existence of legal institutions, enforcement mechanisms, and procedures for their protection. In this sense, the distinction

between negative and positive obligations is relative rather than absolute.¹⁰

This approach has acquired particular importance in the jurisprudence of the European Court of Human Rights. For several decades, the Court has consistently maintained that the rights guaranteed by the Convention must be not theoretical and illusory but practical and effective. This principle is of fundamental importance for understanding the place of legal aid within the system of human rights guarantees, as it shifts the focus from the formal existence of legal opportunities to an individual's actual ability to make use of them.

The most well-known illustration of this approach is the judgment in *Airey v. Ireland*. In considering the applicant's access to judicial proceedings, the Court concluded that, in certain circumstances, the absence of legal aid may effectively deprive an individual of the possibility of exercising a right to which they are formally entitled. In doing so, the Court articulated an important legal principle: state obligations are not exhausted by the mere creation of judicial procedures if those procedures remain inaccessible to a significant segment of the population for economic or other reasons.¹¹

However, this judgment does not support the conclusion that the state is under a universal obligation to provide legal aid in all circumstances. It is precisely at this point that one of the most interesting debates in contemporary legal scholarship begins. If rights must be practical and effective, does this necessarily require the continual expansion of state-funded legal aid schemes?

Proponents of a more cautious approach answer this question in the negative. Bar-endrecht argues that access to law may be promoted through a variety of mechanisms, including procedural simplification, the development of legal information, improvements in

213–231). Edward Elgar Publishing. <https://doi.org/10.4337/9781035314584.00026>.

10 Fredman, S. (2008). *Human rights transformed: Positive rights and positive duties*. Oxford University Press, 499-503.

11 European Court of Human Rights. (1979). *Airey v. Ireland* (Application No. 6289/73). Strasbourg. <https://hudoc.echr.coe.int/eng?i=001-57420>.

dispute resolution systems, and greater accessibility of public services. From this perspective, legal aid is only one possible means of overcoming legal barriers rather than the sole method by which the state fulfils its positive obligations.¹²

Developing this argument further, Barendrecht, Kamminga, and Verdonshot propose that access to law should be understood primarily through the needs of its users. In their view, the effectiveness of legal institutions should be assessed not by the quantity of legal services provided but by their capacity to help individuals resolve the problems they encounter in everyday life. Such an approach embraces a broader understanding of access to law and allows for the use of a wide range of instruments, from legal information and advice to alternative dispute resolution mechanisms and simplified procedures for interacting with public authorities.¹³ Within this framework, legal aid remains important but is regarded as one component of a broader system designed to secure access to law.

This position deserves serious consideration. Not every legal problem requires professional legal representation. In many cases, barriers arise from inadequate legal awareness, the complexity of administrative procedures, or the absence of clear mechanisms for interacting with public authorities. In such circumstances, the development of legal information systems and public legal education may prove no less effective in promoting access to law than the expansion of legal aid programmes.

This conclusion is supported by research on universal access to legal information. As noted elsewhere, a substantial proportion of legal problems arise before individuals seek professional legal assistance. Greater legal awareness, the development of accessible information re-

sources, and the availability of advisory services can prevent many disputes from emerging or significantly reduce their complexity at an early stage.¹⁴

At the same time, recognising the value of alternative mechanisms does not diminish the importance of legal aid. On the contrary, it enables a more precise identification of the circumstances in which legal aid becomes particularly significant. Legal information may help individuals understand the content of their rights, but it cannot always overcome the consequences of substantial inequalities in legal capacity. In many situations, individuals face not only a lack of information but also complex legal frameworks, multi-layered administrative procedures, or professionally represented state bodies and large organisations.

It is precisely in such circumstances that the limitations of a purely formal understanding of equality become apparent. As the jurisprudence of the European Court of Human Rights demonstrates, identical procedural rules do not necessarily provide equal opportunities for the protection of rights. This problem was particularly evident in *Steel and Morris v. the United Kingdom*, where the applicants became involved in complex litigation against a large corporation possessing vastly superior financial and organisational resources. Under such conditions, formal equality between the parties did not eliminate the practical inequality of their ability to defend their interests.¹⁵

A similar approach can be seen in *McVicar v. the United Kingdom*. The Court did not recognise a general obligation to provide legal aid in all civil cases, but it emphasised the need to

12 Barendrecht, M. (2011). Legal aid, accessible courts or legal information? *Global Jurist*, 11(1), Article 3. <https://doi.org/10.2202/1934-2640.1377>.

13 Barendrecht, M., Kamminga, P., Verdonshot, J. (2014). Prioritizing the needs of users in access to justice. *Hague Institute for the Internationalisation of Law*, 7-15.

14 Suhov, V. (2024). Mechanisms and Strategies for Ensuring Universal Access to Legal Information and Assistance: The Experience of the Republic of Moldova, *The Annals of "Dunarea de Jos" University of Galati. Legal Sciences*. Fascicle XXVI, 7(2), 102-112. <https://www.gup.ugal.ro/ugaljournals/index.php/als/article/view/7243>.

15 European Court of Human Rights. (2005). *Steel and Morris v. the United Kingdom* (Application No. 68416/01). Strasbourg. <https://hudoc.echr.coe.int/eng?i=001-68224>.

assess the specific circumstances of each case, including the complexity of the dispute, the individual's ability to represent themselves, and the consequences of the absence of professional legal assistance. In doing so, the Court identified an important limit to the state's positive obligations: the necessity of legal aid depends not on the abstract nature of a right but on the practical possibility of exercising it in the circumstances of a particular case.¹⁶

In our view, this approach most accurately reflects the contemporary understanding of the state's positive obligations. Legal aid is neither the sole mechanism for securing human rights nor a substitute for other forms of legal support. Nevertheless, there are situations in which neither legal information, procedural simplification, nor other organisational measures are capable of compensating for significant inequalities in legal capacity. In such circumstances, the absence of legal aid calls into question the very possibility of the effective exercise of rights.

Accordingly, the significance of state-guaranteed legal aid cannot be reduced to facilitating access to judicial procedures alone. In a broader sense, it constitutes one of the instruments through which the state fulfils its positive obligations to ensure the effective enjoyment of human rights.

At the same time, this conclusion does not in itself determine the place of legal aid within the system of human rights. If legal aid serves to compensate for structural legal inequality and enables the practical exercise of subjective rights, the question arises whether it should be regarded merely as an auxiliary mechanism for implementing other rights or as an autonomous element within the broader system of social guarantees.

3. INSTITUTIONALISING STATE OBLIGATIONS IN THE FIELD OF LEGAL AID: EUROPEAN MODELS AND INTERNATIONAL STANDARDS

Unlike many other legal guarantees, legal aid cannot be secured solely through the formal recognition of a corresponding right. Its effective implementation requires the existence of dedicated organisational structures, sustainable sources of funding, service delivery procedures, and quality control mechanisms. For this reason, an examination of institutional models of legal aid makes it possible to assess not only the ways in which legal aid is organised but also the nature of state responsibility in this field.

Within the European legal space, the development of legal aid systems has been closely associated with the expansion of the state's social function and the gradual recognition of the need to ensure meaningful access to law for individuals in vulnerable situations. Unlike minimalist approaches that are limited to the formal recognition of a right to legal aid, most European states have sought to establish durable institutional mechanisms for its provision. Research has long demonstrated that legal aid should be regarded not as a one-off social service or a charitable measure of support, but as an element of legal infrastructure integrated into justice systems and public administration.¹⁷ This understanding has subsequently been reinforced by contemporary legal scholarship and European institutional assessments, which emphasise that the effectiveness of legal aid depends not only on statutory guarantees but also on institutional design, sustainable funding, accessibility, and the capacity of legal services to respond to people's legal needs.¹⁸

16 European Court of Human Rights. (2002). *McVicar v. the United Kingdom* (Application No. 46311/99). Strasbourg. <https://hudoc.echr.coe.int/en-g?i=001-60450>.

17 Public Interest Law Institute. (2009). *Making legal aid a reality: A resource book for policy makers and civil society*. Public Interest Law Institute. <https://www.pilnet.org/wp-content/uploads/2020/04/Making-Legal-Aid-a-Reality.pdf>.

18 Pleasence, P., Balmer, N. (2025). Legal capability and access to civil justice. In Bloom, A., Engel, D. M., Jolly, R. L. (Eds.), *Research handbook on civil justice* (pp.

These general principles are reflected in different institutional arrangements adopted across European legal aid systems, despite significant variations in their organisational structure and methods of service delivery.

Comparative analysis of the legal aid systems of Finland, Germany, the Netherlands, England and Wales, and the Republic of Moldova reveals three principal institutional models: centralised state-run systems, models based primarily on the participation of the legal profession, and mixed institutional arrangements involving a division of responsibilities between public authorities, professional associations, and non-governmental organisations. Despite significant differences in institutional organisation, administrative structures, and the role of legal professionals, all of these systems are based on the same fundamental legal principle: the state retains ultimate responsibility for financing legal aid, establishing eligibility criteria, ensuring quality standards, and guaranteeing effective access to legal services. Comparative analysis therefore demonstrates that differences between European legal aid systems concern the institutional arrangements through which legal aid is delivered rather than the legal character of the state's obligation to ensure effective access to legal assistance.¹⁹

Of particular importance is the fact that none of these models operates exclusively on a market basis. Even in systems that rely extensively on private legal practitioners and members of the legal profession, the state retains responsibility for funding, establishing eligibility criteria, setting quality standards, and overseeing the use of public resources.²⁰ This demonstrates that legal aid is regarded as an object of sustained public responsibility rather than a sphere entirely delegated to private regulatory mechanisms.

This conclusion is further supported by empirical research. Studies of different legal aid systems indicate that their effectiveness depends not only on the level of funding but also on the quality of their institutional organisation. The formal existence of a right to legal aid does not guarantee effective protection of rights where services are provided under conditions of administrative dependence, excessive workloads for service providers, or inadequate quality assurance mechanisms. Accordingly, the academic literature emphasises the importance of institutional guarantees of independence, professional accountability, and adequate remuneration as essential components of a functioning legal aid system.²¹

The international dimension of legal aid institutionalisation is reflected in the gradual development of universal and regional standards defining the core requirements for national legal aid systems. Although most of these instruments are not legally binding, they reflect an emerging international consensus regarding the place of legal aid within the broader framework of human rights protection. International standards proceed on the assumption that legal aid should be accessible, timely, of high quality, and responsive to the needs of vulnerable groups. Moreover, its scope extends beyond

213–231). Edward Elgar Publishing. <https://doi.org/10.4337/9781035314584.00026>; Organisation for Economic Co-operation and Development. (2025). Making justice systems more effective and people-centred: Advancing a responsive rule of law. OECD Publishing. <https://doi.org/10.1787/e02fd90b-en>; European Commission for the Efficiency of Justice. (2024). European judicial systems: CEPEJ evaluation report 2024: Evaluation cycle (2022 data). Part 1: General analysis. Council of Europe. <https://www.coe.int/en/web/cepej/special-file>.

19 European Commission for the Efficiency of Justice. (2024). European judicial systems: CEPEJ evaluation report 2024: Evaluation cycle (2022 data). Part 1: General analysis. Council of Europe. <https://www.coe.int/en/web/cepej/special-file>; Ministry of Justice. (2024). Review of civil legal aid: Comparative analysis of legal aid systems report. Ministry of Justice. <https://www.gov.uk/government/publications/review-of-civil-legal-aid-comparative-analysis-of-legal-aid-systems-report>.

20 Sukhov, V. (2021). World's models of free legal aid provision. *Relații internaționale. Plus*, 2(20), 241–246. https://ibn.idsi.md/ro/vizualizare_articol/146093.

21 Moorhead, R., Sherr, A., Paterson, A. (2003). Contesting professionalism: Legal aid and nonlawyers in England and Wales. *Law & Society Review*, 37(4), 770–773. <https://doi.org/10.1111/1540-5893.3704002>.

legal representation in court and encompasses a broader range of measures aimed at ensuring access to law.²²

Institutional analysis also allows for a critical assessment of proposals to replace legal aid with alternative mechanisms for promoting access to law, such as legal information services, digital tools, or simplified procedures. The value of these instruments is undeniable; however, research demonstrates that their effectiveness has objective limits. In complex and socially significant categories of cases, they are incapable of fully compensating for the absence of professional legal assistance. For this reason, replacing legal aid with less costly forms of support may result not in greater efficiency but in the reinforcement of structural legal inequality and a reduction in the actual level of rights protection.²³

Viewed from a broader socio-legal perspective, institutional models of legal aid affect not only the functioning of justice systems but also the character of social integration. Research indicates that the weakening of institutional guarantees of legal aid contributes to the legal marginalisation of socially vulnerable groups and undermines public trust in institutions. Conversely, stable and professionally organised legal aid systems strengthen legal inclusion and promote the principle of substantive equality.²⁴

Despite the diversity of national legal aid models, they share a common characteristic: access to professional legal assistance is recognised as a matter of sustained public responsibility. This development reflects the broader expansion of the social dimension of citizen-

ship described by T. H. Marshall, whereby the state assumes responsibility for creating the conditions necessary for individuals to participate fully in social life.²⁵

The analysis of institutional models therefore demonstrates that, within contemporary European legal systems, legal aid is not regarded as an optional supplement to particular legal procedures but as a stable institution of public responsibility supported by dedicated funding mechanisms, organisational infrastructure, and professional standards. Regardless of the specific features of any given model, the state retains a central role in ensuring both the accessibility and effectiveness of legal aid. This observation is of fundamental importance for addressing the broader question of whether legal aid should be understood not merely as an instrument for implementing other rights but also as an autonomous element within the system of social rights.

4. STATE-GUARANTEED LEGAL AID AS A SOCIAL RIGHT OF AN INFRASTRUCTURAL NATURE: A THEORETICAL JUSTIFICATION

Despite the significant transformation of approaches to legal aid in contemporary legal scholarship, its classification as an autonomous social right remains contested. The prevailing view continues to regard legal aid as a derivative guarantee of the right to judicial protection, the right to a fair trial, or the broader concept of access to justice. From this perspective, legal aid possesses no independent content of its own and exists solely as a means of facilitating the implementation of other rights.

This position is not without foundation. Historically, the development of legal aid institutions was indeed closely linked to judicial protection and the need to ensure procedural equality between parties. For this reason, legal aid was long perceived primarily as an auxil-

22 United Nations Office on Drugs and Crime. (2017). Model law on legal aid in criminal justice systems with commentaries. United Nations. https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf.

23 Barendrecht, M. (2011). Legal aid, accessible courts or legal information? *Global Jurist*, 11(1), Article 3, 6-8. <https://doi.org/10.2202/1934-2640.1377>.

24 Sommerlad, H., Sanderson, P. (2013). Social justice on the margins: The future of the not for profit legal sector as a service provider. *Journal of Social Welfare and Family Law*, 35(3), 309–312. <https://doi.org/10.1080/09649069.2013.829712>.

25 Marshall, T. H. (1950). *Citizenship and social class and other essays*. Cambridge University Press, 28-29.

iary mechanism whose significance derived not from its own content but from its capacity to facilitate the exercise of other legal rights. However, the analysis undertaken in this article raises questions as to whether this explanation remains sufficient.

As demonstrated above, the evolution of European legal doctrine has been marked by a gradual departure from a narrowly procedural understanding of legal aid. In the work of M. Cappelletti, the focus increasingly shifted from formal access to judicial procedures towards the effective enjoyment of rights by socially vulnerable groups. Human rights scholarship linked legal aid to the state's positive obligations, while the socio-legal approach, most notably associated with the work of H. Sommerlad, highlighted its role in promoting legal inclusion and social citizenship. At the same time, the institutional development of European legal aid systems demonstrated that states increasingly regard legal aid not as an occasional form of assistance but as a stable component of public responsibility.

These developments signify more than a mere expansion of the scope of legal aid. They reflect a gradual transformation in perceptions of its legal nature. Whereas legal aid was initially understood as a means of participating in particular legal procedures, it is now increasingly viewed as a mechanism for securing access to the very process through which rights are realised.

Against this theoretical background, the central question is no longer whether legal aid performs a social function, but what distinguishes its legal nature from that of other social rights. This constitutes its defining characteristic. Most social rights are directed towards the provision of a specific social good or the satisfaction of a particular social need. The right to education provides access to educational resources; the right to healthcare is concerned with the protection of health; and the right to social security is aimed at supporting individuals in disadvantaged socio-economic circumstances. Legal aid performs a different function.

Its purpose is not to provide an independent social good but to create the conditions necessary for individuals to make use of the entire system of subjective rights.

This understanding is consistent with recent civil justice scholarship, which emphasises that the effective enjoyment of rights depends not only on the availability of legal rights but also on individuals' ability to recognise legal problems and act upon them effectively. This perspective further supports the view that legal aid performs a broader enabling function by facilitating the practical exercise of rights rather than merely providing procedural representation.²⁶

In this sense, legal aid possesses an infrastructural character. It supports the functioning of the mechanism through which rights are realised in much the same way that educational or judicial infrastructure enables the operation of the corresponding social institutions. The absence of legal aid does not necessarily result in the violation of any specific right; however, it may render the practical exercise of a wide range of rights and legitimate interests impossible. This explains why the consequences of inaccessible legal aid extend far beyond the confines of individual legal proceedings.

The understanding of legal aid proposed here as a social right of an infrastructural nature partially overlaps with existing concepts in human rights theory that emphasise rights facilitating the exercise of other rights. At the same time, the category employed in this study has a more limited scope. It does not focus on the normative priority of a particular right or its position within the hierarchy of human rights. Rather, it emphasises the function performed by that right within the legal system. Legal aid is characterised as an infrastructural right precisely because it provides individuals with access to the mechanisms through which subjective rights are realised and protected,

26 Sandefur, R. L. (2025). Civil legal needs. In Bloom, A., Engel, D. M., Jolly, R. L. (Eds.), *Research handbook on civil justice* (pp. 199–209). Edward Elgar Publishing. <https://doi.org/10.4337/9781035314584.00023>.

regardless of the branch of law to which those rights belong.

This understanding is consistent with broader developments in the theory of social rights. T. H. Marshall's classical conception of social citizenship links social rights to the ability of individuals to participate fully in social life and to the mitigation of social inequality.²⁷ In contemporary societies, participation in social life cannot be understood solely in terms of material well-being. Equally important is access to legal resources that enable individuals to interact effectively with public institutions, protect their interests, and make meaningful use of the rights available to them. In this respect, legal aid performs a function comparable to that of other social rights, as it seeks to overcome one particular form of social exclusion—legal marginalisation.

Contemporary understandings of equality further reinforce this conclusion. As Fredman argues, the purpose of social rights is not merely to provide formally equal opportunities but also to remove the structural obstacles that prevent individuals from making effective use of those opportunities.²⁸ From this perspective, legal aid constitutes one of the mechanisms through which substantive equality is promoted. It helps compensate for disparities in legal knowledge, access to professional support, and the ability to navigate complex institutional procedures. Its social function therefore extends beyond facilitating access to particular legal processes and includes mitigating the consequences of structural legal inequality.

A possible objection to recognising legal aid as an autonomous social right is that it merely serves as an instrument for implementing other rights. Such an argument, however, is ultimately unpersuasive. Many social rights also possess an instrumental dimension. Education creates the conditions necessary for the exercise of political, economic, and cultural rights.

Social security enables individuals to participate in society with dignity. Healthcare provides the preconditions for the enjoyment of a broad range of other rights and freedoms. The instrumental nature of a right does not in itself deprive that right of autonomous significance within the human rights framework.

Indeed, it is precisely legal aid's capacity to facilitate the exercise of a wide range of other rights that justifies its recognition as a right of a particular kind. Unlike most social rights, it is not directed towards the satisfaction of a specific need but towards maintaining the functioning of the entire system of legal opportunities available to the individual. This is what gives legal aid its infrastructural character and, at the same time, its distinctive place within the system of social rights.

The conclusion that legal aid possesses a social-rights dimension is further supported by the application of traditional criteria used to identify social rights. First, its implementation is impossible without active state involvement, including regulation, funding, and organisational support. Secondly, it possesses a minimum normative content encompassing accessibility, timeliness, and effectiveness. Thirdly, its operation is directly linked to specialised institutions and the allocation of public resources. Finally, legal aid is directed towards mitigating the effects of social and legal inequality, a function traditionally regarded as one of the defining characteristics of social rights.

Accordingly, state-guaranteed legal aid cannot be reduced either to a derivative procedural safeguard or to an instrument of access-to-justice policy. Its purpose is to secure the practical exercise of the entire system of subjective rights by compensating for structural legal inequality. It is this function that justifies treating legal aid as an autonomous social right of an infrastructural nature, occupying a distinctive place within the human rights framework of the modern social state.

27 Marshall, T. H. (1950). *Citizenship and social class and other essays*. Cambridge University Press, 28-29.

28 Fredman, S. (2008). *Human rights transformed: Positive rights and positive duties*. Oxford University Press.

CONCLUSION

The present study demonstrates that the traditional understanding of state-guaranteed legal aid as a derivative procedural safeguard no longer fully reflects its place within the contemporary human rights framework. Although the historical development of legal aid was indeed closely linked to securing access to justice and ensuring the right to a fair trial, contemporary legal doctrine and practice reveal a significantly broader range of functions performed by legal aid.

Legal aid provides not only the opportunity to participate in specific legal procedures but also access to the very mechanisms through which subjective rights are realised. In a context characterised by increasingly complex legal regulation, the expanding scope of state intervention, and persistent social inequality, an individual's ability to make effective use of their rights depends ever more heavily on the availability of professional legal support. In the absence of such support, many rights and legitimate interests continue to exist in a formal sense but become difficult, or even impossible, to exercise in practice.

An analysis of the state's positive obligations makes it possible to regard legal aid as one of the instruments through which the effective enjoyment of human rights is secured. At the same time, its significance cannot be reduced to a merely auxiliary function in relation to other rights. Unlike traditional social rights, which are directed towards satisfying specific social needs, legal aid possesses an infrastructural character. Its purpose is to provide individuals with access to the entire range of legal opportunities offered by the contemporary legal order. It is this distinctive feature that justifies treating state-guaranteed legal aid as an autonomous social right.

The social nature of legal aid is determined not by the object of provision but by the function it performs—namely, compensating for structural legal inequality and ensuring that different social groups have an equal capac-

ity to exercise their rights. In this respect, legal aid occupies a distinctive position within the system of social rights. Rather than serving primarily as a mechanism for the distribution of material benefits, it functions as a means of promoting legal inclusion and enabling individuals to participate fully in social life.

The proposed approach has implications not only for legal theory but also for public policy. If legal aid is regarded solely as an instrument of procedural policy, its scope and forms may be determined primarily by considerations of administrative convenience and budgetary efficiency. If, however, it is recognised as an autonomous social right, the assessment of legal aid systems must extend beyond economic indicators and include their capacity to ensure genuine access to law for socially vulnerable groups. Such an approach entails higher standards in relation to the sustainability of legal aid systems, the quality of services provided, and the guarantees of their accessibility.

Ultimately, the development of state-guaranteed legal aid reflects a broader transformation in the evolution of the modern social state. Alongside education, healthcare, and social security, legal aid contributes to the creation of the institutional conditions necessary for the effective exercise of rights in increasingly complex legal systems. For this reason, the further development of social rights theory requires legal aid to be recognised not merely as an instrument of access to justice, but as an autonomous subject of scholarly inquiry whose place within the human rights framework should be reconsidered in light of its infrastructural function.

REFERENCES:

Scholarly literature:

- Barendrecht, M. (2011). Legal aid, accessible courts or legal information? *Global Jurist*, 11(1). <<https://doi.org/10.2202/1934-2640.1377>>;
- Barendrecht, M., Kamminga, P., Verdonschot, J. (2014). Prioritizing the needs of users in access to justice. Hague Institute for the Internationalisation of Law;
- Cappelletti, M. (1989). The judicial process in comparative perspective. Clarendon Press;
- Cappelletti, M., Garth, B., Trocker, N. (1976). Access to justice: Comparative general report. *Rabels Zeitschrift für ausländisches und internationales Privatrecht / The Rabel Journal of Comparative and International Private Law*, 40(3-4);
- Chicu, M. (2013). The right to legal aid in non-criminal matters through the glance of the human rights rationale (Doctoral dissertation). Central European University;
- Fredman, S. (2008). Human rights transformed: Positive rights and positive duties. Oxford University Press;
- Marshall, T. H. (1950). Citizenship and social class and other essays. Cambridge University Press;
- Moorhead, R., Sherr, A., Paterson, A. (2003). Contesting professionalism: Legal aid and nonlawyers in England and Wales. *Law & Society Review*, 37(4). <<https://doi.org/10.1111/1540-5893.3704002>>;
- Pleasence, P., Balmer, N. (2025). Legal capability and access to civil justice. In Bloom, A., Engel, D. M., Jolly, R. L. (Eds.), *Research handbook on civil justice* (pp. 213-231). Edward Elgar Publishing. <<https://doi.org/10.4337/9781035314584.00026>>;
- Sandefur, R. L. (2025). Civil legal needs. In Bloom, A., Engel, D. M., Jolly, R. L. (Eds.), *Research handbook on civil justice* (pp. 199-209). Edward Elgar Publishing. <<https://doi.org/10.4337/9781035314584.00023>>;
- Sommerlad, H. (2004). Some reflections on the relationship between citizenship, access to justice, and the reform of legal aid. *Journal of Law and Society*, 31(3). <<https://doi.org/10.1111/j.0021-8553.2004.00299.x>>;
- Sommerlad, H., Sanderson, P. (2013). Social justice on the margins: The future of the not for profit legal sector as a service provider. *Journal of Social Welfare and Family Law*, 35(3). <<https://doi.org/10.1080/09649069.2013.829712>>;
- Suhov, V. (2024). Mechanisms and Strategies for Ensuring Universal Access to Legal Information and Assistance: The Experience of the Republic of Moldova, The Annals of "Dunarea de Jos" University of Galati. Legal Sciences. Fascicle XXVI, 7(2). <<https://www.gup.ugal.ro/ugaljournals/index.php/als/article/view/7243>>;
- Sukhov, V. (2021). World's models of free legal aid provision. *Relații internaționale. Plus*, 2(20). <https://ibn.idsi.md/ro/vizualizare_articol/146093>.
- Sukhov, V., Gîlca, N. (2026). Legal aid as an element of social citizenship and an instrument of access to justice. *Vector European*, (1). <https://ibn.idsi.md/ro/vizualizare_articol/249860>.

Court decisions:

- European Court of Human Rights. (1979). *Airey v. Ireland* (Application No. 6289/73). Strasbourg. <<https://hudoc.echr.coe.int/eng?i=001-57420>>;
- European Court of Human Rights. (2002). *McVicar v. the United Kingdom* (Application No. 46311/99). Strasbourg. <<https://hudoc.echr.coe.int/eng?i=001-60450>>;
- European Court of Human Rights. (2005). *Steel and Morris v. the United Kingdom* (Application No. 68416/01). Strasbourg. <<https://hudoc.echr.coe.int/eng?i=001-68224>>.

Other Supplementary materials:

European Commission for the Efficiency of Justice. (2024). European judicial systems: CEPEJ evaluation report 2024: Evaluation cycle (2022 data). Part 1: General analysis. Council of Europe. <https://www.coe.int/en/web/cepej/special-file>;

Ministry of Justice. (2024). Review of civil legal aid: Comparative analysis of legal aid systems report. Ministry of Justice. <https://www.gov.uk/government/publications/review-of-civil-legal-aid-comparative-analysis-of-legal-aid-systems-report>;

Organization for Economic Co-operation and Development. (2025). Making justice systems more effective and people-centred: Advancing a responsive rule of law. OECD Publishing. <https://doi.org/10.1787/e02fd90b-en>;

Public Interest Law Institute. (2009). Making legal aid a reality: A resource book for policy makers and civil society. Public Interest Law Institute. <https://www.pilnet.org/wp-content/uploads/2020/04/Making-Legal-Aid-a-Reality.pdf>;

United Nations Office on Drugs and Crime. (2017). Model law on legal aid in criminal justice systems with commentaries. United Nations. https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf.



LEGAL GOVERNANCE OF DISASTER RISKS UNDER NEPAD: Establishing Contractual Responsibility for Resilience and Sustainable Development in Africa

Khedidja Ziani 

Ph.D in Political Science, University of Batna 1, Algeria

 khedidja.ziani@univ-batna.dz

Hichem Makhoulf 

Ph.D in Private Law, University Center of Barika, Algeria

 Hichem.makhoulf@cu-barika.dz

Mohammed Halim Limam 

*Ph.D in Political Science and International Relations,
University of Algiers 3, Algeria*

 limam.halim@gmail.com

ARTICLE INFO

Article History:

Received	22.07.2026
Accepted	10.09.2026
Published	30.09.2026

Keywords:

Risk governance, Disaster risk, NEPAD, Legal responsibility, Strategies, Risk management, Capacity, Resilience

ABSTRACT

This paper examines the strategy of the New Partnership for Africa's Development (NEPAD) for disaster risk reduction and aims to analyze the initiative's approach to overcoming obstacles that hinder sustainable development, particularly the poor management of major disasters and the limited effectiveness of national risk reduction plans. The study is guided by a central research question: How does NEPAD's strategic approach to disaster risk reduction contribute to enhancing the resilience of African countries in the face of major disasters, and to what extent does this strategy establish a genuine legal, as distinct from merely political, responsibility on the part of African States for its implementation?

The findings indicate that the successful implementation of a disaster risk governance strategy to improve the prepared-

ness and resilience of African nations against various crises depends on several key factors. These include strong political commitment from governments to disaster risk reduction, the development of national institutions and observatories to enhance risk identification and assessment mechanisms, and the establishment of effective early warning systems. Additionally, the study finds that NEPAD does not, of itself, establish a contractual responsibility in the strict sense of treaty law; it establishes a conditional responsibility that hardens into a binding legal obligation only as African States progressively transpose continental commitments into national legislation. The study further highlights the importance of integrating disaster risk governance into development plans and programs, as well as strengthening coordination among African governments to ensure a more comprehensive and effective response.

INTRODUCTION

African countries face enormous challenges in the field of disaster risk management, ranging from natural disasters such as floods, droughts, and hurricanes, to human-induced disasters. These risks do not recognize political borders and require a coordinated, integrated response that goes beyond the individual capacities of states. Regional and international cooperation thus becomes an inevitable necessity to strengthen governance systems and enhance the ability to mitigate the impacts of disasters, prepare for them, respond to them, and recover from them. This is what the African Union and the New Partnership for Africa's Development (NEPAD) realized when they announced the regional strategy for disaster risk reduction, aimed at achieving a set of objectives through a package of strategies that address weaknesses in existing policies and structures in the field of disaster risk reduction, and lay the foundations of governance capable of strengthening countries' resilience in the face of disasters. Africa's share of global disasters has risen, and their impacts have

become an obstacle to achieving sustainable development in its countries.

NEPAD's interest in the issue of disaster risk governance has arisen within a broader global concern with disaster management, and with the shift established by many international initiatives within the framework of what is known as disaster risk management. Therefore, this research paper will seek to identify the key features of NEPAD's strategy for disaster risk governance, starting from the following problem: How does the strategic approach adopted by the NEPAD initiative in the field of disaster risk reduction contribute to strengthening the resilience of African countries in the face of major disasters?

The existing literature on disaster risk in Africa has largely approached the subject from developmental, institutional, or governance-oriented perspectives, emphasizing capacity-building, early warning, and coordination among stakeholders.¹ At the same time, the

1 Pelling, M., Wisner, B. (2012). *Disaster risk reduction: Cases from urban Africa*. Routledge; Tierney, K. (2012). *Disaster governance: Social, political, and economic dimensions*. *Annual review of Environment and*

broader field of international disaster response law has been mapped comprehensively at the universal and regional (mainly European) levels,² but without a sustained, dedicated legal reading of the African Union/NEPAD architecture specifically. This paper seeks to fill that gap: it offers what is, to the authors' knowledge, the first systematic legal assessment of whether NEPAD's disaster-risk commitments generate a genuine responsibility on the part of African States, and it traces the conditions under which a non-binding continental strategy may progressively harden into binding domestic and international obligations.

Relying on the inductive method, this article will attempt to identify one of the most important issues facing the countries of the African continent: the increasing severity of natural and non-natural disasters, the impacts and costs arising from them, and from poor responses to them. This paper seeks to identify the strategic approach adopted by the African Union in the field of disaster risk reduction through the New Partnership for Africa's Development.

METHODOLOGY

This study adopts the inductive method as its principal research strategy. The choice is dictated by the nature of the inquiry: rather than testing a single pre-formulated legal hypothesis against a closed body of rules, the research proceeds from the systematic observation of a wide range of particular instances – documented disaster episodes across several African States, the specific commitments contained in NEPAD's regional strategy, and the institutional practice of the African Union – to draw general conclusions on the adequacy and legal character of the continent's disaster-risk governance architecture. This bottom-up movement from

the particular to the general is recognized in the legal-research methodology literature as the mode of reasoning best suited to studies that seek to map an evolving and only partially codified regulatory field.

The analysis draws on two complementary categories of sources. The first consists of primary legal and institutional instruments: the Constitutive Act of the African Union (2000); the founding document of the New Partnership for Africa's Development (2001); the Africa Regional Strategy for Disaster Risk Reduction (2004) and its Programme of Action for the Implementation of the Sendai Framework in Africa; the Sendai Framework for Disaster Risk Reduction 2015–2030; and the African Union Climate Change and Resilient Development Strategy and Action Plan (2022–2032). The second category comprises the secondary scholarly literature on disaster risk governance and international disaster response law, together with recent institutional monitoring reports issued by the African Union Commission and the United Nations Office for Disaster Risk Reduction (UNDRR).

Methodologically, each primary instrument is read doctrinally to determine its legal nature (binding treaty, soft-law declaration, or programmatic strategy) and is then cross-referenced against the empirical record of disasters and against continental reporting on implementation between 2004 and 2025. This cross-referencing makes it possible to test whether NEPAD's institutional commitments correspond to enforceable legal obligations capable of generating responsibility, or whether they remain, at this stage, essentially political and programmatic in character.

In order to understand the African strategy, the paper will first address the concept and dimensions of disaster risk governance, global and regional efforts in confronting major disasters, and what the NEPAD initiative has introduced in terms of disaster risk reduction for sustainable development, specifically the regional strategy.

To appreciate its importance, the paper will outline the most significant disasters that some

Resources, 37(1), 341-363; Adelekan, I. (1970). *Disaster risk and its reduction: An agenda for urban Africa*. Liverpool University Press.

2 De Guttery, A., Gestri, M., Venturini, G. (2012). *International disaster response law* (1-774). The Hague: TMC Asser Press.

countries have faced, the risks confronting the “black continent”, and the main challenges its countries encounter in dealing with them.

Finally, the last section will touch on the details of that strategy and how to implement it in order to govern disaster risks effectively.

The issue will be analyzed by dividing the article as follows:

FINDINGS AND DISCUSSION

1. THE NATURE OF DISASTER RISK GOVERNANCE AND ITS DEFINITION WITHIN THE FRAMEWORK OF THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT INITIATIVE

Among the priorities established within global efforts aimed at reducing disasters is understanding their risks by formulating policies to mitigate them, based on recognizing their dimensions, the extent of vulnerability to them, and the capacity to confront them. This priority leads to achieving a second priority, namely strengthening disaster risk governance and working to coordinate the risk management process at all levels and tiers, and to integrate it into development plans and efforts.

Before reviewing what the NEPAD initiative has introduced in the field of disaster management, we will first present a theoretical framework for the study by defining the concept of disaster risk governance and identifying the most important global initiatives on this subject.

1. 1. The Concept and Dimensions of Disaster Risk Governance

Disaster risk management is understood as the way in which public authorities, civil servants, the media, the private sector, and civil society cooperate at community, national, and regional levels to manage disasters and climate-related risks and reduce them. This means

ensuring that adequate levels of capacity and resources are available to prevent, prepare for, manage, and recover from disasters.

With more than 20 years of experience in disaster risk reduction and in providing practical advice on democratic governance and development to national governments in low- and middle-income countries, the United Nations Development Programme (UNDP) has advanced practical and conceptual work on disaster risk management and its mainstreaming since 2010. Since then, UNDP has been supporting disaster risk reduction policy, disaster risk governance, and advocacy in more than 20 countries.³

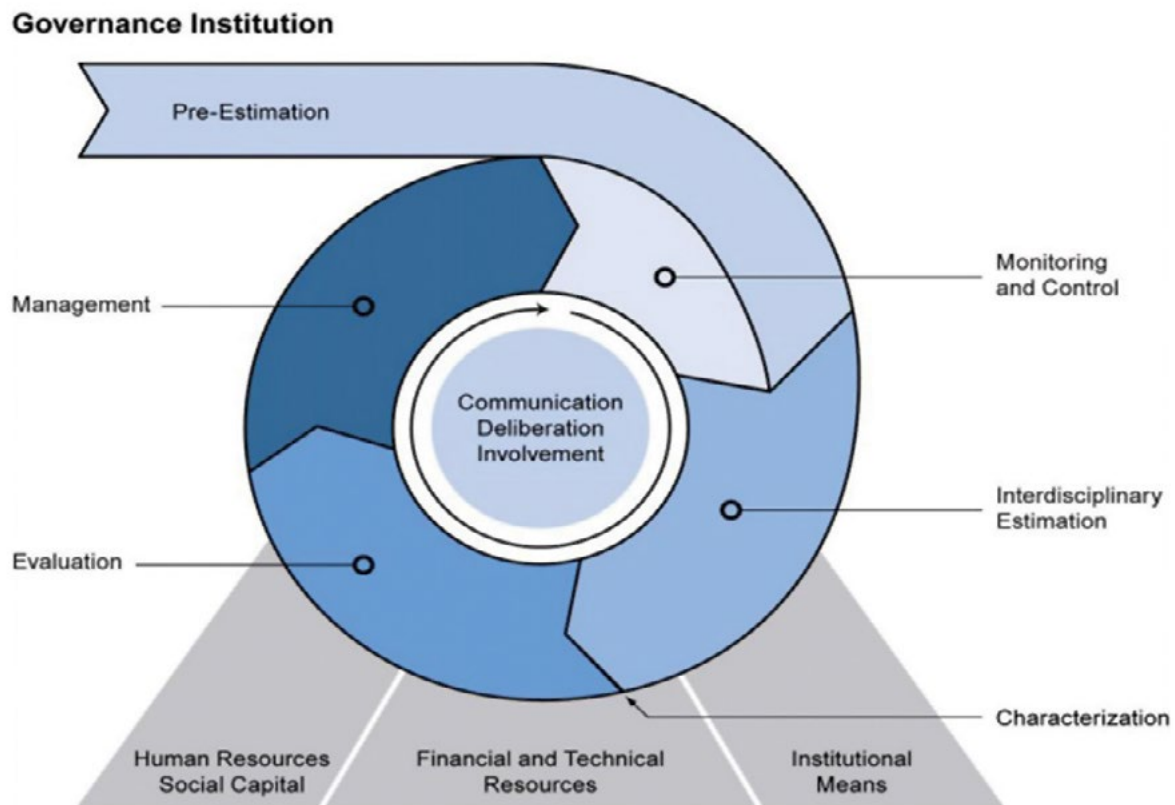
Disaster planning and preparedness must be mainstreamed into development planning in order to avoid unnecessary routine, allow for the effective allocation and use of resources, and maximize national capacities to deal with changing environmental conditions. Since the lives of the majority of people in every country are affected by major disasters such as tsunamis and climate change, the planning process must involve broad participation and representation, and this is only possible if planning becomes more decentralized.⁴

The quality of policymaking requires several characteristics that can be classified under four dimensions of governance, which achieve predictability, transparency, participation, and accountability. The better these principles are realized in a country's governance structure, the better prepared the government will be to ensure sound management of public resources, a favorable environment for emerging private-sector activities, and productive information exchange between the public and private sectors.⁵

3 Alam, E., Ray-Bennett, N. S. (2021). Disaster risk governance for district-level landslide risk management in Bangladesh. *International Journal of Disaster Risk Reduction*, 59, 10, 2220, 2.

4 Waheed, M., Shakoob, H. A. (2014). The Impact of the Indian Ocean Tsunami on Maldives. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer, 67.

5 Ahrens, J., Rudolph, P. M. (2006). The importance of governance in risk reduction and disaster management. *Journal of Contingencies and Crisis Management*.

FIGURE 1: Risk Governance Concept

Source: Klinke, A., Renn, O., *op cit*, 548.

Comprehensive risk governance goes beyond traditional risk analysis to include the participation of various stakeholders, as well as consideration of the broader legal, political, economic, and social contexts in which risks are assessed and managed. This approach focuses on the democratic foundations of risk governance as an inclusive and participatory activity that integrates the perspectives of different stakeholders, engages in the co-production of practical knowledge, and resolves emergencies by developing distinct scenarios that translate different negotiable concerns and positions.⁶

The new concept of the risk governance framework (Figure 1) includes central integrative and adaptive capacities, meaning the ability and authority to design and implement a col-

lective, systematic approach to organizational and political learning in institutional environments that help solve cognitive, evaluative, and normative problems related to risks. Its governance becomes a dynamic process of continuous and gradual learning and adjustment that allows risks to be managed wisely and sustainably. It encompasses a wide range of institutional and procedural means and mechanisms for using resources more effectively. These resources include:

- Institutional and financial means as well as social capital (for example, robust institutional mechanisms and configurations, transparent decision-making, allocation of decision-making authority, formal and informal networks that enhance collective handling of risks, and education);
- Technical resources (for example, databases, computer software and hardware, etc.);

ment, 14(4), 212.

6 Schweizer, P.-J. (2021). Systemic risks—concepts and challenges for risk governance. *Journal of Risk Research*, 24(1), 84.

- And human resources (such as skills, knowledge, experience, capacity, people's voluntary engagement, and their willingness to participate). (See Fig.1)⁷

The Sendai Framework divides the response to a disaster event into five phases: preparedness, emergency, rehabilitation, recovery, and reconstruction. We divide the response to an individual disaster event into three phases: before the disaster, during the disaster, and after the disaster. These three phases cover the stages of preparedness, emergency response, recovery, and reconstruction, which together constitute the functional system of integrated disaster risk governance.⁸

In the field of emergency management, it is widely accepted that an effective response to a large-scale disaster relies primarily on cooperation among the public sector, the private sector, and nonprofit organizations. First, we live in what is called a “risk society”. Systemic risks are increasing due to the interaction between social structure, demographics, technological innovation, and environmental changes. Second, the participation of the private sector and nonprofit organizations can provide diverse resources to meet the different needs of various groups affected by disasters. As a result, emergency response must depend on the collective efforts of the public sector, the private sector, and nonprofit organizations. Third, natural disasters are complex social phenomena; as an emerging component of emergency response, the participation of the private sector and nonprofit organizations can greatly enhance the potential for adaptive self-organization or improvisation in the response.⁹

The topic of risk governance highlights the shift from the traditional organizational decision-making approach to risk—based on state-centered command and control, hierarchical orders, or private self-regulation—to a new governance approach referred to as post-normal risk governance, which involves peer communities, stakeholders, the general public, and the distribution of responsibility. Postnormal risk governance is a deliberate democratic advancement through the differentiation and distribution of risk-related responsibilities. It is a more inclusive form of self-governance, where deliberation and the involvement of those who hold substantive authority are crucial in risk-related decision-making. It differs from traditional risk regulation led by government agencies or private corporations in that epistemic, collective, and public deliberation becomes the democratic source of legitimacy and effectiveness in risk management.¹⁰

From a strictly legal standpoint, however, disaster risk governance cannot be reduced to its administrative or managerial dimension. A meaningful distinction must be drawn between, on the one hand, binding legal instruments — treaties that States negotiate, sign, and ratify, and which generate obligations enforceable through the ordinary mechanisms of State responsibility — and, on the other hand, non-binding or “soft-law” instruments such as strategies, declarations, and programmes of action, which express political commitment but do not, by themselves, give rise to responsibility under international law. The Constitutive Act of the African Union, adopted at Lomé on 11 July 2000 and in force since 26 May 2001, belongs to the first category: it is a treaty properly so called, ratified by all Member States, and it commits them, among other objectives, to solidarity and cooperation for the achievement of a better life for the peoples of Africa.¹¹ By contrast, NEPAD's

7 Klinker, A., Renn, O. (2021). The coming of age of risk governance. *Risk Analysis*, 41(3), 55.

8 Shi, P., et al. (2020). Disaster risk science: A geographical perspective and a research framework. *International Journal of Disaster Risk Science*, 11(4), 434.

9 Zhang, H. (2014). Collaboration in emergency response in China: Evolution from the Wenchuan earthquake, May 12, 2008 to the Lushan earthquake, April 20, 2013. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance* (69–84). Springer, 71.

10 Klinker, A., Renn, O., op.cit, 550, 551.

11 African Union. (2000). Constitutive act of the African Union, adopted 11 July 2000, Lomé, Togo, entered into force 26 May 2001, 2158 UNTS 3, Preamble. and Art. 3. <https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf>.

own founding document and its Africa Regional Strategy for Disaster Risk Reduction (2004) were adopted as programmatic instruments of the Assembly rather than negotiated as treaties, and therefore lack, in themselves, independent binding force.

This distinction matters because it determines which secondary rules apply in the event of non-compliance. Where a legal obligation exists – whether directly under a treaty or indirectly through domestic legislation adopted to implement a continental strategy – a breach may engage the general international-law regime on State responsibility, in particular the rules on attribution, breach, and reparation codified by the International Law Commission.¹² Where, however, the instrument in question is purely programmatic, non-compliance carries political rather than legal consequences. Reading NEPAD's disaster-risk governance strategy through this lens – rather than treating “governance” as a synonym for good administration – is essential to assessing, in the third section of this study, whether and to what extent a genuine legal or contractual responsibility can be said to arise from it.

1.2. Enhancing Capacity for Disaster Risk Reduction: Global Initiatives

The third millennium has witnessed the international community moving towards early warning to enable timely action before hazardous events occur. This resulted from the severe impact of the El Niño phenomenon and climate change affecting the tropical Pacific region and beyond, with the aim of reviewing the Yokohama Strategy and identifying gaps and challenges. The early warning system movement was strengthened with the establishment of the

International Strategy for Disaster Reduction (ISDR) and a focus on shifting from Disaster Risk Management (DRM) to Disaster Risk Reduction (DRR), along with efforts to integrate the Johannesburg Plan of Implementation agreed upon at the World Summit on Sustainable Development (WSSD).

The International Strategy for Disaster Reduction adopted the “Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters”, which was endorsed by the World Conference on Disaster Reduction held in Kobe, Hyogo, Japan, to facilitate the inclusion of disaster reduction strategies in national plans. The fourth priority of the Hyogo Framework focuses on reducing disaster losses and calls for “reducing underlying risk factors”.¹³

Recent intergovernmental declarations, including the Addis Ababa Action Agenda, the Paris Agreement on climate change, the New Urban Agenda, and the 2030 Agenda, have incorporated disaster risk reduction and resilience-building as essential components and prerequisites for sustainable development. Strengthening disaster risk reduction and community resilience is a cross-cutting issue that affects progress toward achieving the Sustainable Development Goals. Disaster risk reduction and resilience building have been explicitly mentioned; for example, Goal 1.5 (the first Sustainable Development Goal) includes the core resilience goal of building “the resilience of the poor and those living in fragile situations, and reducing their exposure and vulnerability to extreme climate-related events and other economic, social and environmental shocks and disasters”.¹⁴

In the Asia-Pacific region, the ten member states of the Association of Southeast Asian Nations (ASEAN) ratified the ASEAN Agreement on

12 International Law Commission. (2001). Draft Articles on Responsibility of States for Internationally Wrongful Acts. Annexed to UN General Assembly Resolution 56/83 (December 12, 2001), UN Doc. And corrected by document A/56/49(Vol. I), /Corr. 4, Arts. 1–2 and 31.

13 Etinay, N., Egbu, C., Murray, V. (2018). Building urban resilience for disaster risk management and disaster risk reduction. *Procedia Engineering*, 212, 578.

14 Imperiale, A. J., Vanclay, F. (2021). Conceptualizing community resilience and the social dimensions of risk to overcome barriers to disaster risk reduction and sustainable development. *Sustainable Development*, 29(5), 897.

Disaster Management and Emergency Response (AADMER) for the period 2010–2015, a legally binding agreement to cooperate more closely in disaster preparedness and relief. However, these countries differ in the roles played by the government and civil society. The 2013 assessment report issued by the AADMER Partnership Group indicated that many civil society organizations are increasingly involved in advocacy work on disaster risk reduction (DRR) laws in various Southeast Asian countries, such as Cambodia, Laos, Indonesia, Thailand, and the Philippines. In contrast, other high-risk countries such as Myanmar have highly centralized disaster management systems that leave little room for non-governmental actors.¹⁵

The Global Platform for Disaster Risk Reduction (GPDRR) in Cancún, Mexico, aims to support government efforts to reduce disaster risks by disseminating information on disaster risk reduction to their audiences. These broadcasting organizations believe they play an important role in implementing the Sendai Framework by informing, alerting, and educating populations. Other media outlets in the African region, such as Malawi Television and Radio Nigeria, have endorsed this movement. They also pledged to act proactively by producing creative, high-quality media coverage of efforts to mitigate risks. They further acknowledged that this movement requires multiple sectors and disciplines to ensure professional, accurate, timely, and persuasive risk messaging.¹⁶

The launch of the Philippine Disaster Risk Reduction and Management Act (DRRM Act) in 2010 represented a qualitative shift in disaster management in the Philippines, from a narrow focus on disaster response to a much broader focus on preparedness, response, prevention,

mitigation, rehabilitation, and recovery. The Act replaces the National Disaster Coordinating Council (NDCC) with the National Disaster Risk Reduction and Management Council (NDRRMC) and gives this new body many wideranging responsibilities, including advising the President on disaster preparedness, prevention, mitigation, response, and rehabilitation operations, as well as coordinating and managing resources for disaster risk reduction and management. It is supported by a set of implementing rules and regulations, and the National Disaster Risk Reduction and Management Plan (NDRRM Plan).¹⁷

The concept of collaborative governance in the management of natural disasters refers to the processes and structures of decisionmaking and management in the field of public policy that constructively engage people across the boundaries of public agencies, levels of government, and/or the public, private, and civil spheres to achieve a public purpose that could not otherwise be achieved. Crossboundary decisionmaking and management is precisely what has been happening since the 11 March disaster in Japan.¹⁸

In the Australian state of Victoria, which experienced devastating fires in 2009, the two governments moved quickly to establish a number of mechanisms to implement what would become the largest recovery program ever carried out in Victoria. They partnered with the Australian Red Cross to launch an appeal fund to support those affected by the bushfires and established a central agency, the Victorian Bushfire Reconstruction and Recovery Authority (VBRRA), to lead and coordinate a wide range of recovery-related tasks.¹⁹

15 Brassard, C., Howitt, A. M., Giles, D. W. (2014). Confronting disaster: Recent lessons from the Asia-Pacific. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer, 26-27.

16 Kunguma, O. (2020). *South African Disaster Management Framework: Assessing the Status and Dynamics of Establishing Information Management and Communication Systems in Provinces*. University of the Free State, 65.

17 Barber, R. (2014). Localising the humanitarian toolkit: Lessons from recent Philippines disasters. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer, 20.

18 Aoki, N. (2014). Collaborative manpower support for restoring hope in the aftermath of the March 11 disasters in Japan. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer, 103.

19 O'Neill, K. (2014). Communities at the heart of recovery: Reflections on the government-community partnership for recovery after the 2009 Black Saturday bushfires in Victoria, Australia. In *Natural Disaster*

VBRRRA prepared its work program within an internationally recognized disaster recovery framework that includes four key pillars of recovery: people (prioritizing the safety, health, and well-being of affected individuals); reconstruction (aimed at facilitating the rebuilding of destroyed and damaged infrastructure, including residential, commercial, rural, and public properties); environment (based on biodiversity, ecosystems, amenities, and the management of waste, pollution, and natural resources); and economy (intended to support the renewal of businesses, agriculture, and tourism). In cooperation with the responsible government agencies, VBRRRA established a number of different bodies to facilitate the planning and implementation of bushfire recovery activities across governmental and non-governmental agencies.

The shift from disaster management to risk management was linked to the launch of the Sendai Framework. Evidence from the 2015 Global Assessment Report on Disaster Risk Reduction indicates that most resources are still being invested in building the necessary capacities, and that success in applying policies, rules, and regulations to manage disaster risk across development sectors has been limited. This highlights the importance of distinguishing between tools and mechanisms for disaster risk reduction and risk management to address their underlying drivers, rather than focusing only on alleviating challenges during the post-disaster recovery phase.²⁰

The Global Facility for Disaster Reduction and Recovery (GFDRR) operates along three tracks: global and regional partnerships; a program for mainstreaming disaster risk reduction into development, which includes a focus on climate change adaptation and disaster risk reduction in the context of development activities; and a recovery financing facility that assists countries affected by disasters. The Fund's work focuses primarily on disaster-prone developing countries, including least developed countries

and small island developing states; its South-South Cooperation Initiative seeks to promote cooperation among developing countries in the Global South. The Global Fund for Disaster Risk Reduction pays particular attention to disaster economics and risk insurance.²¹

There are many mechanisms at the national level that support the bottomup transformation of disaster risk management. Chief among them is the United Nations system, through its country team, which produces the United Nations Development Assistance Framework (UNDAF). The UNDAF document for development assistance contains implementable and fundable national development priorities. Since disaster risk reduction tends to be linked to development, the bulk of disasterrelated activities falls under the supervision of the United Nations Development Programme, through its thematic trust fund for crisis prevention and recovery, funded by national disaster management organizations to support disaster risk reduction governance at both the national and regional levels.²²

Regional development banks sponsor a wide range of disaster risk reduction activities. The AsiaPacific region is particularly exposed to disasters, and the Asian Development Bank provides support for both predisaster programs—such as education, preparedness, and capacitybuilding—and postdisaster assistance for affected countries.²³

The Asian Disaster Preparedness Center (ADPC) is a regional organization that seeks to develop and serve disaster management institutions in the AsiaPacific region. The focal areas of the Abu Dhabi disaster management program include communitybased disaster risk management; the development of decisionsupport tools for risk reduction; and assisting citizens with risk and vulnerability assessments, modeling, and the provision of other technical

Management in the Asia-Pacific: Policy and Governance. Springer, 121.

20 Etinay, N., et al., op.cit, 578.

21 Tierney, K. (2012). Disaster governance: Social, political, and economic dimensions. *Annual Review of Environment and Resources*, 37(1), 353-354.

22 Jones, S., Manyena, B., Walsh, S. (2015). Disaster risk governance: Evolution and influences. In *Hazards, Risks, and Disasters in Society*, 49.

23 Tierney, K. op.cit, 354.

guidance. It has been active in a number of initiatives, including the Asian ministerial conferences concerned with disaster issues, the Asian Disaster Reduction Platform, and the International Strategy for Disaster Reduction. In the aftermath of the 2004 Indian Ocean earthquake and tsunami, the Abu Dhabi Police Center facilitated the development of the Regional Integrated MultiHazard Early Warning System for Africa and Asia (RIMES).²⁴

1.3. Disaster Risk Governance for Sustainable Development within the Framework of the “NEPAD” Initiative

It is essential that governments ensure effective and vigilant governance of disaster risks, rather than falling into reactive policies and adopting ad hoc political measures. While preventive measures are costly, addressing the consequences of risks in terms of human cost is far more important. One way to achieve improved efforts in this field is to adopt a comprehensive, multi-sectoral approach, in which governments play an active role in bringing together donor organizations, civil society, non-governmental organizations, and other stakeholders under a single umbrella.²⁵

There are some qualifications that are best made regarding this shift in dynamics between national and international actors. First, with the expected increase in the intensity of climate-related disasters, national capacities will remain strained. In such cases, the task of national governments will be much easier where there are strong policies and procedures for managing international assistance. Second, although national capacities for disaster management have increased, vulnerable groups still, in many cases, remain left behind, which requires a targeted response when resources are depleted. Third, a large proportion of the population across the region is affected not

only by natural disasters but also by conflict. While national governments bear the primary responsibility for protecting their populations, the international community has a residual responsibility—the humanitarian imperative—to provide humanitarian assistance to populations affected by conflicts and disasters where national governments do not meet the needs.²⁶

External assistance from higher levels of government or non-profit organizations is crucial for response and recovery when the scale of a disaster exceeds local capacities. Reliance on such assistance is of critical importance for risk reduction and preparedness, and both external aid and local capacities are more effective than mere response in reducing disaster-related losses.²⁷

There has been much discussion of the New Partnership for Africa’s Development (NEPAD) as the economic framework for sustainable development on the continent. This initiative has been conceived as a development strategy led by the private sector, one that would herald economic growth, with foreign investors playing an important role in guiding the continent toward its promised economic treasure. Nevertheless, what the initiative has succeeded in achieving is bringing together the entire continent. The African Union and NEPAD recognize that strengthening disaster risk reduction as an integral part of development represents a major challenge. In fact, simply reinforcing and expanding existing disaster management practices and mechanisms will not adequately address the problem of disaster risk in Africa; what is required is a transformation in the mindset and core practices of national authorities, the disaster management community, the public, and development partners in relation to disaster risk reduction.²⁸

Recent evidence-based research reinforces the need to understand disaster risk in Africa

²⁴ Ibid, 355.

²⁵ Brassard, C., et al., op.cit, 2.

²⁶ Barber, R., op.cit, 19-20.

²⁷ Zhang, H. op.cit, 71.

²⁸ The African Union (AU) and New Partnership for Africa’s Development (NEPAD). (2004). Disaster Risk Reduction for Sustainable Development in Africa: Africa Regional Strategy for Disaster Risk Reduction, 4.

as the product of interacting hazards, vulnerability, and limited coping capacity. Eze and Siegmund state that “physical exposure to floods, epidemics, and violent conflicts are hazard drivers of DR in Africa” and that other important drivers are associated with “vulnerable groups and poor infrastructural coping capacities”.²⁹ Their continent-wide analysis further identifies regional differences in disaster risk and highlights the need for targeted policies, resilience-building measures, vulnerability reduction, and sustainability-oriented solutions. These findings support the interpretation adopted in this study: NEPAD’s disaster-risk agenda should be assessed not only through emergency-response measures, but also through the legal, institutional, infrastructural, and developmental capacities that determine whether States can prevent and manage risk effectively.

Most governance systems in Africa lack institutional effectiveness, legal authority, staff, and political support, and operate with limited budgets. As a result, they fail to address regional imbalances in the management of the global environment. The national environmental agenda is not given the priority it deserves, which explains why many countries fail to fully integrate the principles of sustainable development into their national strategies. It is also noticeable that most institutions involved in service delivery are not held accountable for their failures and are more vulnerable to interference from industrialized countries. Most economies face the challenge of developing in a way that creates wealth, good health, education, and other social services, while in most cases growth has been confined to extractive industries. Climate change further increases the vulnerability of African countries to natural disasters that threaten economic growth and social development.³⁰

In a resilient society, when a crisis or disaster occurs, activating social learning and transformation processes will always mean that external actors, together with local communities, will learn from the crisis and the past failures that led to it, and will undergo a positive transformation. This mutual transformation will be directed towards: (a) reducing local vulnerabilities, risks, impacts, and the social conditions that precede disasters; and (b) enhancing community well-being and local capacities to reduce risks and build resilience to future disasters. These two goal-oriented processes together can be considered a “transformation towards sustainability”. Social learning and transformation towards sustainability can be activated in each of the eight dimensions of community well-being.

In order to “institutionalize” disaster risk reduction, it must be integrated into all organizational structures and public policy processes of the state. Policy integration must occur horizontally across sectors and vertically within sectors. For the government, this means expanding the disaster risk reduction agenda so that all planning in distinct departments such as health, transport, and natural resource management incorporates disaster risk reduction in both policy and practice. A central coordinating body that can compel ministries and departments to enact policy integration is an important element in mainstreaming.³¹

2. AFRICA IN THE FACE OF MAJOR DISASTER RISKS: THE NATURE OF THE RISKS AND THEIR COSTS

2.1. Disaster Risks in Africa

It is widely acknowledged that urban residents in low – and middle-income countries are exposed to many risks arising from extreme weather events, and to a number of infectious

29 Eze, E., Siegmund, A. (2024). Identifying disaster risk factors and hotspots in Africa from spatiotemporal decadal analyses using INFORM data for risk reduction and sustainable development. *Sustainable Development*, 32(4), 4020. <https://doi.org/10.1002/sd.2886>.

30 Okoh, A. I. S. (2014). The challenge of entropic society and sustainable development governance in Africa.

ca. *International Journal of Public Administration and Management Research*, 2(3), 169.

31 Imperiale, A. J., Vanclay, F., op.cit, 896.

and parasitic diseases and accidents, including fires and road traffic accidents, all of which are highly prevalent in Africa. Although disasters are considered exceptional events that cause major losses in lives and property, the cumulative impacts of such everyday risks are in fact greater than those resulting from what can be termed major disasters.³²

In most West African countries, despite the establishment of management plans to deal with floods, the effectiveness of interventions still poses a major challenge. In 2007, heavy rains caused severe flooding that affected more than 1.5 million people in West Africa. In 2012, floods resulted in the deaths of 81 and 137 people in Niger and Nigeria, respectively, and displaced more than 600,000 people. In Ghana, flooding has been a chronic annual experience since 1990, with consequences for lives, infrastructure, and the environment, causing the deaths of more than 150 people and severe damage to homes in Accra. Similarly, in Mali, especially in Yelimane in the Kayes region, large areas along riverbanks and lakes are flooded every year, leading to the destruction of agricultural crops.

Despite the scarcity of information about floods in Togo, the few available reports on floods show that in 2007, flooding affected more than 127,880 people, with 13,764 individuals displaced and 12 deaths. In 2017, floods severely affected more than 602 households from villages near the Mono River in Togo. In Côte d'Ivoire, projections confirmed a significant increase in rainfall intensity along with heavy precipitation. Eight out of thirteen municipalities in Abidjan are at risk of flooding; furthermore, during the rainy season in June 2020, deadly floods occurred in many slums and residential areas in Abidjan.³³

Maputo in Mozambique suffered from large-scale floods in the year 2000, as did other smaller coastal cities located further north along the Indian Ocean coast. The country has a very long shoreline, about 2,000 km in length, and is crossed by 93 permanent and intermittent rivers, most of which originate outside its national borders at high altitudes on the African plateau. This complicates extreme weather phenomena, such as the heavy rainfall that accompanies cyclones; it also concerns land-use practices and even water engineering over which Mozambique has no control. Thus, the decision to release water from the Kariba Dam in Zimbabwe without prior warning made it necessary for the management of the Cahora Bassa Dam, located downstream along the Zambezi River, to release water in emergency situations, without sufficient warning to Mozambicans living downstream and at the river mouth.³⁴

The risks of earthquakes and tsunamis are also not unknown in Africa. Somalia, Kenya, and Tanzania were affected by the Asian tsunami in 2004, when the energy released by a major earthquake near Indonesia spread across the Indian Ocean. It resulted in the deaths of an estimated 150 people, the displacement of 5,000 people, and damage to another 44,000 in the northeastern coastal region of Somalia. Seismic activity has become common; between 1980 and 2002, the sub-Saharan African region experienced fifty serious earthquakes, which killed 23,000 people. The authorities in Addis Ababa were sufficiently concerned about the seismic risks in this large highland city that they included it as one of the eight key cities in the United Nations RADIUS program for the reduction of natural disasters during the last three years of the International Decade for Natural Disaster Reduction (1990–1999).³⁵

In North Africa, the coasts of Algeria experience the highest levels of earthquake risk, having experienced many earthquakes since the beginning of the millennium, the most devas-

32 Adelekan, I., Johnson, C., Manda, M., Matyas, D., Mberu, B., Parnell, S., Pelling, M., Satterthwaite, D., Vivekananda, J. (2015). Disaster risk and its reduction: An agenda for urban Africa. *International Development Planning Review*, 37(1), 34.

33 Kouamé, P. K., et al. (2022). Assessing institutional stakeholders' perception and limitations on coping strategies in flooding risk management in West Africa. *International Journal of Environmental Research and*

Public Health, 19(11), 1-2.

34 Pelling, M., Wisner, B. (2012). *Op. cit.*, 28-29.

35 *Ibid.*

tating of which was the Boumerdès earthquake in May 2003.

In turn, the phenomenon of volcanic activity is among the most dangerous threats facing many countries on the continent. There are dormant and even active volcanoes stretching from Ethiopia, through Kenya and Tanzania, all the way to Malawi. In 2002, the city of Goma in the Democratic Republic of the Congo was split in two by rapidly flowing lava from Mount Nyiragongo. Studies indicate that Nyiragongo's violent activity continues; it is a volcano that produces the fastest-flowing lava ever recorded. It is also possible that carbon dioxide gas trapped in the depths of Lake Kivu near Goma could be released as a deadly cloud due to a violent eruption and the accompanying earthquakes. Given the proximity of developing cities such as Arusha to volcanoes, volcanic eruption emergencies cannot be ruled out. Even in the absence of the risk of lava flows, the accumulation of ash can be devastating and harmful to human respiratory health.³⁶

Read together, these episodes – the recurrent West and Central African floods, the 2004 tsunami's impact on the Horn of Africa coastline, the Boumerdès earthquake, and the volcanic threat around Lake Kivu – do not simply illustrate the physical exposure of the continent to disaster; they also expose a persistent gap between the existence of a continental policy framework and the presence, at the national level, of binding legal instruments capable of translating that framework into enforceable obligations.

A multi-country legal survey conducted jointly by the International Federation of Red Cross and Red Crescent Societies and the United Nations Development Programme found that, although disaster risk reduction is increasingly reflected as a principle in national disaster management laws, considerable gaps persist in the allocation of dedicated resources and in the clear establishment of the responsibility and accountability of the relevant national actors.³⁷

At the regional level, the report confirms a gap between the development of legal and institutional frameworks for disaster risk reduction and their actual implementation in Africa. The Midterm Review of the Implementation of the Sendai³⁸ Framework shows that a number of countries have enacted legislation, strategies, action plans, and governance mechanisms aligned to varying degrees with the Sendai Framework, yet implementation has remained uneven, with continued heavy practical reliance on post-disaster response compared to systematic investment in prevention, risk reduction, and preparedness.

2.2. Efforts of African Countries to Reduce Disaster Risks

Disaster risk reduction practice in Africa has focused on trying to reduce the impacts of disasters on development through emergency management. Large amounts of humanitarian aid flow into Africa, partly to provide relief assistance in emergencies. However, despite the relatively long history of emergency response management in relation to disaster risk reduction and the large volume of humanitarian assistance, disaster response activities remain largely separate from the main development activities in Africa. Relief agencies often focus on urgent emergency needs, with an emphasis on distributing food aid. They focus less on bridging the gap between relief and rehabilitation or investing in developing people's capaci-

cent Societies (IFRC) & United Nations Development Programme (UNDP). (2014). *Effective Law and Regulation for Disaster Risk Reduction: A Multi-Country Report*. New York: IFRC & UNDP, 7-10. https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP_CPR_DRR_fullreport2013.pdf.

38 United Nations Office for Disaster Risk Reduction. (2023). *Report of the Midterm Review of the Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030: Africa Regional Summary*. <https://sendaiframework-mtr.undrr.org/2023mtr-sf-submissions-and-reports>.

36 Ibid, pp. 28-29.

37 International Federation of Red Cross and Red Cres-

ties to cope with future disasters.³⁹

Risk reduction begins with identifying and assessing risks, including early warning. However, risk identification practice is limited in Africa. Parts of subregional early warning systems exist, covering food security, drought, and climatic factors, along with the development of desertification monitoring systems. A small number of countries have completed vulnerability and capacity assessments, but these were intended to support food aid and social protection management. The continued focus on emergency response in Africa leads to greater emphasis on post-disaster loss assessment than on proactive risk assessment. Most risk planning processes carried out are top-down, with little participation by communities or self-assessment of risks. However, the growing practice of holding consultations with stakeholders in climate outlook forums and community-based assessments of vulnerability to volcanic eruptions are examples of progress in scaling up participatory risk assessment in Africa.⁴⁰

There are governmental and cooperative platforms for dealing with flood events and risk management in Côte d'Ivoire and Togo. For example, in Côte d'Ivoire, discussions during stakeholder workshops revealed the existence of formal collaboration between ministries, government agencies, and municipalities to address flood problems. The Ministry of Health works in cooperation with the Ministry of Environment and Sustainable Development through the National Sanitation Office (ONAD), in collaboration with other government institutions, the National Petroleum Office, and the municipal authorities in Abidjan; there is a legal framework for cooperation between these institutions. This cooperation mainly concerns the provision of climate data and information on weather variability by the government agency SODEXAM. This agency provides scientists and decision-makers with all relevant climate and weather information in order to design

awareness messages to prevent floods, and to disseminate awareness messages broadcast by government agencies and the technical services of local governments.⁴¹

Across Africa, governments have begun integrating disaster risk reduction into development planning. The Disaster Management Act of South Africa (2003) is considered one of the most comprehensive national frameworks for disaster risk reduction worldwide. The Act specifies clear responsibilities for municipal government in mitigating and reducing risks.⁴² In Togo, a similar cooperation framework has been observed for addressing flood risks among different institutions. There is an official platform for floods and disaster risk management.

It was observed in the Republic of Togo that, according to the majority of organizations (ANPC, ANASAP, the Platform of Disasters, and ANC), there is a coordinating body in the Constitution of 14 October 1992, which forms a legal and institutional framework for protecting the rights of vulnerable populations in the event of floods. There is cooperation between ministries and government agencies, technical services, local government, international organizations, and non-governmental organizations. COUSP monitors drainage routes, collects data, and facilitates the exchange of climate information among members of the national platform for disaster risk reduction.⁴³

Policy integration is also taking place in Africa. There is a success story in Malawi: through a partnership with an international non-governmental organization called Tearfund, a national non-governmental organization—the Evangelical Association of Malawi (EAM), which has experience in disaster risk reduction—was invited to participate in drafting the national social protection policy. Before that, civil society representation did not include an organization with expertise in disaster risk reduction. The invitation arose from a research project in which Tearfund and EAM worked with the Government

39 The African Union (AU) and New Partnership for Africa's Development (NEPAD). (2004). *Op.cit*, 8.

40 *Ibid*, 6.

41 Kouamé, P. K., et al., *op.cit*, 10.

42 Pelling, M., Wisner, B., *op.cit*, 46-47.

43 Kouamé, P. K., et al., *op.cit*, 10.

of Malawi to assess national capacities. The government also included EAM in a group of stakeholders who met with the government to monitor the progress it had made in addressing and contributing to climate change.⁴⁴

South Africa adopted Agenda 21 and embarked on a national strategy to achieve sustainable development for South Africa. Success in these initiatives was supported by another legislative instrument that provides prominent guidance on disaster risk reduction and its impacts, called “Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation”, whose Plan of Action was adopted in 1994. The Yokohama Strategy was reviewed, and one of the gaps identified—later used to inform the development of the “Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters (HFA)” —was governance: “institutional, legal and policy frameworks”.⁴⁵

Burundi implemented a national platform for disaster risk reduction that brings together a number of ministries and stakeholders, and it also established a national policy for disaster risk reduction. However, there are doubts among civil society organizations as to whether that platform is actually functioning. Mozambique was one of the first Southern African Development Community countries to formalize its disaster risk reduction structures at both national and local levels, through the National Institute for Disaster Management. Similarly, South Africa, Nigeria, Swaziland and Kenya established national platforms for disaster risk reduction.⁴⁶

Reporting in Kenya indicates growth in civil society participation in disaster risk reduction at the national level, with a particular focus on the participation of women’s groups. Kenya also recognizes the importance of integrating disas-

ter risk reduction into development and poverty reduction activities. At the national level, the government has established a National Disaster Trust Fund, and at the local government level, local emergency funds have been created.

Furthermore, disaster risk reduction in Mozambique is addressed in the National Adaptation Programme of Action (NAPA). Disaster risk reduction is also being mainstreamed at the local level through development plans.

Clear progress is evident in Nigeria in terms of integrating development and disaster risk reduction; through ongoing advocacy by various civil society groups and government departments such as NEMA and State Emergency Management Agencies (SEMAS), capacity development for disaster risk reduction and climate change adaptation is in place.⁴⁷

The thematic areas of the New Partnership for Africa’s Development include agriculture, food security, and nutrition. The Comprehensive Africa Agriculture Development Programme (CAADP), which is an integral part of NEPAD, constitutes Africa’s policy framework for agricultural transformation, wealth creation, food security and nutrition, economic growth, and prosperity for all African peoples.

The CAADP Implementation Support Programme aims to stimulate the transformation of agricultural systems and to promote an increase in sustainable agricultural performance in the member states as a means of achieving economic growth and inclusive development.

CAADP provides a comprehensive African framework to help countries critically review their situations and identify investment opportunities with optimal impact and returns. It offers an evidence-based planning process with knowledge as a key primary input and human resource development and partnership as a central factor.⁴⁸

South Africa’s Disaster Management Act,⁴⁹

44 Pelling, M., Wisner, B., op.cit, 47.

45 Kunguma, O., op.cit, 63.

46 van Niekerk, D. (2014). Retrospective Assessment of Progress in Disaster Risk Governance. University of North-West, 35.

47 Ibid, 36.

48 Tadesse, T. (August, 2016). Strategic framework for drought management and enhancing resilience in Africa. In African Drought Conference, 11-12.

49 Government of South Africa. (2002). Disaster Management Act, No. 57. <https://www.cogta.gov.za/>

assented to on 30 December 2002 and brought into force in 2004, is a binding statute of general application: it creates a National Disaster Management Centre with defined statutory powers, imposes specific duties on national, provincial and municipal organs of state, and establishes a compulsory national disaster management framework. This places it in a markedly different legal category from Togo's arrangement, which is based primarily on the Framework Law on the Environment (2008) – whose Section 13 addresses natural disasters and major industrial and technological hazards⁵⁰ and on subsequent national strategies and ministerial decisions establishing a national platform for disaster risk reduction, rather than on a dedicated, comprehensive disaster-risk statute that defines specific institutional powers and sanctions in the manner of South Africa's Act.

Burundi's national platform illustrates a further, and analytically distinct, difficulty; the platform was formally established and brings together several ministries and stakeholders, yet civil society organizations themselves have expressed doubt as to whether it is actually functioning. This is a textbook illustration of the classical distinction, in legal sociology, between "law in the books and law in action";⁵¹ the formal existence of an institutional or legal instrument is not, by itself, evidence of its effective legal or practical operation. The same caution should be extended to several of the other national platforms mentioned in this section (Mozambique's National Institute for Disaster Management, and the platforms of South Africa, Nigeria, Eswatini and Kenya), their mere establishment does not, without independent verification of their operative capacity, establish that they discharge binding legal functions rather than symbolic or purely coordinating ones.

Read against the analytical framework proposed in this study, these examples confirm that legal responsibility for disaster risk governance in Africa is generated overwhelmingly at the domestic level, through instruments of highly uneven legal quality – ranging from comprehensive binding statutes such as South Africa's, to constitutionally-derived general mandates, to platforms whose operative status remains contested. NEPAD's own regional strategy neither requires nor guarantees this level of legal rigor; it merely encourages Member States to adopt "institutional, legal and policy frameworks", leaving the choice of legal form, and consequently the intensity of any resulting responsibility, entirely to each State.

2.3. The Challenges Facing Disaster Risk Management in Africa

It has become clear that achieving the collective ambition of meeting the targets of the Sendai Framework and contributing to the 2030 Agenda for Sustainable Development can only be realized in a way that "leaves no one behind", by jointly focusing on how to achieve disaster risk reduction in such contexts, as explained above.⁵²

Proactive investment in disaster risk reduction, rather than relying solely on reactive response, will reduce the costs of damages and of operating effective management systems. Although it is difficult to determine precise figures, the key message from international organizations such as the United Nations Office for Disaster Risk Reduction is that governments must recognize that the reasonable and cost-effective way to deal with disasters is to invest in prevention before they occur.

More importantly, the link between disaster risk reduction and the joint country assessment should be prioritized in terms of investments.

[cgta_2016/wp-content/uploads/2016/06/DISASTER-MANAGEMENT-ACT.pdf](https://cgta-2016/wp-content/uploads/2016/06/DISASTER-MANAGEMENT-ACT.pdf).

50 République Togolaise. (2008). *Loi n° 2008-005 du 30 mai 2008 portant loi-cadre sur l'environnement*. <https://bwciimplementation.org/sites/default/files/resource/TG_Loi_Cadre_Environnement.pdf>.

51 Pound, R. (1910). Law in books and law in action. *American Law Review*, 44(1), 12-36.

52 Mena, R., Hilhorst, D., Peters, K. (2019). *Disaster Risk Reduction and Protracted Violent Conflict*. London: Overseas Development Institute, 17.

It is therefore no coincidence that the third priority of the Sendai Framework is entitled “Investing in disaster risk reduction for resilience”. However, worldwide, financing remains low when compared with funding for response.⁵³

The financing dimension provides further evidence of the gap between continental commitments and effective implementation. Coetzee et al. report that interventions aimed at reducing social and economic vulnerability and investing in long-term mitigation activities are often few, poorly funded, and insignificant in comparison with money spent on humanitarian assistance, disaster relief, and post-disaster reconstruction. The authors further find that disaster-risk reduction is inadequately funded in the SADC member states examined when compared with funding allocated to disaster response. Their discussion of the budget process shows that budgets constitute the institutional means through which resources are allocated to plans, policies, and departments.⁵⁴ From a legal perspective, these findings support the argument that policy commitments to disaster-risk reduction require supporting budgetary rules, clearly assigned institutional duties, and accountability mechanisms if they are to produce enforceable and measurable results.

According to the Climate Prediction and Applications Center (ICPAC) of the Intergovernmental Authority on Development (IGAD), experience in the Horn of Africa indicates that most governments have not given appropriate priority to drought risk management, instead relying on crisis management approaches. In addition, governments and donors provide more resources for response activities than for long-term

development activities that deal with planning, mitigation, and disaster preparedness throughout the Horn of Africa.

The situation is similar in many other African countries; due to the urgency and the lack of adequate time for planning during a drought crisis, emergency response is often ineffective. More importantly, countries rarely learn from previous droughts, resulting in little to no reduction in response time and risks.⁵⁵

There is a saying that “disasters do not discriminate”, but this is not correct in theory or in practice. Disasters are neither natural nor conflict-neutral; when disaster risk is constructed, there are differentiated vulnerabilities and differentiated risks. Strengthening disaster risk reduction in contexts of fragility, conflict, and violence has the potential to enhance the way we think and act regarding disaster risks, as well as to provide opportunities and possibilities to reinforce disaster risk reduction in such contexts to support those most vulnerable to disasters.⁵⁶

Most African countries adopt decentralized implementation of disaster risk reduction interventions, but the delegation of authority to lower administrative levels has been limited. This is partly due to the fact that most disaster risk reduction systems are agency-centric and top-down, have insufficient competencies and resources to meet decentralized responsibilities, and lack adequate partnerships with communities.⁵⁷

The two structural challenges identified in this section – chronic underinvestment in prevention relative to response, and the limited delegation of authority to lower administrative levels – are, on closer legal analysis, symptoms of the same underlying deficiency: the absence, in most African States, of binding legal instruments that convert continental policy priorities into enforceable domestic obligations. The Sendai Framework’s third priority, “Investing in disaster risk reduction for resilience”, is not

53 Albris, K., Laut, K. C., Raju, E. (2020). Strengthening governance for disaster prevention: The enhancing risk management capabilities guidelines. *International Journal of Disaster Risk Reduction*, 47, 6.

54 Coetzee, C., Khoza, S., Nemaconde, L. D., Shoroma, L. B., Wentink, G. W., Nyirenda, M., Van Niekerk, D. (2023). Financing Disaster Risk Reduction: Exploring the Opportunities, Challenges, and Threats Within the Southern African Development Community Region: Coetzee et al. *Financing Disaster Risk Reduction*. *International Journal of Disaster Risk Science*, 14(3), 398-399. <https://doi.org/10.1007/s13753-023-00499-6>.

55 Tadesse, T., op.cit, 17.

56 Mena, R., et al., op.cit, 17-18.

57 The African Union (AU) and New Partnership for Africa’s Development (NEPAD). (2004). Op.cit, 7.

accompanied, at the continental level, by any binding rule requiring Member States to allocate a minimum share of public expenditure to prevention; in the absence of such a rule, or of its domestic transposition through binding budgetary legislation, the priority remains, as this section itself observes, aspirational rather than enforceable.

Similarly, the limited delegation of authority to lower administrative levels described in this section is best understood as a problem of domestic administrative law rather than of continental policy design: decentralization requires not merely a political statement of intent, but a specific legal instrument – typically a decentralization statute or municipal-competency law – that transfers defined powers, together with the corresponding financial and human resources, from central to local government. Where, as this section notes, disaster risk reduction systems remain “agency-centric and top-down” despite a formal policy commitment to decentralization, the most probable explanation is precisely such a gap between the legal instrument (where one exists) and its practical implementation, again illustrating the law-in-books/law-in-action distinction identified above. Both challenges therefore reinforce, from a different angle, the central finding of this study: without domestic legal transposition bearing real institutional and budgetary consequences, NEPAD’s continental commitments on disaster risk reduction remain unable, by themselves, to generate the responsibility that effective governance requires.

3. NEPAD AND DISASTER RISK GOVERNANCE: STRATEGIES, OPPORTUNITIES, AND REQUIREMENTS

Regional and international cooperation has become an imperative necessity to strengthen governance systems and develop capacities to mitigate the effects of disasters, and to prepare for, respond to, and recover from them.

This falls within the framework of enhancing countries’ ability to reduce major disaster risks, which remains modest in light of the increasing impacts of disasters in most African countries.

The question is whether NEPAD’s disaster-risk governance strategy creates contractual responsibility for African States or remains a political commitment. NEPAD was adopted in 2001 by the OAU Assembly as a programme, not a treaty.⁵⁸ Its Africa Regional Strategy for Disaster Risk Reduction (2004) was likewise adopted as a strategic programme, not negotiated or ratified as a treaty. It therefore lacks the constitutive requirements of binding international agreements under treaty law.⁵⁹ NEPAD’s commitments thus resemble “soft law”: policy direction without generating enforceable obligations.

However, two contextual factors qualify this. First, NEPAD now operates as an AU agency; Member States remain bound by the Constitutive Act – a full treaty-committing them to solidarity, cooperation, and policy coordination. Persistent failure to implement programmes adopted under the AU framework arguably conflicts with these treaty obligations, even if NEPAD itself is not directly enforceable. Second, responsibility hardens progressively as continental commitments are domesticated into national law. African States with national DRR strategies rose from 11 in 2015 to 32 in 2024.⁶⁰ For these States, NEPAD/Sendai content has been converted into domestic law, generating legal responsibility before national courts and potentially under State responsibility rules for

58 African Union. (2001). Declaration on the New Partnership for Africa’s Development (NEPAD), AHG/Decl.1(XXXVII). <[https://archives.au.int/bitstream/handle/123456789/258/Assembly%20AU%20Decl%201%20\(I\)%20_E.PDF](https://archives.au.int/bitstream/handle/123456789/258/Assembly%20AU%20Decl%201%20(I)%20_E.PDF)>.

59 Vienna Convention on the Law of Treaties. (Opened for signature 23 May 1969, 1155 UNTS 331, entered into force 27 January 1980). Arts. 2(1)(a) and 11-14.

60 International Institute for Sustainable Development. (October 28, 2024). AFRP Bulletin: Ninth Africa Regional Platform for Disaster Risk Reduction: 21-24 October 2024, Windhoek, Namibia. Earth Negotiations Bulletin, 17(136), 4. <<https://enb.iisd.org/sites/default/files/2024-10/afrp9.pdf>>.

internationally wrongful acts.

On this reading, NEPAD does not, of itself, establish a contractual responsibility in the strict sense associated with treaty law; it establishes, rather, a conditional or embryonic responsibility whose legal character depends on the extent of domestic implementation and on the AU's own institutional oversight, exercised in practice through the Africa Working Group on Disaster Risk Reduction and monitored at successive sessions of the Africa Regional Platform for Disaster Risk Reduction. It is this conditional and evolving responsibility, rather than a fully formed contractual liability, that the remainder of this section proposes to trace through NEPAD's specific institutional proposals.

3.1. NEPAD Proposals to Strengthen Disaster Risk Governance

Since 2003, the New Partnership for Africa's Development (NEPAD), the African Development Bank, and the United Nations Strategy for Disaster Reduction have been working together to provide guidance and direction for integrating disaster risk reduction into planning and sustainable development. In addition, the African Union, NEPAD, and the United Nations International Strategy for Disaster Reduction have developed an innovative set of guidelines for integrating disaster risk assessment. Overall, most of these efforts focus on disaster reduction and development rather than addressing the drought crisis specifically. Building a strategic framework for drought risk management and strengthening resilience would increase the focus on drought and enhance ongoing activities in Africa aimed at comprehensive agricultural, environmental, social, and economic development.⁶¹

61 Tsegai, D., Stefanski, R., Mejias Moreno, P. (Eds.). (2016). Strategic framework for drought risk management and enhancing resilience in Africa [White paper]. United Nations Convention to Combat Desertification (UNCCD), 12. [https://www.unccd.int/resources/publications/strategic-framework-drought-risk-manage-](https://www.unccd.int/resources/publications/strategic-framework-drought-risk-management-and-enhancing-resilience-africa)

Recent research on African disaster-risk governance confirms that the principal challenge is not merely the adoption of policy language, but the translation of that language into coordinated and accountable institutional practice. Okunola's comparative analysis of Kenya, Nigeria, Egypt, Namibia, and the Democratic Republic of Congo finds only partial alignment with the governance aspirations of the Sendai Framework, particularly in relation to legal reforms, multilevel planning, and stakeholder engagement. The study further identifies persistent gaps in the integration of disaster risk reduction into sectoral policies, the institutionalisation of participation, and the achievement of transparency and accountability. In the African context, local and regional governance structures are often marginalised, underfunded, or misaligned with national priorities, while subnational and transboundary arrangements may remain inconsistent and poorly coordinated. These findings reinforce the argument advanced in this article that NEPAD's programmatic commitments acquire practical legal significance only when they are translated into coordinated national and subnational institutions with defined competences, adequate resources, and effective review mechanisms.⁶²

The African regional strategy for disaster risk reduction, prepared by the African Union in cooperation with NEPAD, opens by presenting the various shortcomings in institutional frameworks. Its authors observed that national initiatives aimed at systematically developing the institutional framework for disaster risk reduction have not been implemented. Moreover, the quality of many policy frameworks needs improvement, as disaster risk management mechanisms in Africa still lack the necessary capacity to adequately help reduce disaster risks.

There are many factors that contribute to

[ment-and-enhancing-resilience-africa>](#).

62 Okunola, O. H. (2025). Beyond institutional silos: Rethinking multilevel disaster risk governance in Africa a decade into the sendai framework implementation: OH Okunola. *International Journal of Disaster Risk Science*, 16(3), 321-323. <https://doi.org/10.1007/s13753-025-00646-1>.

the failure of national plans and programs, foremost among them weak funding and insufficient financial support.⁶³

Based on the existence of numerous gaps in the field of disaster risk management, the African regional strategy for disaster risk reduction,⁶⁴ whose core objective is to contribute to achieving sustainable development and eradicating poverty by facilitating the integration of disaster risk reduction into development, sets out a package of strategies aimed at risk reduction, through:⁶⁵

- **Increasing political commitment:** by improving governance structures and processes, and through funded strategies.
- **Improving the identification and assessment of disaster risks:** by enhancing the quality of information and data, and early warning systems.
- **Strengthening knowledge management:** by promoting the generation of information and developing distinguished academic institutions.
- **Increasing public awareness:** by enhancing the integration of disaster risk reduction into education and expanding the role of the media.
- **Improving institutional governance:** by developing national platforms, decentralization, participation, and coordination.
- **Integrating disaster risk reduction into emergency response management** and into development processes, including internationally agreed development processes such as the New Partnership for Africa's Development (NEPAD).

Recent research published in 2026 demonstrates that the effectiveness of early-warning systems in Southern Africa depends not only on technological capacity but also on institutional governance. Mangara, Dorasamy, and Muzangaza show that the legal and organisational environment, institutional mandates, financing arrangements, and coordination among responsible agencies influence whether warnings are converted into timely and effective action. Their analysis indicates that fragmented institutional responsibilities, weak inter-agency coordination, and inadequate financing can undermine the practical value of early-warning systems, even where technical infrastructure exists. This finding is directly relevant to NEPAD's regional strategy because it demonstrates that commitments to risk identification and early warning must be supported by clear legal mandates, sustainable financing, accountable institutions, and effective coordination between national, subnational, and regional actors.⁶⁶

From a legal standpoint, the six components of the African Regional Strategy for Disaster Risk Reduction set out above share a common feature; each is formulated as a policy objective ("improving", "strengthening", "increasing") rather than as a rule imposing a determinate obligation of conduct or result on a specifically identified duty-bearer. This drafting technique is characteristic of soft-law instruments and distinguishes the Strategy from the Constitutive Act of the African Union, whose Article 4 provisions on non-interference, solidarity, and collective security are formulated as binding commitments of Member States.⁶⁷ As such, failure by a Member State to pursue any of these components does not, in itself, constitute an

63 The African Union (AU) and New Partnership for Africa's Development (NEPAD). (2004). Op.cit, 5-8.

64 United Nations Office for Disaster Risk Reduction. (2023). The Report of the Midterm Review of the Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030. Geneva, Switzerland: United Nations Office for Disaster Risk Reduction, 71. <https://sendaiframework-mtr.undrr.org/2023mtr-sf-submissions-and-reports>.

65 The African Union (AU) and New Partnership for Africa's Development (NEPAD). (2004). Op.cit, 9-14.

66 Mangara, F., Dorasamy, N., Muzangaza, R. W. (2026). Beyond technology: institutional determinants of early warning system effectiveness in Southern Africa. *Discover Hazards*, 2(1), 28. <https://doi.org/10.1007/s44475-026-00038-z>.

67 African Union. (2000). Constitutive Act of the African Union, adopted 11 July 2000, Lomé, Togo, entered into force 26 May 2001, 2158 UNTS 3, Art. 4. https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf.

internationally wrongful act under the International Law Commission's Articles on State Responsibility.

Only "improving institutional governance" generates binding effects through National Platforms for DRR. Where established by statute or decree with regulatory powers, these platforms constitute domestic legislation, breach of which engages State responsibility before national courts, independently of NEPAD's non-binding status. This pillar's legal weight thus varies from aspirational to binding, depending on each State's legislative implementation.

3.2. Regional Initiatives to Improve Cooperation Among African Countries in Disaster Management

Disaster risk reduction cannot be integrated into development unless disaster management institutions that facilitate this process are strengthened. This requires improving the management of these institutions. This includes institutions that develop the necessary capacities, secure adequate and safe resources, focus interventions on the tangible needs of people at risk through inclusive and participatory processes, and coordinate and align activities with other stakeholders.⁶⁸

Building on past and current experiences and lessons learned in Africa, and in line with global disaster reduction frameworks such as the Sendai Framework and the High-Level Meeting on National Drought Policy (HMNDP), a new strategic framework called "Drought Resilient and Prepared Africa" (DRAPA) is proposed. It is designed to establish effective drought risk management and strengthen resilience at continental, regional, national, and local/community levels across Africa.

The strategic framework for the Africa Disaster Risk Assessment Programme consists of six main components aligned with the priorities

of African regional networks, for example, the Intergovernmental Authority on Development's initiative on disaster resilience and sustainability in drought situations, National Action Programmes (NAPs), and global disaster risk reduction frameworks such as the Sendai Framework. These components are: drought policy and governance for risk management; drought monitoring and early warning; drought vulnerability and impact assessment; drought mitigation, preparedness, and response; knowledge management and drought awareness; and finally, reducing the underlying drivers of drought risk, as well as cross-cutting issues such as capacity development and income inequality.⁶⁹

The weak attention given to disaster management in Africa did not prevent national and regional food security from being accorded an early strategic priority. This was done within the Southern African Development Coordination Conference (SADCC), the predecessor of the Southern African Development Community (SADC). It was reflected in the establishment of the Regional Early Warning Unit (REWU) within the Food Security Technical and Administrative Unit of the SADCC, headquartered in the Zimbabwean capital, Harare.

In the early 1980s, the Regional Early Warning Unit built the capacity to monitor and harmonize data related to regional food security for each agricultural season. This was considered essential in a region where more than 26% of total export revenues were generated from agricultural production, and where 80% of the population in four SADCC member states (Malawi, Mozambique, Swaziland, and Tanzania) depended on agriculture for their livelihoods.

The Regional Water and Sanitation Unit continued to play a pivotal role in tracking changes in food security and remained at the forefront of the regional response to the droughts of 1991 and 1992 and various subsequent crises, even though it was not explicitly established as a disaster management structure.⁷⁰

68 The African Union (AU) and New Partnership for Africa's Development (NEPAD). (2004). Op.cit, 12.

69 Tadesse, T., op.cit, 20-21.

70 Holloway, A. (2003). Disaster risk reduction in southern Africa: Hot rhetoric—cold reality. *African Security*

The regional cooperation mechanisms reviewed in this section are, without exception, instruments of technical and administrative cooperation rather than treaties creating rights and obligations between States. Their legal weakness stands in instructive contrast to the one genuinely binding regional mechanism in this field: The African Risk Capacity (ARC), established as a Specialized Agency of the African Union by a treaty adopted by Plenipotentiaries of AU Member States on 23 November 2012.⁷¹ Unlike NEPAD's own strategy documents, the ARC Treaty was negotiated, signed, and made subject to ratification in accordance with the ordinary law of treaties, and it entered into force only on 15 April 2020, upon deposit of the tenth instrument of ratification, in accordance with its own Article 26(3).

The contrast is legally significant; Whereas the ARC Treaty creates binding obligations — the payment of insurance premiums, participation in the Conference of the Parties, and adherence to the Agency's governance rules — enforceable according to ordinary treaty law once ratified, the remaining regional cooperation mechanisms described above create no comparable obligations. Yet even the ARC Treaty illustrates the conditional and incomplete character of legal responsibility within the NEPAD/AU disaster-risk architecture. As of 2024, it had been signed by 38 Member States but ratified by only 13, meaning that the large majority of African States remain, with respect to this specific mechanism, in the position of political signatories rather than legally bound parties.⁷² This confirms, at the level of a concrete treaty mechanism, the broader thesis defended in this

study: legal responsibility under the NEPAD/AU disaster-risk framework is not general and automatic, but progressive and State-specific, contingent on each Member State's own act of ratification or domestic transposition.

These institutional arrangements have continued to develop in recent years. At the 21st session of the Africa Working Group on Disaster Risk Reduction, held in Kigali in April 2024, participants reported the adoption of a national Disaster Risk Management Policy in Rwanda (2023), the approval of a national disaster-risk-financing strategy in Sierra Leone, and the planned operationalization by the end of 2024 of the Southern African Development Community's Emergency and Humanitarian Operations Centre.⁷³

At the Ninth Africa Regional Platform for Disaster Risk Reduction, held in Windhoek in October 2024, the African Union Commission further reported that direct economic losses from disasters, as a share of the continent's GDP, had risen from 0.54 per cent to 2.94 per cent between 2015 and 2023, even as the number of States possessing a national disaster-risk-reduction strategy increased from eleven to thirty-two over the same period.⁷⁴ These figures confirm both the acceleration of institutional and legislative uptake of the NEPAD/Sendai agenda and the continuing gap between that uptake and any measurable reduction in the continent's exposure to disaster losses, a gap that reinforces the conditional character of the legal responsibility discussed above.

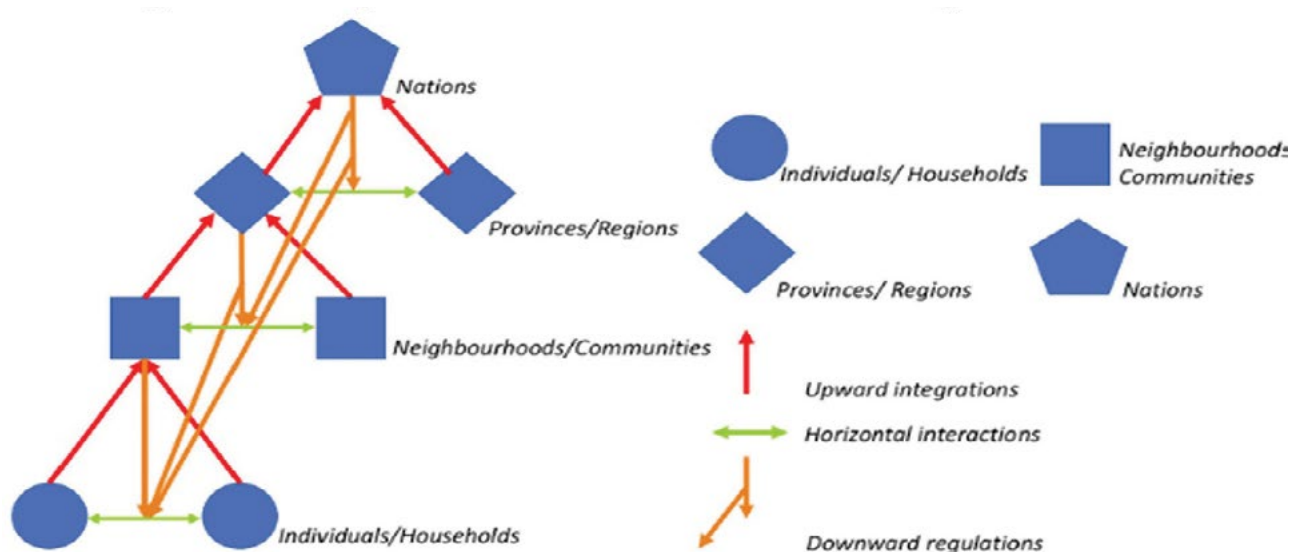
Studies, 12(1), 31.

71 African Union. (2012). Agreement for the Establishment of the African Risk Capacity (ARC) Agency, Art. 2–3. Adopted 23 November 2012, Pretoria, South Africa; entered into force 15 April 2020.

72 African Union. (April 22, 2024). Fourteenth Session of the Conference of the African Risk Capacity Conference of the Parties. Addis Ababa: African Union Commission. <<https://au.int/en/newsevents/20240422/fourteenth-session-conference-african-risk-capacity-conference-parties>>.

73 African Union. (May 16, 2024). Africa realises notable progress in strengthening disaster risk reduction [Press release]. <<https://au.int/en/pressreleases/20240516/africa-realises-notable-progress-strengthening-disaster-risk-reduction>>.

74 International Institute for Sustainable Development. (October 28, 2024). Op.cit.

FIGURE 2: Building Resilience at All Levels of Social-Ecological Governance

Source: Imperiale, A. J., Vanclay, F., op.cit, 898.

3.3. NEPAD and Building Resilience: Requirements for Developing States' Capacities in Disaster Risk Management

The figure below shows three basic interrelated dynamics between levels: horizontal interactions, upward integrations, and downward regulations. Horizontal interactions are mutual assistance and social sustainability that enable resilience in the community and must be recognized and strengthened. Upward integrations are the processes through which lower levels of social organization contribute to prevention, mitigation, monitoring, and enhancement activities. They also serve to inform external actors of the results of positive learning and the shift toward sustainability at the lower levels of organization. Downward regulations are empowering processes that, instead of being directed at individuals, should be directed at horizontal interactions that facilitate comprehensive social learning and the shift toward sustainability in the community. (See Fig.2)⁷⁵

The ability of local governments to reduce risk through effective planning in many low –

and middle-income countries lacks broad scope because of their limited power and resources and their often conflicted relationship with the poorest and most vulnerable groups. While the reasons for the ineffectiveness of local governments and their planning systems in postcolonial African cities are well documented, good practices in urban planning and governance for risk reduction are not. There is a need to document cases where city governments have partnered with local residents and civil society organizations to reduce risks. Ongoing work with the national federations of Slum/Shack Dwellers International (SDI), active in 15 African countries, is a particularly valuable opportunity that provides an entry point for gaining insights into how community-driven “slum upgrading” processes, as a form of co-production, can reduce risks while contributing to broader societal transformation in the context of reducing urban poverty.

Ongoing work with the national federations of Slum/Shack Dwellers International (SDI), active in 15 African countries, is a particularly valuable opportunity that provides an entry point for gaining insights into how community-driven slum upgrading, as a form of co-pro-

⁷⁵ Imperiale, A. J., Vanclay, F., op.cit, 898.

duction, can reduce risks while contributing to broader community transformation in the context of reducing urban poverty.⁷⁶

Wherever risk is being addressed, policies, investments, and programmatic responses largely repeat traditional approaches; they tend not to question whether there are alternative, radical, or unconventional options that could be designed and pursued to enhance disaster risk reduction outcomes in such contexts. For disaster risk reduction to be sufficiently mature and fit for purpose in different types of conflict settings, it is necessary to ask whether conventional disaster risk reduction strategies, financing mechanisms, approaches, and tools are suitable for contexts of fragility, conflict, and violence, and if they are not, what adjustments are required. The answers may indicate that, instead of adapting current disaster risk reduction practice to conflict settings, it may be time to overhaul traditional approaches in some contexts.⁷⁷

The growing recognition of the role of local communities in reducing disaster risk, along with the failures of centralized interventions, has led to a shift in thinking about resilience-building from a government-centered approach to a governance approach. Under the Sendai Framework, the United Nations has recommended that states strengthen disaster risk governance in order to better direct investments towards enhancing disaster risk reduction, resilience, and the rebuilding of better, more sustainable, and more resilient communities, both before and after disasters.

However, the assessment of top-down, military-style command and control urges states and their civil protection systems to use institutional strategies that contribute to exacerbating social exclusion instead of promoting inclusive disaster risk reduction governance; financial strategies that lead to investments facilitating disaster capitalism rather than community resilience; and risk management, community participation, and physical planning strategies

that worsen social impacts and the pre-existing conditions of disasters, creating secondary disasters, instead of rebuilding better, more sustainable, and more resilient communities.⁷⁸

Disaster risk reduction policies must fully include input from indigenous populations in terms of participation and/or consultation to support the implementation process, especially in the area of compliance monitoring. The policies must also take into account the actual social, economic, and cultural characteristics of indigenous populations. Community or public awareness should be strongly encouraged, and people should be educated through magazines, workshops, community town hall meetings, and awareness campaigns as a means of providing information by the government and non-governmental agencies to communities exposed to disasters.⁷⁹

The synergistic model of green development and disaster risk reduction achieves a balance between development and security (see figure below) by effectively reducing disaster risks and implementing a comprehensive plan for green development and integrated disaster risk governance, in order to promote sustainable development. This process is referred to as risk management for development. It is characterized by the following objectives. First, coordinating the establishment of a resource-efficient and environmentally friendly society, promoting the green economy, and advancing towards a circular economy; second, strengthening the administrative functions of governments at all levels, and enhancing the roles of other stakeholders (entrepreneurs and households) in integrated disaster risk management; and finally, increasing the efficiency and effectiveness of the use of resources for integrated disaster risk management, improving the coordination of plans at different levels and across sectors, and fostering synergy among innovative, coordinated, green,

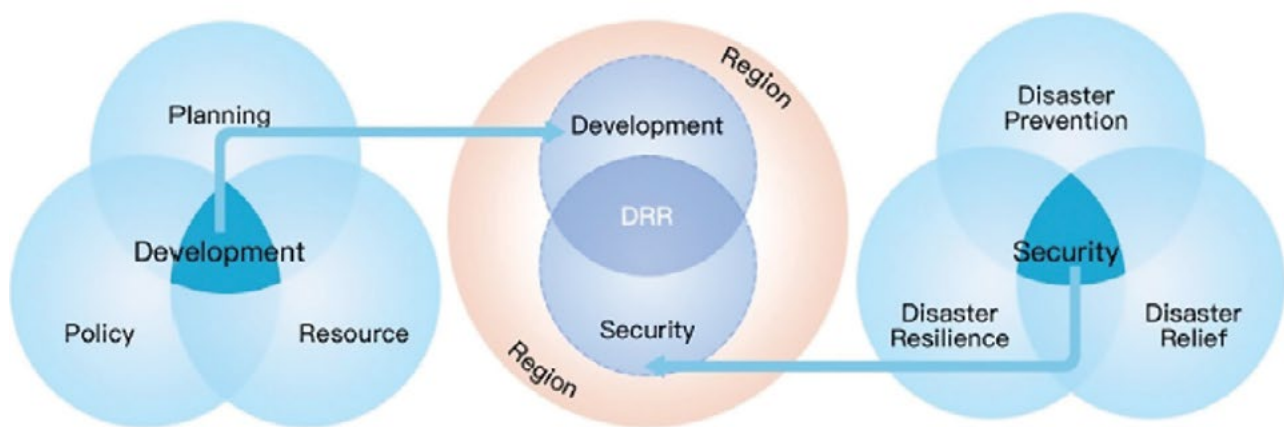
76 Adelekan, I., et al., op.cit, 39.

77 Mena, R., et al., op.cit, 41.

78 Imperiale, A. J., Vanclay, F., op.cit, 900-901.

79 Wizer, C. H., Cooke, A. T. (2019). Role of governmental and non-governmental agencies towards disaster risk reduction in Rivers State, Nigeria. *International Journal of Research in Environmental Science*, 5(3), 63.

FIGURE 3: Synergetic Paradigm for Disaster Risk Governance and Sustainable Development



Source: Shi, P., et al., *op.cit.*, 435.

open, and shared development, which supports the creation of “win-win” models. The establishment of an integrated regional synergistic model for disaster risk management plays an important supporting role in improving the capacity to respond to regional disasters. (See Fig.3)⁸⁰

The community-level and local-government dimensions of resilience-building examined in this final axis are, almost by definition, matters of domestic administrative and local-government law rather than of continental or international law. The African Union’s own Constitutive Act does not purport to regulate the internal distribution of competences between central and local government within a Member State; it is a matter left, under ordinary principles of sovereignty and subsidiarity, to each State’s constitutional and administrative order.⁸¹ Consequently, any legal responsibility arising from the failure to include local communities and indigenous populations in disaster risk governance – as recommended in this section – can only be a domestic responsibility, engaged under a State’s own decentralization statutes, administrative law, or constitutional guarantees of participation, and not a responsibility arising directly from NEPAD or from AU instruments themselves.

This does not mean that continental instruments are wholly irrelevant to this dimension. The IFRC-UNDP multi-country legal survey found that the clearest examples of effective national disaster-risk-reduction legislation were precisely those that had translated the general, non-binding recommendation to “facilitate the participation of communities, civil society and vulnerable groups” into specific, justiciable rights and procedures at the domestic level.⁸² The third axis of NEPAD’s strategy therefore performs, in legal terms, a purely programmatic and orientational function: it identifies the substantive content that domestic legislators are encouraged to adopt, but it neither compels them to do so nor, in the absence of such domestic legislation, exposes them to any responsibility under continental or international law.

Read together, the legal assessment of NEPAD’s three institutional axes confirms the thesis advanced in this study: responsibility under the NEPAD/AU disaster-risk framework is neither wholly absent nor uniformly binding, but distributed unevenly along a spectrum that runs from purely aspirational policy language (the first axis), through a genuine but incom-

80 Shi et al., *op.cit.*, 435.

81 Ibid.

82 International Federation of Red Cross and Red Crescent Societies & United Nations Development Programme. (2014). *Op.cit.*, 29-30.

pletely ratified treaty mechanism — the African Risk Capacity (within the second axis) — to matters left entirely to domestic constitutional and administrative law (the third axis). It is this uneven and evolving distribution, rather than a single, general contractual responsibility, that most accurately describes the legal condition of NEPAD's contribution to disaster risk governance in Africa.

CONCLUSION

In answer to the central research question — how NEPAD's strategic approach to disaster risk reduction contributes to strengthening the resilience of African countries in the face of major disasters, and to what extent this strategy establishes a genuine legal responsibility — this study has shown that NEPAD's contribution operates principally through the progressive conversion of a continental policy framework into binding national legal and institutional structures, rather than through any directly enforceable continental obligation.

Four findings support this conclusion. First, disaster risk governance, properly understood in legal terms, requires distinguishing binding instruments such as the Constitutive Act of the African Union from the essentially programmatic, soft-law character of NEPAD's own founding texts and regional strategy. Second, the recurrent floods, earthquakes, tsunamis, and volcanic episodes surveyed in this study confirm that the practical cost of this soft-law character has been a persistent, if narrowing, gap between continental policy and enforceable national protection a gap documented independently by the IFRC-UNDP multi-country legal survey and by UNDRR's own midterm review of the Sendai Framework in Sub-Saharan Africa, and illustrated at the national level by the marked contrast between comprehensive statutes such as South Africa's Disaster Management Act and platforms of contested effectiveness such as Burundi's. Third, the legal assessment of NEPAD's three institutional axes shows that responsibility is dis-

tributed unevenly: predominantly aspirational in the first axis, embodied in a genuine but only partially ratified treaty — the African Risk Capacity — in the second, and left to domestic administrative law in the third. Fourth, and directly addressing the question of contractual responsibility raised in the title of this study, NEPAD does not, by itself, establish a contractual responsibility in the strict sense of treaty law. It establishes instead a conditional and evolving responsibility: political and institutional in its origin under the NEPAD framework and the Constitutive Act of the African Union, but capable of hardening into ordinary legal responsibility — domestic, and in appropriate cases international — as African States progressively transpose continental commitments into binding national legislation. Continental reporting indicates that this process is well underway, with the number of States possessing a national disaster-risk-reduction strategy rising from eleven in 2015 to thirty-two in 2024, even as direct economic losses from disasters, as a share of GDP, continued to rise over the same period.

Based on these findings, this study proposes the following recommendations:

- Integrating disaster risk reduction into development plans and investing in early warning systems.
- Accelerating the domestication of the NEPAD/Sendai regional strategy into binding national legislation and institutional structures, to convert the political commitments undertaken at the continental level into legal obligations enforceable before national courts and administrative bodies.
- Encouraging wider ratification of binding regional instruments, in particular the African Risk Capacity Treaty, to close the gap between political signature and legal commitment identified in this study.
- Strengthening the African Union's own institutional oversight — in particular through the Africa Working Group on Disaster Risk Reduction and the Africa Regional Platform for Disaster Risk Re-

duction – so that the conditional responsibility identified in this study continues to harden into a genuine, continent-wide

regime of legal accountability for disaster risk governance.

REFERENCES:

Scholarly Literature:

- Adelekan, I. (1970). *Disaster risk and its reduction: An agenda for urban Africa*. Liverpool University Press;
- Adelekan, I., Johnson, C., Manda, M., Matyas, D., Mberu, B., Parnell, S., Pelling, M., Satterthwaite, D., Vivekananda, J. (2015). *Disaster risk and its reduction: An agenda for urban Africa*. *International Development Planning Review*, 37(1);
- Ahrens, J., Rudolph, P. M. (2006). The importance of governance in risk reduction and disaster management. *Journal of Contingencies and Crisis Management*, 14(4);
- Alam, E., Ray-Bennett, N. S. (2021). Disaster risk governance for district-level landslide risk management in Bangladesh. *International Journal of Disaster Risk Reduction*, 59;
- Albris, K., Lauta, K. C., Raju, E. (2020). Strengthening governance for disaster prevention: The enhancing risk management capabilities guidelines. *International Journal of Disaster Risk Reduction*, 47;
- Aoki, N. (2014). Collaborative manpower support for restoring hope in the aftermath of the March 11 disasters in Japan. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer;
- Barber, R. (2014). *Localising the humanitarian toolkit: Lessons from recent Philippines disasters*. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer;
- Brassard, C., Howitt, A. M., Giles, D. W. (2014). *Confronting disaster: Recent lessons from the Asia-Pacific*. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer;
- Coetzee, C., Khoza, S., Nemakonde, L. D., Shoroma, L. B., Wentink, G. W., Nyirenda, M., Van Niekerk, D. (2023). *Financing Disaster Risk Reduction: Exploring the Opportunities, Challenges, and Threats Within the Southern African Development Community Region*: Coetzee et al. *Financing Disaster Risk Reduction*. *International Journal of Disaster Risk Science*, 14(3). <https://doi.org/10.1007/s13753-023-00499-6>;
- De Guttery, A., Gestri, M., Venturini, G. (2012). *International disaster response law (1-774)*. The Hague: TMC Asser Press;
- Etinay, N., Egbu, C., Murray, V. (2018). Building urban resilience for disaster risk management and disaster risk reduction. *Procedia Engineering*, 212;
- Eze, E., Siegmund, A. (2024). Identifying disaster risk factors and hotspots in Africa from spatiotemporal decadal analyses using INFORM data for risk reduction and sustainable development. *Sustainable Development*, 32(4). <https://doi.org/10.1002/sd.2886>;
- Holloway, A. (2003). Disaster risk reduction in southern Africa: Hot rhetoric—cold reality. *African Security Studies*, 12(1);
- Imperiale, A. J., Vanclay, F. (2021). Conceptualizing community resilience and the social dimensions of risk to overcome barriers to disaster risk reduction and sustainable development. *Sustainable Development*, 29(5);

- Jones, S., Manyena, B., Walsh, S. (2015). Disaster risk governance: Evolution and influences. In *Hazards, Risks, and Disasters in Society*;
- Klinke, A., Renn, O. (2021). The coming of age of risk governance. *Risk Analysis*, 41(3);
- Kouamé, P. K., et al. (2022). Assessing institutional stakeholders' perception and limitations on coping strategies in flooding risk management in West Africa. *International Journal of Environmental Research and Public Health*, 19(11);
- Kunguma, O. (2020). *South African Disaster Management Framework: Assessing the Status and Dynamics of Establishing Information Management and Communication Systems in Provinces*. University of the Free State;
- Mangara, F., Dorasamy, N., Muzangaza, R. W. (2026). Beyond technology: institutional determinants of early warning system effectiveness in Southern Africa. *Discover Hazards*, 2(1). <<https://doi.org/10.1007/s44475-026-00038-z>>;
- Mena, R., Hilhorst, D., Peters, K. (2019). *Disaster Risk Reduction and Protracted Violent Conflict*. London: Overseas Development Institute;
- O'Neill, K. (2014). Communities at the heart of recovery: Reflections on the government-community partnership for recovery after the 2009 Black Saturday bushfires in Victoria, Australia. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer;
- Okoh, A. I. S. (2014). The challenge of entropic society and sustainable development governance in Africa. *International Journal of Public Administration and Management Research*, 2(3);
- Okunola, O. H. (2025). Beyond institutional silos: Rethinking multilevel disaster risk governance in Africa a decade into the sendai framework implementation: OH Okunola. *International Journal of Disaster Risk Science*, 16(3). <<https://doi.org/10.1007/s13753-025-00646-1>>;
- Pelling, M., Wisner, B. (2012). *Disaster risk reduction: Cases from urban Africa*. Routledge;
- Pound, R. (1910). Law in books and law in action. *American Law Review*, 44(1);
- Schweizer, P.-J. (2021). Systemic risks—concepts and challenges for risk governance. *Journal of Risk Research*, 24(1);
- Shi, P., et al. (2020). Disaster risk science: A geographical perspective and a research framework. *International Journal of Disaster Risk Science*, 11(4);
- Tierney, K. (2012). Disaster governance: Social, political, and economic dimensions. *Annual Review of Environment and Resources*, 37(1);
- van Niekerk, D. (2014). *Retrospective Assessment of Progress in Disaster Risk Governance*. University of North-West;
- Waheed, M., Shakoor, H. A. (2014). The Impact of the Indian Ocean Tsunami on Maldives. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance*. Springer;
- Wizor, C. H., Cookey, A. T. (2019). Role of governmental and non-governmental agencies towards disaster risk reduction in Rivers State, Nigeria. *International Journal of Research in Environmental Science*, 5(3);
- Zhang, H. (2014). Collaboration in emergency response in China: Evolution from the Wenchuan earthquake, May 12, 2008 to the Lushan earthquake, April 20, 2013. In *Natural Disaster Management in the Asia-Pacific: Policy and Governance* (69–84). Springer.

Normative Acts:

- African Union. (2000). *Constitutive Act of the African Union*, adopted 11 July 2000, Lomé, Togo, entered into force 26 May 2001, 2158 UNTS 3. <https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf>;

- African Union. (2001). Declaration on the New Partnership for Africa's Development (NEPAD), AHG/Decl.1(XXXVII). <[https://archives.au.int/bitstream/handle/123456789/258/Assembly%20AU%20Decl%201%20\(I\)%20_E.PDF](https://archives.au.int/bitstream/handle/123456789/258/Assembly%20AU%20Decl%201%20(I)%20_E.PDF)>;
- African Union. (2012). Agreement for the Establishment of the African Risk Capacity (ARC) Agency, Art. 2–3. Adopted 23 November 2012, Pretoria, South Africa; entered into force 15 April 2020;
- Government of South Africa. (2002). Disaster Management Act, No. 57. <https://www.cogta.gov.za/cgta_2016/wp-content/uploads/2016/06/DISASTER-MANAGEMENT-ACT.pdf>;
- International Law Commission. (2001). Draft Articles on Responsibility of States for Internationally Wrongful Acts. Annexed to UN General Assembly Resolution 56/83 (December 12, 2001), UN Doc. And corrected by document A/56/49(Vol. I), /Corr. 4;
- République Togolaise. (2008). *Loi n° 2008-005 du 30 mai 2008 portant loi-cadre sur l'environnement*. <https://bwcim-plementation.org/sites/default/files/resource/TG_Loi_Cadre_Environnement.pdf>. (in French);
- United Nations Office for Disaster Risk Reduction. (2023). Report of the Midterm Review of the Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030: Africa Regional Summary. <<https://sendaiframe-work-mtr.undrr.org/2023mtr-sf-submissions-and-reports>>;
- Vienna Convention on the Law of Treaties. (Opened for signature 23 May 1969, 1155 UNTS 331, entered into force 27 January 1980).
- Other Supplementing Materials:**
- African Union. (May 16, 2024). Africa realises notable progress in strengthening disaster risk reduction [Press release]. <<https://au.int/en/pressreleases/20240516/africa-realises-notable-progress-strengthening-disaster-risk-reduction>>;
- African Union. (April 22, 2024). Fourteenth Session of the Conference of the African Risk Capacity Conference of the Parties. Addis Ababa: African Union Commission. <<https://au.int/en/new-sevents/20240422/fourteenth-session-conference-african-risk-capacity-conference-parties>>;
- International Federation of Red Cross and Red Crescent Societies (IFRC) & United Nations Development Programme (UNDP). (2014). Effective Law and Regulation for Disaster Risk Reduction: A Multi-Country Report. New York: IFRC & UNDP. <https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP_CPR_DRR_fullreport2013.pdf>;
- International Institute for Sustainable Development. (October 28, 2024). AfRP Bulletin: Ninth Africa Regional Platform for Disaster Risk Reduction: 21–24 October 2024, Windhoek, Namibia. Earth Negotiations Bulletin, 17(136). <<https://enb.iisd.org/sites/default/files/2024-10/afrp9.pdf>>.
- Tadesse, T. (August, 2016). Strategic framework for drought management and enhancing resilience in Africa. In African Drought Conference;
- The African Union (AU) and New Partnership for Africa's Development (NEPAD). (2004). Disaster Risk Reduction for Sustainable Development in Africa: Africa Regional Strategy for Disaster Risk Reduction;
- Tsegai, D., Stefanski, R., Mejias Moreno, P. (Eds.). (2016). Strategic framework for drought risk management and enhancing resilience in Africa [White paper]. United Nations Convention to Combat Desertification (UNCCD). <<https://www.unccd.int/resources/publications/strategic-framework-drought-risk-management-and-enhancing-resilience-africa>>.



FORECLOSURE AUCTIONS: LEGAL CONSEQUENCES AND THE CONTINUITY OF RIGHTS IN COMPARATIVE PERSPECTIVE

Eter Burjanadze 

*Ph.D Candidate, Faculty of Law and Social Sciences,
East European University, Georgia, Tbilisi*

 e_burjanadze@cu.edu.ge

ARTICLE INFO

Article History:

Received: 04.06.2026
Revised: 14.08.2026
Accepted: 01.09.2026
Published: 30.09.2026

Keywords:

Foreclosure auction,
Enforcement proceedings,
Continuity of rights,
Extinguishment of rights,
Secured creditor

ABSTRACT

This article examines the legal consequences of foreclosure auctions, focusing on the continuity and extinguishment of real (in rem) and obligational (in personam) rights encumbering immovable property.

The study identifies ambiguities in Georgian enforcement legislation that have resulted in inconsistent enforcement and registration practices. The most problematic issue concerns obligational rights registered after the creation of a mortgage. In practice, similar cases have produced divergent outcomes: some rights are extinguished following a foreclosure auction, while others continue to encumber the property. This inconsistency undermines legal certainty and affects the interests of creditors, debtors, purchasers, and rights holders.

The research is based on an analysis of Georgian legislation, enforcement practice, legal doctrine, and comparative legal materials, including selected European jurisdictions. It also examines the current Law of Georgia on Enforcement Proceedings and the proposed Enforcement Code.

The article argues that legislative reform is needed to establish clear rules on the continuity of rights following foreclosure auctions. Comparative analysis shows that the legal consequences of foreclosure should depend not only on whether a right is real or obligational, but also on its priority and legal regime. In the Georgian context, rights registered after the mortgage should, as a general rule, be extinguished where enforcement is pursued by a secured creditor, while prior rights should remain in force. Where enforcement is pursued by an unsecured creditor, all registered rights should remain unaffected. This approach would strengthen legal certainty, promote consistency in enforcement practice, and better balance the interests of the parties involved.

INTRODUCTION

The legal consequences of foreclosure auctions constitute one of the most complex and debated issues in modern enforcement and property law. Whenever immovable property is sold through a foreclosure auction conducted within mortgage enforcement proceedings, a fundamental legal question arises: what becomes of the rights encumbering the property after ownership is transferred to the successful bidder? The answer to this question extends beyond a purely procedural matter of enforcement law. It directly affects the balance between creditor protection, property rights, transactional security, and the legitimate expectations of third parties whose rights are attached to the property.

The issue is particularly significant in legal systems where mortgage-secured lending serves as a principal mechanism for financing and credit security. The effectiveness of the mortgage institution depends not only on the creditor's ability to realize its security interest through enforcement proceedings but also on the existence of clear and predictable rules governing the legal consequences of foreclosure sales. Recent European scholarship further demonstrates that mortgage enforcement re-

quires a careful balance between the effective exercise of the mortgagee's enforcement rights and the protection of the debtor's interests, including access to effective legal remedies.¹ Legal certainty in this context is essential for all participants involved in enforcement proceedings. Purchasers acquiring property through foreclosure auctions must be able to determine which encumbrances will survive the transfer of ownership, while rights holders require clarity as to whether their legally established interests will continue or be extinguished following foreclosure.

Within the Georgian legal system, this issue remains particularly problematic. Although foreclosure auctions are frequently used to satisfy mortgage claims, the legal consequences of such sales for rights registered against the property remain insufficiently regulated. In particular, the treatment of obligational rights established after the registration of a mortgage has generated considerable controversy in both enforcement and registration practice. Comparable factual situations have produced inconsis-

1 Bouzora, N. L., Visser, I. (2026). Exploring Proportionality in Mortgage Enforcement Proceedings in The Netherlands: Diverse Perspectives on Balancing Debtor Protection and Legal Remedies. *European Property Law Journal*, 15(1), 4. <https://doi.org/10.1515/eplj-2025-2013>.

tent legal outcomes: in some cases, such rights have been extinguished following foreclosure, whereas in others they have remained effective and continued to encumber the property after its transfer to a new owner.

The persistence of these contradictory approaches reveals structural deficiencies within the existing legislative framework. The applicable legal provisions do not provide a sufficiently clear basis for determining the relationship between mortgage priority and subsequently registered rights, thereby permitting divergent interpretations by enforcement authorities and registration bodies. As a result, legal certainty is undermined, enforcement outcomes become less predictable, and the interests of creditors, debtors, purchasers, and third-party rights holders are placed at risk.

Despite the practical importance of this issue, Georgian legal scholarship has not yet developed a comprehensive doctrinal framework capable of resolving the competing interests arising in foreclosure proceedings. Moreover, the problem extends beyond the Georgian context, reflecting a broader challenge faced by many legal systems: how to reconcile the priority of secured creditors with the protection of rights acquired by third parties. The issue therefore forms part of a wider comparative and theoretical discussion concerning the legal effects of foreclosure on competing proprietary and obligational interests.

Against this background, the central research question of this article is how Georgian enforcement law should regulate the continuity or extinguishment of real and obligational rights following a foreclosure auction, particularly where such rights were registered after the mortgage of the enforcing creditor. In addressing this question, the study examines the legal criteria that should determine the survival or extinguishment of such rights and seeks to identify an appropriate balance between the priority of the secured creditor and the legitimate interests of purchasers and third-party rights holders.

For the purposes of comparative analysis,

the article examines the legal frameworks of Germany and France. The selection of these jurisdictions is based on their relevance to the central research problem and on the existence of developed statutory frameworks governing mortgage enforcement, the priority of competing rights, and the legal consequences of compulsory sales of immovable property. German law provides a particularly relevant comparative perspective because the legal consequences of foreclosure are closely connected with the ranking and priority of rights and with the determination of which rights survive or are extinguished as a result of the forced sale.

French law offers a valuable comparative perspective on the interaction between mortgage enforcement, the protection of rights attached to immovable property, and the specific rules governing compulsory enforcement against such property. The selection of Germany and France therefore enables the study to examine different regulatory approaches within continental European legal systems and to assess how competing interests of secured creditors, purchasers, and third-party rights holders are balanced in the context of foreclosure.

The comparative analysis is not intended to transpose foreign rules directly into Georgian law. Rather, it seeks to identify legal principles and regulatory approaches that may assist in addressing the deficiencies identified in Georgian legislation and contribute to the development of a clearer, more coherent, and predictable framework governing the continuity or extinguishment of rights following foreclosure auctions.

The article argues that legislative reform is necessary to establish a clear and predictable legal regime governing the continuity of rights following foreclosure auctions. It proposes a differentiated approach based on the nature of the enforcement claim and the priority of the mortgage right. According to this approach, where enforcement is conducted for the benefit of a secured creditor, rights registered after the mortgage should, in principle, be extinguished, whereas rights predating the mortgage should

remain unaffected. Conversely, where enforcement is carried out for the benefit of an unsecured creditor, all existing rights should remain in force. Such reform would strengthen legal certainty, enhance consistency in enforcement and registration practice, and contribute both to the doctrinal development of Georgian enforcement law and to broader comparative discussions concerning the relationship between mortgage enforcement, property rights, and the protection of third-party interests.

METHODOLOGY

This research is primarily based on a doctrinal legal approach, supplemented by comparative and qualitative research methods. The doctrinal component of the study involves a systematic analysis of Georgian legislation, legal doctrine, judicial practice, enforcement practice, and relevant aspects of banking practice concerning the legal consequences of foreclosure auctions and the treatment of rights encumbering immovable property. This approach enables the identification of legislative ambiguities, interpretative inconsistencies, and regulatory gaps within the existing legal framework.

The comparative legal method constitutes a central element of the research design. The study examines the currently applicable Law of Georgia on Enforcement Proceedings and the proposed Enforcement Code of Georgia in order to assess whether the proposed legislative framework addresses the deficiencies identified in existing law and practice. The comparative analysis further examines the legal frameworks of Germany and France, selected on the basis of their relevance to the central research problem, particularly the regulation of mortgage enforcement, the priority of competing rights, and the legal consequences of compulsory sales of immovable property. The comparison is functional and problem-oriented: rather than providing an exhaustive account of either foreign legal system, it focuses on the legal mech-

anisms relevant to determining the survival or extinguishment of rights following foreclosure and assesses their potential relevance to the development of Georgian enforcement law.

In addition, the research employs case analysis and comparative evaluation of individual cases. Judicial decisions, enforcement practices, and registration outcomes are examined to identify inconsistencies in the treatment of rights registered before and after the establishment of a mortgage. Particular attention is given to comparable cases in which similar factual circumstances have resulted in different registration outcomes following foreclosure. The analysis of practical cases makes it possible to assess the effectiveness and consistency of existing legal norms and their application in practice.

The study also incorporates qualitative research methods through eleven semi-structured individual interviews conducted over one month (in April 2026) with professionals possessing practical experience relevant to enforcement proceedings. The respondents included enforcement officers of the LEPL National Bureau of Enforcement, private enforcement officers, representatives of the LEPL National Agency of Public Registry and the banking sector. Each interview was conducted on the basis of a pre-designed semi-structured interview guide adapted to the respondent's professional experience and the specific aspects of the research problem relevant to their field. The interviews provided practical insights into the application of the existing legal framework and were aimed at identifying inconsistencies, practical difficulties, and regulatory gaps concerning the legal consequences of foreclosure auctions, particularly the continuity or extinguishment of rights encumbering immovable property. In accordance with research ethics and the principle of confidentiality, the identities of the respondents are not disclosed in the article.

The combination of doctrinal, comparative, case-based, and qualitative methods enables a multidimensional examination of the central research question. This methodological frame-

work makes it possible to identify deficiencies in the existing regulatory regime, assess their practical consequences, evaluate relevant comparative approaches, and develop normative recommendations aimed at establishing a coherent and predictable legal framework governing the continuity or extinguishment of rights following foreclosure auctions.

FINDINGS AND DISCUSSION

1. FORECLOSURE AUCTION AS THE FINAL STAGE OF MORTGAGE ENFORCEMENT

The foreclosure auction of immovable property constitutes the final and most significant stage of mortgage enforcement proceedings aimed at satisfying a secured creditor's claim through the realization of mortgaged assets. A foreclosure auction, as a form of enforcement, first appeared in Georgian legislation in 1999 with the adoption of the "Law of Georgia on Enforcement Proceedings". This term replaced the term "public trading" used in the Civil Procedure Code. Currently, the rules for foreclosure auctions are regulated by the "Law of Georgia on Enforcement Proceedings" and the Order No. 21 of the Minister of Justice of Georgia of January 31, 2011, "On the Approval of the Form, Rule, and Procedures for Conducting a foreclosure auction".

A foreclosure auction is conducted by the National Bureau of Enforcement or another person based on a contract concluded with it, in accordance with the rules established by the "Law of Georgia on Enforcement Proceedings". Since February 2011, the National Bureau of Enforcement of Georgia has operated through an electronic auction system. Foreclosure auctions are conducted and published on the website www.eauction.ge, which enables interested persons to search for and acquire property offered for sale from any location in the world.²

As a rule, the foreclosure auction must be held within one month from the date of seizure of the property.³ Any person may participate in the auction, and it is also important that the identity of the website user and the property acquirer is confidential.

The initiation of a foreclosure auction is preceded by a series of enforcement measures designed to protect both the creditor's interests and the procedural rights of the debtor. Where a mortgage-secured obligation is not voluntarily fulfilled, the mortgagee is entitled to demand the sale of the mortgaged property unless otherwise provided by the mortgage agreement.⁴ Enforcement proceedings commence upon the submission of an enforcement application and an enforceable title⁵ to the National Bureau of Enforcement or a private enforcement officer. Contemporary scholarship also demonstrates that the procedural framework governing mortgage enforcement may itself constitute an important safeguard for the debtor. In some legal systems, residential mortgage enforcement is subject to prior judicial control, reflecting the broader importance of procedural protection in the realization of mortgage security.⁶

"The enforcement officer is obliged to commence enforcement proceedings if the following conditions are met: (1) the statutory time limit for submitting the enforcement document for execution has not expired; (2) the enforcement document complies with the requirements outlined in Article 21 of the Law of Georgia on Enforcement Proceedings, meaning that it has been prepared in accordance with all legal requirements;⁷ and (3) the enforcement fee

Project for the Improvement of the Enforcement System (BESTT), 276-277.

3 Law of Georgia on Enforcement Proceedings, Article 69, Paragraph 1.

4 Civil Code of Georgia, Article 301, Paragraph 1.

5 Law of Georgia on Enforcement Proceedings, Article 25, Paragraph 1.

6 Whitehouse, L., Crampin, C. (2023). Missing in Action? Mortgage Enforcement under Section 126 of the Consumer Credit Act 1974. *Legal Studies*, 43(3), 543. <https://doi.org/10.1017/lst.2023.14>.

7 For the mandatory elements of an enforcement title, see Article 21 of the Law of Georgia on Enforcement

2 Witdehaag, J. (Ed.). (2013). Overview of the Georgian Enforcement System: The Georgian Enforcement System in National and International Context. Twinning

has been paid. It should also be noted that, in certain categories of cases, the payment of the enforcement fee is not required”.⁸ Following the initiation of proceedings, no later than 5 days after the start of the enforcement proceedings, the enforcement officer sends the debtor a proposal for voluntary compliance with the decision, which outlines the legal consequences of initiating enforcement proceedings and the measures to be taken.⁹ If the debtor fails to satisfy the obligation within the statutory period, the enforcement officer proceeds with the preparation of the property for foreclosure sale.

Before the auction, the property is subject to expert valuation, and the enforcement officer conducts a comprehensive examination of the legal status of the asset. This examination includes the identification of all registered encumbrances, restrictions, and rights attached to the property. The Order of the Minister of Justice “On the Approval of the Form, Rule, and Procedures for Conducting a Foreclosure Auction” directly establishes the requirement that holders of continuing rights and holders of real rights registered in the public registry after the enforcing creditor’s claim must be notified in advance about the scheduling of the auction.¹⁰ The public auction will only be held after the aforementioned persons have been informed in accordance with Articles 71-77 of the Civil Procedure Code of Georgia. If the notification cannot be delivered to the addressee, public publication is mandatory. The notification is considered delivered to the addressee on the 7th day after public publication.¹¹

The requirement to disclose rights attached to the property reflects the broader principle of

transparency in enforcement proceedings. An examination of the practice of the National Bureau of Enforcement demonstrates that auction notices generally contain information regarding all registered rights, including both real and obligational rights. Such disclosure is essential, as prospective purchasers must be provided with sufficient information to assess the legal and economic risks associated with the acquisition of the property. Empirical research on the German housing market further illustrates the economic significance of foreclosure sales. Just et al. found that residential properties sold through foreclosure were subject to an average discount of approximately 19 per cent compared with otherwise comparable residential properties sold outside foreclosure.¹²

Nevertheless, a significant practical and legal problem remains unresolved. According to recent enforcement practice, auction notices typically identify the rights registered against the property but do not specify which of those rights will survive foreclosure and which will be extinguished upon transfer of ownership.¹³ However, under current practice, the decision on continuing rights falls within the competence of the registering body.¹⁴ Consequently, potential purchasers are often required to independently assess the legal consequences of acquiring the property, despite the complexity and uncertainty of the applicable legal framework.

This practice raises an important institutional question concerning the allocation of authority between enforcement bodies and registration authorities. More specifically, it remains unclear whether the determination of continuing rights should fall within the competence of the enforcement officer conducting the auction

Proceedings.

8 Qurdadze, Sh., Qurdadze, G., Khunashvili, N., Chkonia, Z. (2018). Comments on the Law of Georgia On Enforcement Proceedings, Part 1. Dani Publishing LLC, 254.

9 Law of Georgia on Enforcement Proceedings, Article 25, Paragraph 7.

10 Order No. 21 of the Minister of Justice of Georgia of January 31, 2011, On the Approval of the Form, Rule, and Procedures for Conducting a Foreclosure Auction, Article 1, Paragraph 5.

11 Civil Procedure Code of Georgia, Article 78.

12 Just, T., Heinrich, M., Maurin, M. A., Schreck, T. (2020). Foreclosure Discounts for German Housing Markets. *International Journal of Housing Markets and Analysis*, 13(2), 143. <https://doi.org/10.1108/IJHMA-12-2018-0106>.

13 Interview with an enforcement officer of the LEPL National Bureau of Enforcement [Interview Date: 10.04.2026].

14 Interview with a representative of the LEPL National Agency of Public Registry [Interview Date: 15.04.2026].

or the registration authority responsible for recording the transfer of ownership. Existing legislation does not provide an explicit answer. In practice, however, the determination of continuity is generally deferred to the registration stage and is treated as a matter within the competence of the registering authority.

Such an approach is difficult to reconcile with the principles of legal certainty and transparency that underpin enforcement proceedings. From the perspective of both the successful bidder and the holders of registered rights, the legal consequences of the auction should be ascertainable before the sale takes place rather than after ownership has already been transferred. Accordingly, legislative intervention appears necessary. The law should expressly identify the authority responsible for determining the continuity of rights and require that information concerning surviving encumbrances be disclosed in auction notices. In particular, Order No. 21 of the Minister of Justice of Georgia should be amended to impose a clear obligation to specify, in advance, which rights will remain attached to the property following foreclosure.

The resolution of this issue at the pre-auction stage would significantly enhance legal certainty, improve the transparency of enforcement proceedings, and better protect the interests of creditors, debtors, purchasers, and third-party rights holders. Moreover, it would reduce the risk of subsequent disputes concerning the legal status of rights encumbering immovable property following a foreclosure sale and contribute to the development of a more coherent and predictable framework for mortgage enforcement in Georgia.

2. LEGAL CONSEQUENCES OF FORECLOSURE AUCTIONS: CONTINUITY AND EXTINGUISHMENT OF RIGHTS

The transfer of ownership resulting from a foreclosure auction fundamentally alters

the legal status of the immovable property and the rights attached to it. Upon the transfer of ownership, the former owner is divested of ownership rights, while the successful bidder assumes the legal position of the previous owner with respect to the possession and use of the property.¹⁵ The new owner of the property sold during enforcement proceedings takes the place of the former owner and becomes a participant in the legal relationship related to the possession and/or use of this property at the moment of transfer of ownership.¹⁶ However, the legal consequences of foreclosure extend beyond the transfer of ownership itself and raise a more complex question concerning the fate of rights encumbering the property.

Real rights are defined by the *numerus clausus* principle, which means that the range of real rights is exhaustively determined by law;¹⁷ there are only as many real rights as are recognized by law. This is in contrast to obligatory rights, which are not exhaustively listed in the law. Real rights include: ownership, construction right (*superficies*), servitude, usufruct, pledge, and mortgage. A characteristic of a real right is its quality of adherence (follow-on effect) and transferability.¹⁸ Rights that do not have priority over the mortgage are cancelled after the sale of the mortgaged property at a foreclosure auction.¹⁹

Georgian legislation differentiates the legal consequences of foreclosure auctions according to the nature of the right encumbering the property, the time of its registration, and the status of the enforcing creditor. Consequently,

15 Law of Georgia on Enforcement Proceedings, Article 75, Paragraph 6.

16 Ibid., Paragraph 5.

17 Zoidze, B. (2003). *Georgian Law of Property*. Second revised and complete edition, Metsniereba Publishing, 5.

18 Ibid., 7.

19 Totladze, L., Rusiashvili, G., Chechelashvili, Z., Shotadze, T. (2018). *Commentary on the Civil Code, Book II: Property Law (Articles 147-315)*, Chanturia, L. (Ed.), Tbilisi: Jurists' World, 587. <https://openlibrary.ge/bitstream/123456789/9494/1/%e1%83%99%e1%83%9d%e1%83%9b%e1%83%94%e1%83%9c%e1%83%a2%e1%83%90%e1%83%a0%e1%83%98%202.pdf>.

the continuity or extinguishment of rights following a foreclosure sale depends not only on the classification of the right as real or obligational but also on the legal basis of the enforcement proceedings.

2.1. Enforcement conducted by an unsecured creditor

Where enforcement is carried out by a creditor whose claim is not secured by a mortgage or pledge, the transfer of ownership through a foreclosure auction does not affect rights registered against the property. Both real and obligational rights remain in force and continue to encumber the property after its transfer to the successful bidder.²⁰ This approach is consistent with the principle that an unsecured creditor cannot acquire, through enforcement, a stronger legal position than that possessed by the debtor.

The analysis of enforcement and registration practice confirms the consistent application of this rule. In all cases examined during the course of this research, registered rights remained unaffected by the transfer of ownership and were transferred together with the immovable property to the acquirer. Accordingly, this aspect of the legislative framework appears sufficiently clear and does not reveal any significant practical or doctrinal difficulties.

2.2. Enforcement conducted by a mortgagee

A different legal regime applies where enforcement is conducted for the benefit of a mortgagee or pledgee. In such cases, the transfer of ownership generally results in the extinguishment of real rights registered after the mortgage of the enforcing creditor, with the exception of tax liens and tax mortgages where specifically protected by law. Rights registered

before the mortgage remain unaffected.²¹ Contemporary property-law scholarship further demonstrates that mortgage priority may operate against competing interests subsequently granted to third parties, although the basis and scope of such priority depend on the applicable property-law framework.²²

The principal difficulty arises with respect to obligational rights registered after the creation of the mortgage. While the Law of Georgia on Enforcement Proceedings expressly regulates the fate of certain real rights, it does not provide a clear and comprehensive framework governing the continuity of subsequently registered obligational rights. This legislative silence has resulted in significant inconsistencies in registration practice.

An examination of enforcement and registration practice over the past decade demonstrates that comparable cases have produced divergent outcomes. In some instances, registration authorities have cancelled obligational rights registered after the mortgage, whereas in others such rights have remained in force and continued to encumber the property following foreclosure. This inconsistency persists despite the absence of any substantial changes in the relevant legislative framework. The problem is particularly evident in relation to leases registered against immovable property, which formed the primary focus of the empirical component of this research.

An interesting perspective on this issue is offered by the common-law approach. Under this approach, a mortgage is generally not bound by a lease granted by the mortgagor after the creation of the mortgage without the mortgagee's consent, reflecting the principle of mortgage priority. Consequently, in the event of foreclosure, such a subsequently created lease may be terminated. This approach is based on the view that a mortgagor should not be able to

20 Law of Georgia on Enforcement Proceedings, Article 75, Paragraph 4.

21 Ibid.

22 Nair, A. (2022). Property, Priority and Apportionment: The Case of the Acquisition Creditor. *The Cambridge Law Journal*, 81(1), 139. <https://doi.org/10.1017/S0008197321001070>.

impair the effectiveness of a pre-existing mortgage by subsequently creating rights that interfere with the mortgagee's security.²³

A similar priority-based approach can also be found in contemporary continental European scholarship. In the context of mortgage enforcement, rights created over the property after the constitution of the mortgage may become non-opposable to the purchaser following foreclosure, while subsequent encumbrances may be cancelled as a consequence of enforcement.²⁴ In particular, where a lease is created after the mortgage, the enforcement of the prior mortgage may result in the lease ceasing *ipso iure*. More broadly, this approach treats both personal and real rights created after the mortgage as subject to the enforcement power arising from the pre-existing mortgage.²⁵

2.3. Enforcement conducted by financial institutions

The legal consequences of foreclosure are further modified where enforcement is conducted by certain categories of financial institutions. Under Georgian law, special rules apply where the enforcing mortgagee is a commercial bank, microbank, microfinance organisation, insurance undertaking, securitisation special purpose entity, or another financial institution recognised by the relevant legislation. In such circumstances, the transfer of ownership may also result in the extinguishment of tax liens or tax mortgages registered after the mortgage of the enforcing creditor.

Rights registered before the mortgage remain unaffected.²⁶

However, the analysis of cases obtained from the National Bureau of Enforcement and the National Agency of Public Registry demonstrates that the treatment of obligational rights remains inconsistent even within this special regime. In practice, rights registered after the mortgage are sometimes transferred together with the property and sometimes extinguished following foreclosure. Significantly, this divergence cannot be explained by any identifiable factual or legal distinction between the cases. Rather, it appears to stem from differing interpretations adopted by registration authorities in the absence of an explicit legislative rule governing the continuity of obligational rights.

The uncertainty is further reinforced by the interaction between enforcement legislation and the Law of Georgia on Public Registry. Article 11(4) of the Law of Georgia on Public Registry provides that registered data concerning certain rights, including lease and rent, are transferred unchanged to the new owner unless Georgian legislation provides otherwise.²⁷ The Law of Georgia on Enforcement Proceedings may constitute such a legislative exception. Nevertheless, because enforcement legislation does not expressly regulate the legal consequences of foreclosure for obligational rights registered after a mortgage, the precise scope of this exception remains unclear.

A related doctrinal issue concerns the relationship between Article 75 of the Law of Georgia on Enforcement Proceedings and Article 572 of the Civil Code of Georgia. Pursuant to Article 572, where a lessor transfers ownership of leased property to a third party, the acquirer assumes the position of the lessor and succeeds to the rights and obligations arising from the lease relationship. Some commentators have suggested that this provision supports the

23 Abdulrahman, S. T., Juwah, A. (2024). The Legal Threshold of Rights and Liabilities of the Mortgagor, Mortgagee, and Lessee of a Mortgage Property in Relation to the Validity of a Lease. *International Journal of Law and Society*, 7(4), 146. <https://doi.org/10.11648/j.ijls.20240704.11>.

24 Del Olmo García, P. (2022). Ejecución de la hipoteca y arrendamiento para uso distinto del de vivienda: una explicación real. (Mortgage Enforcement and Lease for Non-Residential Use: A Property-Law Explanation). *Anuario de Derecho Civil*, 75(4), 1692. <https://doi.org/10.53054/adc.v75i4.9797>.

25 Ibid., 1706.

26 Law of Georgia on Enforcement Proceedings, Article 75, Paragraph 4.

27 The Law of Georgia on Public Registry. (2008). Article 11, Paragraph 4. Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/20560?publication=36>.

continuity of lease rights following foreclosure.

Such an interpretation is unpersuasive. Article 572 regulates cases of voluntary alienation by the owner of the leased property, whereas foreclosure auctions constitute a special form of compulsory transfer governed by the rules of enforcement law. Accordingly, the legal consequences of a foreclosure sale cannot be determined solely by reference to the general provisions of lease law. Rather, they must be assessed within the framework of mortgage priority and the specific objectives of enforcement proceedings. Consequently, Article 572 of the Civil Code should not be regarded as contradicting the Law of Georgia on Enforcement Proceedings, which operates as a *lex specialis* governing the effects of foreclosure on rights encumbering immovable property.

3. THE DRAFT ENFORCEMENT CODE AND THE NEED FOR LEGISLATIVE CLARIFICATION

The development of the draft Enforcement Code represents an important attempt to systematise and modernise Georgian enforcement law. Following several years of preparatory work, the Ministry of Justice of Georgia initiated the draft Law of Georgia on the Enforcement Code as the first unified legislative act in the field of enforcement. The draft Code was submitted to the Parliament of Georgia on 22 February 2021 and was adopted at the first reading. Although preparations for the second reading were subsequently undertaken, the adoption of the Code has, for the time being, been postponed indefinitely.

For the present research, Article 188 of the draft Enforcement Code is of particular significance, as it regulates the legal consequences of the transfer of ownership over immovable property acquired through a foreclosure auction. The proposed provision seeks to determine which rights registered against immovable property remain in force and which rights are extinguished following the foreclosure sale.

Compared with the currently applicable Law of Georgia on Enforcement Proceedings, the draft Enforcement Code modifies the legal consequences of enforcement conducted for the benefit of an unsecured creditor. In particular, it provides that where enforcement is carried out by a creditor whose claim is not secured, real rights registered in the Public Registry remain unchanged despite the transfer of ownership resulting from enforcement. However, by referring only to real rights, the draft provision creates a new ambiguity concerning the fate of registered obligational rights. If adopted in this form, the provision may disrupt the existing uniform practice under which all registered rights, both real and obligational, remain in force where enforcement is conducted by an unsecured creditor.

For this reason, the approach reflected in Article 75(4) of the current Law of Georgia on Enforcement Proceedings should be preserved in substance. The draft Enforcement Code should expressly provide that, in cases of enforcement by an unsecured creditor, all registered rights continue to encumber the property following the foreclosure sale. Such a formulation would be consistent with the legal position of unsecured creditors, who lack priority over registered rights and therefore should not be able to extinguish them through enforcement.²⁸

At the same time, the draft Enforcement Code does not resolve the most problematic issue identified in current practice: the fate of obligational rights registered after the creation of a mortgage where foreclosure is conducted for the benefit of a secured creditor. The draft largely reproduces the existing legislative uncertainty by failing to clarify whether such rights are extinguished or continue to bind the new owner. As a result, the proposed reform risks preserving the very inconsistency that has generated divergent enforcement and registration practices.

Accordingly, Article 188(3) of the draft Enforcement Code should be reformulated as fol-

28 Draft Law of Georgia on the Enforcement Code, Article 188, Paragraph 1.

lows: Where enforcement is carried out by a creditor whose claim is secured by a mortgage, the transfer of ownership shall result in the extinguishment of all real and obligational rights, except for tax liens and tax mortgages where protected by law, that were registered against the property after the mortgage of the enforcing creditor.

Such an amendment would eliminate the existing ambiguity and establish a uniform rule for the treatment of rights registered after the mortgage. It would also align foreclosure consequences with the logic of mortgage priority. A person who acquires an obligational right after the registration of a mortgage is able to verify the existence of the mortgage through the Public Registry and is therefore aware, or should be aware, of the risk that the right may be extinguished if the mortgaged property is sold through foreclosure. This approach serves the legitimate interests of the secured creditor, the debtor, and the acquirer, while also ensuring that third-party rights holders can assess the legal risk at the moment of entering into the relevant legal relationship.

Comparative legal experience supports the need for such clarification. In a comparative perspective, and particularly under German law, the legal consequences of a foreclosure sale are determined not solely by the time at which competing rights were created or registered, but by their priority in relation to the enforcing creditor, the applicable auction conditions, and the specific statutory regime governing the right concerned. This priority-based approach reflects the fundamental function of mortgage security: rights ranking behind the enforcing security should not be permitted to undermine the value or effectiveness of the secured creditor's priority. Accordingly, even certain real rights may be extinguished following foreclosure where they do not enjoy priority over the enforcing security, whereas higher-ranking rights may remain effective and continue to encumber the property. Contemporary comparative scholarship likewise demonstrates that mortgage enforcement cannot be

understood solely as a procedural mechanism for the realization of secured property. Although the primary purpose of mortgage enforcement is to enable the creditor to recover the outstanding secured claim, the enforcement process also involves a range of competing private and public interests.²⁹ Comparative research on European mortgage enforcement systems shows that national enforcement frameworks reflect different approaches to balancing the effectiveness of mortgage security with the protection of other legally relevant interests. This broader comparative perspective is particularly relevant to the present analysis, since the legal consequences of foreclosure for competing rights depend on the interaction between the priority of the secured claim, the applicable enforcement regime, and the protection afforded to third-party interests.³⁰

The German example is particularly illustrative. Although usufruct is traditionally classified as a real right, German law recognises important limitations on its transferability. Section 1059 of the German Civil Code provides that usufruct is not transferable. This demonstrates that the classification of a right as real does not automatically guarantee its survival following enforcement; rather, the decisive factor is the specific legal regime governing the right and its priority in relation to the mortgage.³¹ Although German law differs from Georgian law in its classification of certain rights, the example illustrates that the survival of rights following foreclosure is determined by priority and statutory policy considerations rather than by classification alone.

29 See also Dixon, M. (2021). *Modern Land Law*. Oxford: Routledge, 414. <https://doi.org/10.4324/9781003039808>.

30 Visser, I., Bredeveld, J., Hasnaoui, Y. (2022). Different Models of Forbearance and Mortgage Enforcement Proceedings: Comparing Default Resolution Approaches in Europe. *European Journal of Comparative Law and Governance*, 9(2), 158. <https://doi.org/10.1163/22134514-BJA10032>.

31 German Civil Code. (1896). Section 1059. Federal Ministry of Justice. https://www.gesetze-im-internet.de/englisch_bgb/.

More specifically, under German law, a foreclosure sale does not automatically extinguish all rights attached to the property. Their fate is determined primarily by the ranking of the competing rights and by the statutory auction conditions established under the Act on Enforced Auction and Receivership (ZVG). Section 44 of the ZVG protects rights ranking ahead of the claim on the basis of which enforcement is pursued by requiring them to be taken into account in the lowest bid.³² Under Section 52(1), such a right continues to encumber the property if it is designated to remain effective and is not to be satisfied by payment; otherwise, it is extinguished.³³ Section 91(1) further confirms that rights which are not to remain effective under the auction conditions are extinguished upon the award of the property.³⁴ Accordingly, German law protects higher-ranking rights, which may either remain attached to the property or be satisfied from the auction proceeds, whereas rights that are not to remain effective are extinguished, subject to statutory exceptions.³⁵

Lease and tenancy relationships are subject to a special statutory regime. Under Section 57 of the ZVG, the relevant provisions of the German Civil Code concerning the continuation of lease relationships apply correspondingly to foreclosure sales, with the result that the purchaser generally succeeds to the rights and obligations arising from an existing lease.³⁶ However, Section 57a of the ZVG grants the purchaser a special statutory right to terminate the rental or lease relationship within the statutory

notice period, provided that this right is exercised at the first legally permissible opportunity.³⁷ German case law further confirms that legal changes resulting from the foreclosure award are formally implemented in the land register based on a request from the enforcement court. In a 2021 decision, the Higher Regional Court of Munich held that such a request constitutes the exclusive basis for registering legal changes resulting from the award. This illustrates the institutional connection between the substantive legal effects of foreclosure and their subsequent implementation in the land register.³⁸

French law likewise illustrates the complexity of determining the legal consequences of rights encumbering immovable property following a transfer of ownership. Article 1743 of the French Civil Code protects certain lease rights against subsequent acquirers by providing that, where leased property is sold, the purchaser may not evict a lessee whose lease enjoys the required legal status.³⁹ In the specific context of foreclosure, however, Article L321-4 of the French Civil Enforcement Procedures Code provides that leases granted by the debtor after the act of seizure are not enforceable against either the enforcing creditor or the purchaser, irrespective of their duration.⁴⁰ At the same time, Article 2454 of the French Civil Code reflects the mortgagee's right of pursuit (*droit de suite*), providing that the mortgage follows the immovable property into the hands of a third-party acquirer and that, if unpaid, the mortgagee may pursue its judicial sale.⁴¹ However, in the specific context of foreclosure, Article 2461 of the French Civil Code provides that the

32 Act on Enforced Auction and Receivership (ZVG), Sections 44, Federal Ministry of Justice, Official English Translation. https://www.gesetze-im-internet.de/englisch_zvg/englisch_zvg.html.

33 Ibid., Sections 52(1);

34 Ibid., Sections 91(1);

35 Depré, P. (Ed.). (2024). ZVG: Kommentar [ZVG: Commentary] (3rd ed.), §52 Bestehenbleibende Rechte (Rights Remaining Effective), 655-664. Cologne: RWS-Verlag. <https://doi.org/10.15375/9783814559032-061>.

36 Act on Enforced Auction and Receivership (ZVG), Sections 57, Federal Ministry of Justice, Official English Translation. https://www.gesetze-im-internet.de/englisch_zvg/englisch_zvg.html.

37 Ibid., Sections 57a;

38 Higher Regional Court of Munich (Oberlandesgericht München), Decision of 4 November 2021, 34 Wx 273/21. Zwangsversteigerung: Eintragungsfähigkeit von Änderungen auf Grund eines Zuschlags (Enforced Auction: Registrability of Legal Changes Resulting from the Award), *Monatsschrift für Deutsches Recht*, 76(3) (2022), 194-195. <https://doi.org/10.9785/mdtr-2022-760361>.

39 French Civil Code, Article 1743.

40 French Civil Enforcement Procedures Code, Article L321-4.

41 French Civil Code, Article 2454.

immovable property is purged by operation of law of the mortgagee's right of pursuit.⁴² Article L322-14 of the French Civil Enforcement Procedures Code further provides that, once the purchase price has been paid or deposited and the costs of the sale have been paid, the property is automatically purged of all published security interests attributable to the debtor, with effect from the publication of the title of sale.⁴³ Taken together, these provisions demonstrate that the continuity of rights following foreclosure cannot be determined solely by their classification as real or obligational rights. Rather, the legal consequences depend on the specific statutory regime governing the right concerned, including the rules on the purge of security interests and the opposability of other rights following foreclosure. Furthermore, foreclosure proceedings in France are regulated by the French Civil Enforcement Procedures Code, which establishes specific rules governing the seizure and judicial sale of immovable property. This specialised enforcement framework demonstrates that the legal consequences of foreclosure are governed not only by general rules of property and obligations, but also by specific enforcement rules concerning the purge of security interests, the distribution of sale proceeds, and the opposability of competing rights.⁴⁴ Recent English-language comparative scholarship on French mortgage law similarly highlights the importance of registration-based priority among mortgage creditors and the broader objective of ensuring an efficient system of mortgage security and financing.⁴⁵

Considering the foregoing comparative analysis, the draft Enforcement Code should establish a clear and differentiated framework for

the legal consequences of foreclosure. The German and French approaches, although based on different legal mechanisms, both demonstrate the importance of clearly determining which rights continue to encumber the property and which cease to have effect following foreclosure. Where enforcement is conducted by an unsecured creditor, all registered real and obligational rights should remain in force. By contrast, where foreclosure is pursued based on a mortgage-secured claim, rights registered after the enforcing creditor's mortgage should, as a general rule, cease to encumber the property, subject to expressly defined statutory exceptions. Such a model would reflect the principle of priority, strengthen legal certainty, and promote consistency in enforcement and registration practice.

CONCLUSION AND RECOMMENDATIONS

This research has demonstrated that the legal consequences of foreclosure auctions for rights encumbering immovable property remain one of the most problematic and insufficiently regulated aspects of Georgian enforcement law. Although the existing legislative framework establishes certain rules concerning the continuity and extinguishment of rights following the transfer of ownership, it fails to provide a coherent and comprehensive solution regarding the treatment of obligational rights registered after the creation of a mortgage. As a result, enforcement and registration practice has developed inconsistently, with comparable cases producing divergent legal outcomes. Such inconsistency undermines legal certainty, weakens predictability in enforcement proceedings, and adversely affects the interests of secured creditors, debtors, purchasers, and third-party rights holders.

The research confirms that the principal deficiency of the current legal regime lies not in the regulation of real rights, but in the absence of clear legislative guidance concerning obli-

42 Ibid., Article 2461.

43 French Civil Enforcement Procedures Code, Article L322-14.

44 For a more detailed analysis of foreclosure proceedings in France, see French Civil Enforcement Procedures Code, Articles L311-1, L311-8, L321-1, L321-6, L322-1, L322-14.

45 Zeng, R. (2021). A Comparative Study of the Reusable Mortgage Systems in French Civil Code and Chinese Civil Code. *Journal of Politics and Law*, 14(4), 145-146. <https://doi.org/10.5539/jpl.v14n4p143>.

gational rights registered after the mortgage. The analysis of legislation, enforcement practice, registration practice, and empirical data obtained through interviews with practitioners reveals that the existing ambiguity has enabled differing interpretations by registration authorities, resulting in the absence of a uniform approach to the continuity of such rights following foreclosure sales.

The study further demonstrates that the determination of continuing rights should not be deferred to the property registration stage. The legal consequences of a foreclosure auction must be transparent and ascertainable before the sale takes place. Potential purchasers, creditors, debtors, and rights holders should be able to determine in advance which rights will continue to encumber the property and which rights will be extinguished upon the transfer of ownership. Accordingly, Georgian legislation should expressly identify the authority responsible for determining the continuity of rights and require that such information be disclosed in the foreclosure auction notice.

The comparative analysis demonstrates that the legal consequences of foreclosure cannot be determined solely by the formal classification of a competing right as real or obligational, nor exclusively by the date of its registration. The German legal framework places particular emphasis on the ranking and priority of competing rights, the statutory auction conditions, and the specific legal regime applicable to the right concerned, while French law similarly applies differentiated rules concerning the opposability of leases, the mortgagee's right of pursuit, and the statutory purge of security interests following foreclosure. Although the legal mechanisms employed in Germany and France differ, both systems illustrate the importance of expressly determining, in advance and by law, which rights survive a foreclosure sale and which cease to encumber the property. These comparative findings support the development of a clear and differentiated Georgian framework based on mortgage priority, the status of the enforcing creditor, and the legal nature and

ranking of competing rights.

In light of these findings, the existing legislative framework requires targeted reform. First, enforcement legislation should expressly regulate the legal consequences of foreclosure for obligational rights registered after the creation of a mortgage. Second, the law should require the foreclosure auction notice to specify: (a) which rights will remain attached to the property following the transfer of ownership, (b) which rights will be extinguished, and (c) where relevant, the value of the continuing rights. Such information should be disclosed before the auction rather than determined subsequently during the registration process.

Furthermore, Article 75 of the Law of Georgia on Enforcement Proceedings, or, following its adoption, Article 188 of the Enforcement Code, should be amended to establish a clear and differentiated model governing the continuity of rights. Where foreclosure is conducted for the benefit of a secured creditor, all real and obligational rights registered after the mortgage should, as a general rule, be extinguished, while rights registered before the mortgage should remain unaffected. Conversely, where enforcement is carried out for the benefit of an unsecured creditor, all rights encumbering the property should remain in force.

The implementation of these reforms would eliminate the existing legislative ambiguity, ensure consistency in enforcement and registration practice, strengthen legal certainty, and provide a more balanced protection of the legitimate interests of creditors, debtors, purchasers, and rights holders. More broadly, such reform would contribute to the development of a coherent and predictable framework for mortgage enforcement in Georgia and enhance the effectiveness of the mortgage as a security instrument within the legal system.

Beyond the Georgian context, the findings of this study contribute to the broader comparative legal and academic discussion on the legal consequences of foreclosure and the relationship between mortgage priority and the protection of competing rights. The differenti-

ated legislative model proposed in this article, under which the continuity or extinguishment of rights is determined by the secured or unsecured nature of the enforcing claim and the priority of the relevant right, may also provide a useful analytical framework for other legal systems facing similar uncertainties concerning the treatment of rights following foreclosure sales. In this respect, the study demonstrates that legal certainty in foreclosure proceedings requires not merely the classification of com-

peting rights as real or obligational, but a coherent assessment of their priority, the legal position of the enforcing creditor, and the legitimate interests of purchasers and third-party rights holders. Accordingly, the findings may contribute to the broader comparative debate on how enforcement systems can reconcile the effectiveness of mortgage security with the protection of competing rights and the requirements of legal certainty.

REFERENCES:

Scholarly Literature:

- Abdulrahman, S. T., Juwah, A. (2024). The Legal Threshold of Rights and Liabilities of the Mortgagor, Mortgagee, and Lessee of a Mortgage Property in Relation to the Validity of a Lease. *International Journal of Law and Society*, 7(4). <https://doi.org/10.11648/j.ijls.20240704.11>;
- Bouzoraa, N. L., Visser, I. (2026). Exploring Proportionality in Mortgage Enforcement Proceedings in The Netherlands: Diverse Perspectives on Balancing Debtor Protection and Legal Remedies. *European Property Law Journal*, 15(1). <https://doi.org/10.1515/eplj-2025-2013>;
- Totladze, L., Rusiashvili, G., Chechelashvili, Z., Shotadze, T. (2018). Commentary on the Civil Code, Book II: Property Law (Articles 147-315), Chanturia, L. (Ed.), Tbilisi: Jurists' World. <https://openlibrary.ge/bitstream/123456789/9494/1/%e1%83%99%e1%83%9d%e1%83%9b%e1%83%94%e1%83%9c%e1%83%a2%e1%83%90%e1%83%a0%e1%83%98%202.pdf>. (in Georgian);
- Del Olmo García, P. (2022). Ejecución de la hipoteca y arrendamiento para uso distinto del de vivienda: una explicación real. (Mortgage Enforcement and Lease for Non-Residential Use: A Property-Law Explanation). *Anuario de Derecho Civil*, 75(4). <https://doi.org/10.53054/adc.v75i4.9797>. (in Spanish);
- Depré, P. (Ed.). (2024). ZVG: Kommentar [ZVG: Commentary] (3rd ed.), §52 Bestehenbleibende Rechte (Rights Remaining Effective). Cologne: RWS-Verlag. <https://doi.org/10.15375/9783814559032-061>. (in German);
- Dixon, M. (2021). *Modern Land Law*. Oxford: Routledge. <https://doi.org/10.4324/9781003039808>;
- Higher Regional Court of Munich (Oberlandesgericht München), Decision of 4 November 2021, 34 Wx 273/21. Zwangsversteigerung: Eintragungsfähigkeit von Änderungen auf Grund eines Zuschlags (Enforced Auction: Registrability of Legal Changes Resulting from the Award), *Monatsschrift für Deutsches Recht*, 76(3) (2022). <https://doi.org/10.9785/mdtr-2022-760361>. (in German);
- Just, T., Heinrich, M., Maurin, M. A., Schreck, T. (2020). Foreclosure Discounts for German Housing Markets. *International Journal of Housing Markets and Analysis*, 13(2). <https://doi.org/10.1108/IJHMA-12-2018-0106>;
- Nair, A. (2022). Property, Priority and Apportionment: The Case of the Acquisition Creditor. *The Cambridge Law Journal*, 81(1). <https://doi.org/10.1017/S0008197321001070>;

- Qurdadze, Sh., Qurdadze, G., Khunashvili, N., Chkonia, Z. (2018). Comments on the Law of Georgia On Enforcement Proceedings, Part 1. Dani Publishing LLC. (in Georgian);
- Visser, I., Bredevelde, J., Hasnaoui, Y. (2022). Different Models of Forbearance and Mortgage Enforcement Proceedings: Comparing Default Resolution Approaches in Europe. *European Journal of Comparative Law and Governance*, 9(2). <https://doi.org/10.1163/22134514-BJA10032>;
- Whitehouse, L., Crampin, C. (2023). Missing in Action? Mortgage Enforcement under Section 126 of the Consumer Credit Act 1974. *Legal Studies*, 43(3). <https://doi.org/10.1017/lst.2023.14>;
- Witdehaag, J. (Ed.). (2013). Overview of the Georgian Enforcement System: The Georgian Enforcement System in National and International Context. Twinning Project for the Improvement of the Enforcement System (BESTT). (in Georgian);
- Zeng, R. (2021). A Comparative Study of the Reusable Mortgage Systems in French Civil Code and Chinese Civil Code. *Journal of Politics and Law*, 14(4). <https://doi.org/10.5539/jpl.v14n4p143>;
- Zoidze, B. (2003). Georgian Law of Property. Second revised and complete edition, Metsniereba Publishing. (in Georgian).
- [tion=140>](https://matsne.gov.ge/document/view/29962) [Accessed: 30.05.2026]. (in Georgian);
- Civil Procedure Code of Georgia. (1997). Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/29962> [Accessed: 20.07.2026]. (in Georgian);
- Codecivil[FrenchCivilCode].(1804).Legifrance. https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006118109/#LEGISCTA000006118109. [Accessed: 20.07.2026]. (in French);
- Code des procédures civiles d'exécution [French Civil Enforcement Procedures Code]. (2012). Legifrance. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000025024948/. [Accessed: 20.07.2026]. (in French);
- Draft Law of Georgia on the Enforcement Code (2021). Parliament of Georgia. <https://info.parliament.ge/file/1/BillReview-Content/269887> [Accessed: 30.05.2026]. (in Georgian);
- Law of Georgia on Enforcement Proceedings. (1999). Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/18442?publication=129> [Accessed: 30.05.2026]. (in Georgian);
- Order No. 21 of the Minister of Justice of Georgia of 31 January 2011, On the Approval of the Form, Rule and Procedures for Conducting a Foreclosure Auction. Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/1193802?publication=0> [Accessed: 30.05.2026]. (in Georgian);
- The Law of Georgia on Public Registry. (2008). Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/20560?publication=36>. [Accessed: 30.05.2026]. (in Georgian).

Normative Acts:

- Act on Enforced Auction and Receivership (ZVG), Federal Ministry of Justice, Official English Translation. https://www.gesetze-im-internet.de/englisch_zvg/englisch_zvg.html [Accessed: 29.07.2026];
- Bürgerliches Gesetzbuch [German Civil Code]. (1896). Federal Ministry of Justice. https://www.gesetze-im-internet.de/englisch_bgb/. [Accessed: 20.07.2026];
- Civil Code of Georgia. (1997). Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/31702?publication=140> [Accessed: 30.05.2026]. (in Georgian);
- Civil Procedure Code of Georgia. (1997). Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/29962> [Accessed: 20.07.2026]. (in Georgian);
- Codecivil[FrenchCivilCode].(1804).Legifrance. https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006118109/#LEGISCTA000006118109. [Accessed: 20.07.2026]. (in French);
- Code des procédures civiles d'exécution [French Civil Enforcement Procedures Code]. (2012). Legifrance. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000025024948/. [Accessed: 20.07.2026]. (in French);
- Draft Law of Georgia on the Enforcement Code (2021). Parliament of Georgia. <https://info.parliament.ge/file/1/BillReview-Content/269887> [Accessed: 30.05.2026]. (in Georgian);
- Law of Georgia on Enforcement Proceedings. (1999). Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/18442?publication=129> [Accessed: 30.05.2026]. (in Georgian);
- Order No. 21 of the Minister of Justice of Georgia of 31 January 2011, On the Approval of the Form, Rule and Procedures for Conducting a Foreclosure Auction. Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/1193802?publication=0> [Accessed: 30.05.2026]. (in Georgian);
- The Law of Georgia on Public Registry. (2008). Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/20560?publication=36>. [Accessed: 30.05.2026]. (in Georgian).

Other Supplementing Materials:

- Interview with a representative of the LEPL National Agency of Public Registry [Interview Date: 15.04.2026];
- Interview with an enforcement officer of the LEPL National Bureau of Enforcement [Interview Date: 10.04.2026].



THE SPECIFICITIES OF SEABED DISPUTES IN LIGHT OF THE LAW OF THE SEA

Mohammed Hamli 

*Full Professor at the Institute of Law and Political Sciences
University Centre of Maghnia (Algeria)*

*Researcher at the Human Rights and Fundamental Freedoms Laboratory
Tlemcen University (Algeria)*

 m.hamli@cu-maghnia.dz

ARTICLE INFO

Article History:

Received: 06.06.2026
Revised: 11.07.2026
Accepted: 04.09.2026
Published: 30.09.2026

Keywords:

Seabed, Disputes,
Sponsorship,
Compulsory,
Procedures

ABSTRACT

Certainly, the proclamation by the United Nations Convention on the Law of the Sea (UNCLOS) of a new maritime area, which is the Seabed Area, applying the principle of the common heritage of mankind to its resources, and the establishment of an International Tribunal for the Law of the Sea (ITLOS) have had an important impact on the international law of the sea. In fact, the establishment of ITLOS, which includes a permanent chamber with competence to settle seabed disputes, was driven by this development and the specificity of these disputes compared with other disputes under the law of the Sea. This specificity emerges through granting persons of domestic law the right of litigation before the ITLOS, and specifically before the Seabed Disputes Chamber (SDC), but also through the Compulsory procedures, as the jurisdiction is not linked to the consent of the parties to the dispute. So, this study will attempt to shed light on the controls that allow subjects of domestic law to sue before the ITLOS, in particular those relating to obtaining a sponsorship from one of the State parties to carry out activities in the Seabed Area, as well as it will focus on cases where procedures of the SDC are Compulsory.

INTRODUCTION

By the end of the initial half of the twentieth century, international law had made significant progress; interstate litigation, once traditionally understood within a bilateral framework, became increasingly regarded as serving broader community interests.¹ This shift is reflected not only in procedural devices – such as intervention – which serve to guarantee the rights of non-party states to the dispute, but also in the wider role of adjudication in affirming and advancing international law beyond the mere resolution of individual disputes.

In fact, the evolution of international law is particularly reflected in the human rights field, by granting individuals the entitlement to prosecute States before international Courts if their rights enshrined in human rights Pacts were violated. That progress has cast a pall over the standing of the individual within the framework of the law of the sea, which has also undergone an important development, reversed in the Convention on the Law of the Sea (UNCLOS), that provided inter alia the proclamation of a new maritime area named ‘Seabed area’, in which resources represent a shared heritage of humanity. Also, it established an International Tribunal for the Law of the Sea (ITLOS) to resolve disputes relating to the application or interpretation of UNCLOS.

Some writers did not see the need to create an additional standing Tribunal, since the International Court of Justice (ICJ) and arbitral Courts still exist. Some ones like ‘Shigeru’, even considered its creation a great mistake.² In fact, some writers believed that the establishment

of this court increases the risk of conflicting judicial interpretations, as the parties in dispute could freely choose between different bodies for dispute resolution. The divergent interpretations of international law rules could erode the assumption of the unity of international law and its global nature and put it at risk. They also believed that any divergent interpretations could weaken the important benefits of the mandatory litigation mechanism and its function in promoting the stability of international norms enshrined in the Convention on the Law of the Sea.³

However, the above argument may be countered by the fact that the international Legal framework of the seas has evolved in this manner as to allow subjects of domestic law to conduct operations on the seabed Area,⁴ and, normally, conflicts could occur involving one of the persons mentioned. There is therefore a need to set up a judicial instrument to ensure the solving of these differences, whose jurisdiction is unconditional on the agreement of the litigants.

It is worth noting that the negotiating parties at the Conference of the United Nations on the Law of the Sea initially considered establishing a completely independent court to address disputes related to the exploitation of the seabed under Part Eleven, but they ultimately settled on the creation of a chamber with specific jurisdiction within the ITLOS, known as the Seabed Disputes Chamber (SDC), which consists of eleven members.⁵

Indeed, there have been many previous studies that have discussed the topics of the international law of the sea, but most of them have either focused on the importance of the establishment of a new international tribunal for the law of the sea, or on the subject of the protection of the marine environment, or on the topic of the common heritage of mankind.

1 Benzing M. (2006). Community Interests in the Procedure of International Courts and Tribunals, *The Law & Practice of International Courts and Tribunals*, 5(3), 369. <https://doi.org/10.1163/157180306778938719>; Longobardo, M. (2021). The Standing of Indirectly Injured States in the Litigation of Community Interests before the ICJ, *International Community Law Review*, 23(5), 6.

2 Seymour, J. (2006). The International Tribunal for the Law of the Sea: A great mistake? *Indiana Journal of Global Legal Studies*, 13(1), 2. <https://doi.org/10.2979/gls.2006.13.1.1>.

3 Noyes, J. E. (1999). The International Tribunal for the Law of the Sea. *Cornell International Law Journal*, 32(1), 173.

4 United Nations Convention on the Law of the Sea. (December 10, 1982). 1833 U.N.T.S. 397.

5 Noyes, J. E. *Ibid.*, 138, 139.

This study will focus on the specificities of seabed disputes, compared to other disputes concerning the law of the sea. So, what are these specificities?

Below, we will try to answer this problem by addressing the conditions that must be met by the person of domestic law to be able to sue before the ITLOS, and the application of the compulsory procedures concerning the seabed disputes.

METHODOLOGY

The legal nature of the topic leads the study to rely on some relevant sources, which allow the problem to be answered with legal arguments and grounds. As the study will be based on the UNCLOS, in particular its eleventh part concerning the Seabed, and its fifteenth part concerning dispute settlement, not to mention Annex III to the Convention concerning the basic conditions of prospecting, exploration and exploitation, and Annex VI concerning the Statute of the ITLOS.

The study will also draw on some decisions of the International Seabed Authority, and some national acts issued by some States to regulate exploration and exploitation activities in the Seabed area. In addition, it will draw on numerous decisions and advisory opinions issued by competent international tribunals, including those of the ITLOS.

To achieve the objectives of the study and address its core problem, a combination of the inductive approach and the analytical approach has been adopted. The inductive approach is employed to systematically gather and to extract the related provisions from the provisions of UNCLOS and its annexes, national acts, authority decisions, as well as from some international judicial decisions. Complementing this, the analytical approach is utilized to deconstruct and critically analyze the aforementioned provisions and identifying its significance. This allows for the evaluation of their legal implications, enabling the study to construct sound

legal arguments and provide comprehensive, grounded answers to the research problem.

FINDINGS AND DISCUSSION

1. PERSONS OF DOMESTIC LAW AS LITIGANTS TO THE SEABED DISPUTES

Besides sovereign and semi-sovereign states, international organizations that accomplish the requirements of Annex IX of the UNCLOS, we can say that the UNCLOS and especially its 6th Annex hint that natural persons could be litigants before the ITLOS.

Actually, that allusion is concluded from article 190 paragraph 1 of the UNCLOS that stipulates: "If a natural or juridical person is a party to a dispute referred to in article 187, the sponsoring State shall be given notice thereof and shall have the right to participate in the proceedings by submitting written or oral statements". It's also concluded from the second paragraph of article 291 of the same Convention that provides: "... The dispute settlement procedures specified in this Part shall be open to entities other than States Parties only as specifically provided for in this Convention".

In confirmation of the provisions previously mentioned, the first paragraph of Article 20 of the Annex VI concerning the Statute of the Tribunal provides: "The Tribunal shall be open to entities other than States parties in any case expressly provided for in Part XI or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case".

Then, Article 20 of the Statute of the Tribunal alludes to the existence of non-State Party entities referred to in Article 305 of the UNCLOS. Those entities also have the right to litigate before the ITLOS in specific cases mentioned in the 11th Part of the UNCLOS, or in accordance with a special agreement. Article 291 paragraph 2 of the UNCLOS also alludes to specific cases in which non-State Party entities have to be charged before the ITLOS.

Within the same framework, if we refer to Article 187 contained in the 11th part of the UNCLOS, we will find that it has identified some disputes that, as a general rule, fall within the competence of the SDC, which is one of the chambers of the ITLOS. And among these disputes, we note those in which one of the parties is the ISA, or its enterprise, government enterprises, and individual or corporate entities benefiting from State sponsorship.⁶

So, we can say that recourse to the ITLOS by persons of domestic law is a legally recognized right, which distinguishes seabed disputes. However, it should be noted that the appearance of natural and legal persons before the ITLOS in disputes arising under Part Eleven is restricted by Article 190 of the UNCLOS. Under this article, it is allowed for the State that sponsors the individual or legal entity to present statements in writing or orally if that person is a party to the proceedings. It also allows the respondent states to require the State providing sponsorship to be “represented in the proceedings on their behalf”. If the sponsoring state does not appear, the State called upon to respond may appoint a legal person holding its nationality as its representative.

In fact, the inclusion of Article 190 within the provisions of the UNCLOS reflects, as noted by an official engaged in the negotiation of the dispute settlement provisions at the Third United Nations Conference on the Law of the Sea, the continued reluctance of States to recognize the Internal persons’ right to institute proceedings against them before an international judicial forum.⁷

In any case, litigation before the ITLOS falls under the general rules of litigation, the most important of which is the requirement of legal interest, in application of the legal fundamental principle “no legal interest infringed there is no

right of action”,⁸ bearing in mind that the legal interest notion in international law has expanded and is no longer confined to bilateral relations, particularly after the development of the principle of the common heritage of humanity, where the concept of collective interest has appeared.⁹

Accordingly, by reading the stipulations of Article 187 of the UNCLOS, we can say that persons of domestic law cannot litigate before the ITLOS as parties to Seabed disputes without having an interest in litigation. Even more so, the litigant shall be the party with a direct interest and have the capacity to sue. As for the issue in dispute, it should be one of the disputes mentioned in Article 187.

But, like any lawsuit brought before Courts, the applicant must also have the legal capacity to sue. In cases related to the seabed, this clause supposes that the entitled person possesses the standing of a contractor with the ISA, or at least possesses the status of a prospective contractor. In other words, that means that the person concerned must have obtained a sponsorship and then applied to the ISA for endorsement of an implementation plan covering the Area, since obtaining a sponsorship and filing a formal request before the ISA is mandatory to get the aforesaid status.¹⁰

In this regard, we note that each formal request for the endorsement of an exploration work plan must be submitted by the authority entrusted with that function by the State providing sponsorship, and must include adequate information to ascertain the applicant’s nationality or to identify the State or States exercising effective control over the applicant or over its nationals. Also, it shall contain the applicant’s main place of business or residence and, if applicable, its registration address. And if it comes

6 United Nations Convention on the Law of the Sea. (December 10, 1982). 1833 U.N.T.S. 397.

7 Seeberg-Elverfeldt, N. J. (1998). The settlement of disputes in deep seabed mining: Access, jurisdiction and procedure before the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea. Nomos Verlagsgesellschaft, Baden-Baden, 143, 147.

8 Dupuy, P.-M. (2012). Back to the future of a multilateral dimension of the law of State responsibility for breaches of obligations owed to the international community as a whole. *The European Journal of International Law*, 23(4), 1061.

9 Longobardo, M. *Ibid.*, 5, 6.

10 United Nations Convention on the Law of the Sea. (December 10, 1982). 1833 U.N.T.S. 397.

to an entity or group of entities' partnership, the application shall provide the requisite information for each entity forming the partnership or consortium.¹¹

If his application is rejected, the applicant will enjoy the right to lodge an appeal against the decision of refusal before the ITLOS. On the other hand, if it is accepted, he will acquire the status of a contractor,¹² and will have the right to appeal to the ITLOS about the contract's application or even its interpretation, or about acts or failings related to activities carried out in the Area, aimed at the other party or having a direct impact on its legitimate interests.

As a prerequisite for submitting a plan of action to the ISA, and thus obtaining the status of a contractor or potential contractor to engage in activities on the seabed area,¹³ the sponsorship raises some questions to which we will try to come up with answers below.

1.1. Who can grant the sponsorship to persons under domestic law?

As the ITLOS said in its Advisory Opinion dated February 1st, 2011, the sponsorship is a fundamental component of the system for the exploration and exploitation of the Area's resources established in the Convention.¹⁴ And, if we refer to the fourth article of the third Annex to the UNCLOS concerning the "Basic Conditions Of Prospecting, Exploration And Exploitation", it can be observed that the sponsorship shall be granted to the person of domestic law by the State of its nationality, otherwise by State Parties involved if this person holds multiple nationalities, as in the instance of a partnership or consortium of entities representing multiple States, unless this person was under the effective control of another State Party or via one of their citizens, so in such case each of the two States Parties shall sponsor this person.

Accordingly, nothing prevents an individual who wishes to conduct exploitation or even exploration of the resources found in the seabed Area from obtaining sponsorship from several States, especially when this person has dual or multiple nationality or when he possesses the nationality of one State and is effectively controlled by another State.

But, as noted above, only States Parties can grant a sponsorship to their nationals or those who are subject to their effective control or to the control of their nationals. Therefore, States that are not parties to the UNCLOS cannot grant such a sponsorship. Thus, persons of their nationality who wish to conduct exploitation or exploration activities in the Seabed Area should obtain a sponsorship from one of the States adhering to the UNCLOS, as is the situation, for example, of the American company Lockheed, which obtained sponsorship from the United

11 International Seabed Authority Council. (July 22, 2013). Decision relating to amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and related matters (Decision ISBA/19/C/17). https://isa.org.jm/wp-content/uploads/2022/06/isa-19c-wp1_0.pdf; International Seabed Authority Assembly. (May 7, 2010). Decision relating to the regulations on prospecting and exploration for polymetallic sulphides in the Area (Decision ISBA/16/A/12/Rev.1). <https://www.isa.org.jm/>; International Seabed Authority Assembly. (July 27, 2012). Decision relating to the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area (Decision ISBA/18/A/11). https://www.isa.org.jm/wp-content/uploads/2022/04/isa-18a-11_0.pdf.

12 United Nations Convention on the Law of the Sea. (December 10, 1982). 1833 U.N.T.S. 397.

13 Dingwall, J. (2020). Commercial mining activities in the deep seabed beyond national jurisdiction: The international legal framework. In C. Banet (Ed.), *The law of the seabed: Access, uses, and protection of seabed resources*, 148. Brill. https://doi.org/10.1163/9789004391567_009; Freestone, D. (2011). Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area. *American Journal of International Law*, 105(4), 755. <https://doi.org/10.5305/amerjin-telaw.105.4.0755>.

14 ITLOS. (2011). Case of Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion). Case No. 17. Hamburg. <https://www.itlos.org/en/main/cases/list-of-cases/case-no-17/>.

Kingdom, the party to the UNCLOS, through the “Company UK Seabed Resources Ltd” which is under the full ownership of Lockheed Martin,¹⁵ since the United States of America is not a contracting Party to the UNCLOS.¹⁶

Assuming the requirement of effective control is fulfilled, the deep seabed regime imposes no limitations preventing a subsidiary formed within the territory of a State Party and having the sponsorship of that State Party from participating in activities in the Seabed Area.¹⁷ Certainly, through its Advisory Opinion of February 1st, 2011, by implication, the ITLOS acknowledged the liberty of commercial entities to establish firms abroad, thereby obtaining foreign nationality and sponsorship. Nevertheless, according to the court, achieving parity in treatment between developed and developing sponsoring States, commercial firms from the former must be actively barred from establishing subsidiaries in the latter, with the aim of acquiring their nationality and securing their sponsorship, seeking to avoid tougher environmental standards and closer scrutiny. The proliferation of sponsoring states ‘of convenience’ could jeopardize the uniform enforcement of the most stringent marine environmental protection standards, the safety of operations within the area, and the safeguarding of the heritage common of all humanity.¹⁸

15 Dingwall, J. Ibid., 154.

16 It should be noted that the Reagan administration in The United States objected to provisions dealing with deep seabed mining and declined to sign the final text. But later in 1994, after the Agreement Relating to the Implementation of Part XI of the UNCLOS was adopted, President Clinton signed UNCLOS and the Part XI Agreement and submitted the treaty to the Senate. No further action was taken by the United States at that time. For details see: Borgerson, S. G. (2009). The national interest and the law of the sea (Council Special Report No. 46). Council on Foreign Relations, 41, 42. <http://www.jstor.com/stable/resrep00295.11>; Tomlinson, M. L., Becker, M.-A. (2008). International law of the sea. The International Lawyer, 42(2), 797-809. <https://www.jstor.org/stable/40708115>.

17 Dingwall, J. Ibid., 155.

18 ITLOS. (2011) Case of Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion). Case No. 17. Hamburg. <https://www.itlos.org/en/main/>

In this same context, we note that the Competent Authority and procedures for granting the sponsorship are fixed by the internal law of each State Party. For example, article 17 of Order No. 2016-1687 concerning the Maritime zones falling within sovereign authority or jurisdiction in France provides that natural or legal persons wishing to undertake activities in the seabed zone beyond the jurisdiction of the national judiciary must request a sponsorship from both the Ministry of Foreign Affairs and the Ministry of Mines, indicating areas and sectors with its site coordinates, the category of mineral resources concerned and the nature of the operations to be carried out. It should also be accompanied by supporting documents concerning the claimant’s financial ability during the planned operations, as well as the technological capacity that allows him to undertake exploitation or even exploration operations. After the examination of the request, the sponsorship will be granted in the form of a certificate, and must be attached to the application addressed to the ISA.¹⁹

In this context, we note that State Parties do not have absolute discretion over granting their sponsorship. In fact, no State Party may impose requirements for a contractor that are not in conformity with the Eleventh Part of the UNCLOS. However, the implementation of environmental law or any other legal provisions by a State Party against the contractors enjoying its sponsorship, or to vessels sailing under its flag, stricter than those set out by the ISA shall not be considered as conflicting with the Eleventh Part of the UNCLOS.

Accordingly, if the State party refuses to grant its sponsorship to a customer without a compelling reason consistent with requirements prescribed in the UNCLOS, especially in its Annex III, he will have the right to appeal against this decision, but in this case, the com-

[cases/list-of-cases/case-no-17/](https://www.isa.org.jm/national-legislation-database/cases/list-of-cases/case-no-17/).

19 French Ordinance Concerning the Maritime Zones Falling Within Sovereign Authority or Jurisdiction. Official Journal No. 0286. (December 9, 2016). <https://www.isa.org.jm/national-legislation-database/>.

petence to hear that appeal is governed by the relevant domestic legislation. That is what was provided, for example, by Article 46 of the Nauru Act on International Seabed Minerals enacted in 2015.²⁰

However, if the State party grants its sponsorship to the applicant, it becomes responsible to ensure that the person sponsored conducts activities in the Seabed Zone in accordance with its contractual terms and obligations under the UNCLOS. Nonetheless, that State shall not incur liability for any damage resulting from activities of the aforesaid contractor if it has adopted the necessary legislative and regulatory framework and taken suitable measures to guarantee compliance by individuals under its jurisdiction, what mean that in this case, only the contractor shall incur the legal responsibility, and by consequence, he could be prosecuted before the ITLOS.

1.2. Is the sponsorship a preliminary step to the implementation of the 'diplomatic protection'?

It is customary in the international doctrine and jurisprudence that diplomatic protection is the method through which a State enforces another State's responsibility for an act violating international law that impacts the person or property of its nationals.²¹ Or, it is a tool that serves to enforce remedies under international law in cases where the treatment of foreign nationals violates international law standards.²²

Also, diplomatic protection represents measures to protect the State's rights.²³ As the Permanent Court of International Justice (PCIJ) has stated and has reaffirmed: "By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights to ensure, in the person of its subjects, respect for the rules of international law".²⁴

However, this measure is an ancillary or a secondary measure applied only in cases where the state of residence does not conform to international norms.²⁵ In any case, as the PCIJ had described in its Judgment of August 30, 1924, it remains a fundamental principle of international law.²⁶

So, only the link of nationality connecting the State and the individual grants the State the right to afford diplomatic protection. That is what the PCIJ decided in its Judgment of February 28, 1939,²⁷ and later confirmed by the ICJ in the judgment delivered on April 6th, 1955.²⁸ Also, that is what the International Law Commission had adopted in the third article of the draft articles regarding diplomatic protection,²⁹ and the reason for what ICJ refused Guinea's claims to invoke diplomatic protection by way of substitution in favor of "Africom-Zaire and Africontainers-Zaire", since these corporations had the nationality of the Republic of Congo.³⁰

[icljai/20.3.453>](https://doi.org/10.2307/2187430).

20 The Nauru International Seabed Minerals Act. (October 23, 2015). Reprinted in International Seabed Authority National Legislation Database. https://www.isa.org.jm/files/documents/EN/NatLeg/Nauru_ISM.pdf.

21 Hopkins, J. (1971). Review of the book Nationality and diplomatic protection: The Commonwealth of Nations, by C.-J. Joseph. The Cambridge Law Journal, 29(2), 325-327. <https://doi.org/10.1017/S0008197300089960>.

22 Leigh, G. I. F. (1971). Nationality and diplomatic protection. International and Comparative Law Quarterly, 20(3), 455. <https://doi.org/10.1093/>

23 PCIJ. (1924). Case of Mavrommatis Palestine Concessions, Greece v. U.K., No. 9. The Hague.

24 ICJ. (1955). Case of Nottebohm, Liechtenstein v. Guatemala, No. 131. The Hague.

25 Borchard, E. M. (1913). Basic elements of diplomatic protection of citizens abroad. American Journal of International Law, 7(3), 518. <https://doi.org/10.2307/2187430>.

26 Lillich, R. B. (1975). The diplomatic protection of nationals abroad: An elementary principle of international law under attack. American Journal of International Law, 69(2), 360. <https://doi.org/10.2307/2200272>.

27 PCIJ. (1939). Panevezys-Saldutiskis Railway Case, Estonia v. Lithuania, No. 74. The Hague.

28 ICJ. (1955). Case of Nottebohm, Liechtenstein v. Guatemala, No. 131. The Hague.

29 Leigh, G. I. F. Ibid., 2, 3.

30 ICJ. (2007). Ahmadou Sadio Diallo case, Republic of

And, given that there is some overlap between the “sponsorship clause” and the regime of “diplomatic protection”, since the right of a State to invoke the aforesaid protection derives, consequently, from the nationality connection between this State and the person holding her nationality,³¹ one might wonder if the “sponsorship clause” was just a foundational requirement for the enforcement of the diplomatic protection by the State providing sponsorship, and therefore the person enjoying this sponsorship could not litigate before the ITLOS?

As an answer, we believe that the aim of the sponsorship granted by the contracting State in the meaning of UNCLOS and its Annex III is not for the said State to exercise its diplomatic protection for the benefit of the person sponsored, by replacing him when he was a party to a dispute with a contracting State or with the ISA. So that, the exercise of diplomatic protection in compliance with international law requires the existence of preconditions, which consist in the enjoyment of the Protecting State’s nationality by the person under protection, the failure of the person concerned to contribute to the injury, and then the exhaustion of domestic remedies.³² Then, it is clear from these conditions that the possession of the sponsorship granted by the State whose nationality the person holds, or that which implements its effective control over the person concerned, is not required.

In this regard, we note that the SDC did not make any reference to the concept of “Diplomatic Protection” while explaining the meaning of the “sponsorship” in its Advisory opinion issued on February 1st, 2011, according to it: “The purpose of requiring the sponsorship of applicants for contracts for the exploration and exploitation of the resources of the Area is to achieve the result that the obligations set out in the Convention, a treaty under international law which binds only States Parties thereto, are complied with by entities that are subjects of

domestic legal systems. This result is obtained through the provisions of the Authority’s Regulations that apply to such entities and through the implementation by the sponsoring States of their obligations under the Convention and related instruments”.³³

About the liability scope of the State providing sponsorship, the SDC considered that the sponsored contractor’s failure to fulfill its obligations does not, by itself, render the sponsoring State liable. Liability on the part of the sponsoring State arises only under the following conditions: Non-fulfillment of its obligations as provided by the UNCLOS; damage occurrence; and a causal connection between such failure and damage.³⁴

In the case of multiple sponsoring States, the SDC, according to its Advisory Opinion dated 1 February 2001, concluded that Article 139, paragraph 2 of the UNCLOS, and Article 4, paragraph 4, of its third Annex do not guide how liability is to be shared among sponsoring States. Likewise, neither the Nodules Regulations nor the Sulphides Regulations offer clarifications on this matter, save with respect to the certifi-

33 ITLOS. (2011). Case of Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion). Case No. 17. Hamburg. <https://www.itlos.org/en/main/cases/list-of-cases/case-no-17/>.

34 Plakokefalos, I. (2012). Seabed Disputes Chamber of the International Tribunal for the Law of the Sea: Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the Area, Advisory Opinion. *Journal of Environmental Law*, 24(1), 136-140. <https://doi.org/10.1093/jel/eqr021>; See also: Anton, D. K. (2012). The principle of residual liability in the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea: The Advisory Opinion on Responsibility and Liability for International Seabed Mining (ITLOS Case No. 17). *McGill International Journal of Sustainable Development Law and Policy*, 7(2), 247, 248; Russell-LaMotte, K. (2011). Introductory note to the International Tribunal for the Law of the Sea: Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the Area. *International Legal Materials*, 50(4), 456-457. <https://doi.org/10.5305/intelegamate.50.4.0455>; Boyle, A. (2011). Introductory remarks by Alan Boyle. *Proceedings of the ASIL Annual Meeting*, 105, 424. <https://doi.org/10.5305/procanmeetasil.105.0423>.

Guinea v. Democratic Republic of the Congo, No. 103. The Hague.

31 Hopkins, J. *Ibid.*, 453.

32 Leigh, G. I. F. *Ibid.*, 2-5.

cation of the contractor's financial capacity. The latter, as required by regulation 12(5)(c) of the Nodules Regulations and regulation 13(4)(c) of the Sulphides Regulations, must be issued by the State that exercises effective control over the applicant. Consequently, the State's failure to discharge its obligations gives rise to legal responsibility.

Aside from this case, neither Article 139, paragraph 2, of the UNCLOS nor the other instruments governing sponsorship distinguish single and multiple sponsorship. Consequently, the SDC concluded that, in cases of multiple sponsorship, sponsoring States incur joint and several liability, save where the ISA Regulations dispose otherwise.³⁵

It should be noted that, after issuance of the above-mentioned Advisory Opinion, the Council of the ISA immediately adopted a decision on 21 July 2011 during its seventeenth session in Kingston (Jamaica) calling upon all Sponsoring States to furnish details of relevant national legislation, regulatory frameworks, and administrative measures established by them within the scope of their responsibilities under the UNCLOS, and inviting the ISA's Secretary-General to prepare a report thereon.³⁶

But to date, about 37 States have notified the ISA of the required laws and procedures, among which we find the United Kingdom, the United States, France, China, Russia, Japan, Germany and South Korea, which have indeed the technology to engage in the exploitation or even in the exploration of the Seabed Area's resources.³⁷ And we point out that among these Countries, only China, Russia and South Korea hold exploration contracts relating to all of the three mineral types (Polymetallic Sulphides,

Polymetallic Nodules, and Cobalt-Rich Ferromanganese) which are currently regulated.³⁸

Thus, outside of the said conditions mentioned in the advisory opinion, the contracting party shall bear exclusive responsibility for any failure to comply with its obligations under the contract or under the UNCLOS and its related Annexes. That is what the ITLOS had implicitly confirmed while considering that: "State Party shall not be liable for damage caused by any failure to comply...by a person whom it has sponsored...if the State Party has taken all necessary and appropriate measures to secure effective compliance".³⁹

Indeed, Article 22 of the third Annex to the UNCLOS provides: "the contractor shall have responsibility or liability for any damage arising out of wrongful acts in the conduct of its operations, account being taken of contributory acts or omissions by the Authority...". In the same regard, Article 190 of the UNCLOS expressly indicates that the person of domestic law can be the principal party to the proceedings, while it provides that: 'in a case where a natural or legal person is a party to a dispute before the SDC concerning activities in the Seabed Area, the sponsoring State should be notified for this dispute, so that it may intervene in the proceedings by submitting written or oral statements'.

To practice this right, the sponsoring State may notify through written notification its intention to file written statements or to make oral submissions within two months after being notified by the application. Once such notice is received, the SDC's president shall determine the time frame within which the sponsoring State may present its written observations, and shall communicate to it the time and the date of hearing.⁴⁰ And of course, it is well known that intervention in a case presupposes that a legal claim exists between the two main opposing parties in the first place; one of them would be,

35 ITLOS. (2011). Case of Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion). Case No. 17. Hamburg. <https://www.itlos.org/en/main/cases/list-of-cases/case-no-17/>.

36 International Seabed Authority Council. (2011). (ISBA Doc. ISBA/17/C/20). <https://isa.org.jm/documents/isba17c20/>.

37 International Seabed Authority. Database on national legislation with respect to activities in the Area. <https://isa.org.jm/national-legislation-database/>.

38 Dingwall, J. Ibid., 159.

39 Freestone, D. Ibid., 758, 759.

40 ITLOS. (2021). Rules of the Tribunal (ITLOS/8). <https://www.itlos.org/en/main/documents/basic-texts/rules-of-the-tribunal/>.

in this case, the natural or legal person concerned.

1.3. Do persons non-sponsored have the right to litigate before the ITLOS?

In addition to persons sponsored, Article 52 of the Rules of the ITLOS raises some ambiguities as to whether other persons belonging to domestic law can appear before the ITLOS, when it impliedly stipulates that communications to juridical or natural persons other than those sponsored shall be transmitted by means of the government of the State where the communication is required to be received.

In fact, it can be concluded that the expression “juridical or natural persons other” than those covered by the sponsorship refers to all juridical or natural persons who are not involved in the dispute, but have an interest that could be affected by the outcome of the proceedings, where they must be informed of the documents of the suit to bring them into the litigation, or because they have already intervened in it, and as a result, they are entitled to the documents of the case. And what reinforces this view is the term ‘an entity other than Party to the case’ cited in the second paragraph of Article 52.

2. 'RATIONE MATERIAE' IN THE SEABED DISPUTES

Although sponsored persons can get the right to litigate before the ITLOS, where the sponsoring State declines to take part in the litigation or to intervene therein on its behalf, this right should be read to a minimum, as that concerns specific disputes that should not be expanded. It comes to:⁴¹

- Disputes involving contracting parties, including States Parties, public enter-

prises, the ISA or its Enterprise, and legal or natural persons, relating to the implementation or even to the interpretation of the pertinent contract or the work plan, or concerning Conduct or failure to act by a party to the contract in connection with activities in the Seabed Area, and producing a direct effect upon the other party's legitimate interests;

- Disputes involving the ISA and a potential contractor enjoying the sponsorship of a State, and has duly performed its legal obligation, concerning the rejection of a contract, or concerning a legal question, appear during the contract negotiations process;
- Disputes arising between the ISA and a contracting State, a public enterprise, judicial or natural person enjoying the sponsorship of a contracting State, in cases where the ISA is claimed to be liable as stipulated in Article 22 of the third Annex of the UNCLOS.

In this regard, we believe that Article 187 of the UNCLOS has respected the legal logic when it expanded the list of entities entitled to litigate before the ITLOS, and specifically before the SDC. Since the Seabed Area is not within the sovereignty of any State, its resources are held as heritage shared by all mankind⁴², and activities in it should be carried out in the interest of all mankind. And as these activities are conducted, including by judicial or natural persons who hold the sponsorship, it is normal that there will be disagreements between practitioners of the aforesaid activities, and it is also normal that each party to those disagreements defends its interests before the ITLOS.

It can be said that the above-mentioned rulings highlight the dual legal nature of the SDC:

41 United Nations Convention on the Law of the Sea. (December 10, 1982). 1833 U.N.T.S. 397.

42 Strati, A. (1991). Deep seabed cultural property and the common heritage of mankind. *The International and Comparative Law Quarterly*, 40(4), 859. <https://www.jstor.org/stable/760492>; van Zyl, U. (1993). The “common heritage of mankind” and the 1982 Law of the Sea Convention: Principle, pain, or panacea? *The Comparative and International Law Journal of Southern Africa*, 26(1), 49-52.

in one regard, it is an international adjudicative body in the traditional sense, as it adjudicates disputes arising between States inter se or between a State and an international organization; on the other hand, it resembles a global commercial court, since it has jurisdiction over disputes arising between companies and contractors operating throughout the seabed zone. This reflects the will of the global community to establish a comprehensive judicial mechanism that strikes a compromise reconciling the interests of developed States operating in deep seabed mining with those of developing States for which the seabed Area constitutes a common source of wealth.

3. THE MANDATORY NATURE OF THE PROCEDURES FOR THE SETTLEMENT OF THE SEABED DISPUTES

Indeed, the procedures for the settlement of disputes laid down in UNCLOS derive from a fundamental principle, which is the freedom of choice. Part XV of the above Convention recognizes the right of States to choose peaceful means for the settlement of any dispute between them.⁴³

But, for persons of domestic law, in all cases they will be able to resort to the ISA, since their right to litigation is independent of the State providing sponsorship, and the opposing party to the dispute will often be the ISA as indicated in paragraphs (d) and (e) of article 187 above.

So, it can be said that the Seabed disputes devolve specifically and compulsorily to the SDC, that own the competence to hear any dispute referred to it by one of its parties, even if the second party does not agree to the referral order.

Without exaggeration, the SDC is the most important chamber within the ITLOS. This importance is demonstrated by the fact that the UNCLOS devoted Section Five of its Part XI,

which concerns the Area, to the purpose of regulating the jurisdiction of this Chamber. In addition, Annex VI of the Convention allocates an entire section (Section 4) within the Statute of the ITLOS to the same purpose. This particular attention to the Chamber may be attributed to the sensitivity of the disputes it considers, which are linked to materials and resources extracted from the seabed and which constitute the common heritage of humanity.

The importance accorded to this Chamber is also reflected in the number of its Judges, which is set at eleven (11) judges. They are elected by the members of the ITLOS immediately after the elections for renewal, by a majority of votes, with the election ensuring representation of the world's primary legal systems and fair geographic representation.⁴⁴ As for the validity of the meetings of the Chamber, a special quorum is required, consisting of the presence of at least seven judges chosen by the ITLOS for membership in the Chamber.

In this regard, it should be noted that the rules governing the appointment of judges ad hoc, which are binding on the ITLOS when sitting in its full composition to hear a dispute, also apply to the SDC when it sits to consider a dispute within its jurisdiction.⁴⁵ Accordingly, if the SDC, when hearing a dispute, includes among its sitting members a judge of the nationality of one of the disputing parties, the opposing party is entitled to designate an individual to sit as a member of the Chamber in the dispute hearing. If the SDC does not comprise in its membership any judge of the nationality of the disputing parties, each party is entitled to select an individual to serve as a member of the SDC. For this purpose, the ITLOS President must seek the necessary number of SDC members to relinquish their seats in favor of members of the ITLOS who are nationals of the parties con-

44 United Nations Convention on the Law of the Sea. (December 10, 1982). Annex VI: Statute of the International Tribunal for the Law of the Sea, 1833 U.N.T.S. 397.

45 Article 17, paragraph 4, of the Statute of the ITLOS provides: "This article applies to the chambers referred to in articles 14 and 15 of this Annex..."

43 Seymour, J., *Ibid.*, 4.

cerned, and, in the absence or inability of such members to sit, the relinquishment shall be in favor of judges specifically selected by the disputing parties (judges ad hoc).

In fact, the above provisions do not answer the problem related to the situation where the internal person holds a nationality different than that of the State providing sponsorship, while the SDC comprises among its members a judge of the sponsoring State's nationality. Under these circumstances, if the State providing sponsorship refuses to join the proceedings of the dispute for the account of the internal person, may that person request the appointment of a judge to participate in the sessions of the SDC hearing the dispute concerning him? This is a question neither the Statute of the ITLOS nor its Rules provide an answer to, bearing in mind that an affirmative answer would mean that one of the disputing parties would benefit, during the legal process, from the presence of two judges: one holding the sponsoring State's nationality and the other of the nationality of the internal person who is involved in the dispute!

Within the same framework, it should be noted that the entitlement to designate special judges concerns solely the parties engaged in the dispute, as well as intervening parties in the case may not appoint judges ad hoc regardless of the significance of the legal interest they aim to safeguard, due to an explicit provision in Articles 103 and 104 of the Rules of the ITLOS that prohibits them from doing so. And it is noteworthy that the intervening parties referred to here are not meant to include the sponsoring State, since the latter, once it accepts the request addressed to it concerning participation in the dispute, becomes an original disputing party and not an intervening party, in line with the meaning of the second paragraph of Article 190 of the UNCLOS.

In any case, ad hoc Judges of the SDC must meet the same qualifications required of elected judges, as previously outlined in connection with the duties of judges. They are obliged to

take the same formal oath as the ITLOS members, when assuming office, and this shall be done in the public sitting convened for the case in which they participate. They are ranked in the Chamber according to their seniority, but in all cases after the permanent members of the ITLOS. They shall enjoy the entitlement to engage in the case for which they have been appointed on the same footing as the elected judges. In addition, they are entitled to make a statement on the occasion of each case in which they take part.

Just as the SDC can decide on disputes brought before it that lie within its competence, pursuant to the 36th Article of the ITLOS Statute, it may constitute an ad hoc chamber to investigate a specific claim concerning the seabed brought before it in line with subparagraph (b) of the first paragraph of Article 188 of the UNCLOS.

It is sufficient for the establishment of the designated chamber to submit a motion from one of the parties to the international dispute brought before the SDC, provided that it must be submitted within three months of the dispute commencement. The opposition of the second party to the establishment of the designated chamber is irrelevant here,⁴⁶ as the SDC must comply with the request directed to it and has no discretion to decide whether to establish the designated chamber or not. As is apparent from the wording of the first paragraph of Article 36 above, the wording is imperative rather than permissive: "The Seabed Disputes Chamber shall establish a designated chamber".

The SDC jurisdiction is limited to selecting the judges of the designated chamber only and does not extend to assessing the necessity of establishing it or not. Moreover, it does not even extend to determining the number of judges of the designated chamber that should be established, as this number is legally set at three judges, who are to be chosen by the SDC

46 ITLOS. (2021). Rules of the Tribunal (ITLOS/8). <https://www.itlos.org/fileadmin/itlos/documents/basic_texts/rules_en.pdf>.

with the consent of the States party to the dispute, and they must not be employed by or be nationals of any of the parties involved in the dispute.⁴⁷

If the disputing parties fail to agree on forming the designated chamber within the timeframes determined by the SDC President, each of the parties shall designate one member, and the two designated members shall designate a third member by mutual agreement within the set timeframe specified by the SDC President. If the parties disagree again or in the event that any of the parties does not appoint a member, the SDC President shall immediately undertake the mandatory selection from among the chamber members upon consulting the disputing parties.

However, it is noteworthy that despite all these details provided for in both the statute and Rules of the Tribunal, at the time of writing these lines, the SDC has not yet established a dedicated chamber to consider any case within its jurisdiction.

As for disputes relating to the implementation or even to the interpretation of a pertinent contract or to the plan of work, although they come within the competence of the SDC as mentioned above, it will be necessary to refer them to commercial arbitration at the request of one of the disputing parties, unless the disputing parties otherwise agree. So, if a dispute is referred to an arbitral Tribunal, the latter must refrain from deciding on questions. And if the aforementioned dispute raises a question related to the interpretation of Part XI of the UNCLOS and the relevant annexes, that matter shall be brought before the SDC for decision. Similarly, if the Commercial Arbitration Tribunal to which the dispute is referred finds that its ruling hinges on the SDC's decision, whether the matter is raised by one of the disputing parties or by the court's own motion, the aforesaid Tribunal must stop deciding on the dispute, and

bring the matter in question before the SDC for decision. Only then, the Commercial Arbitration Tribunal may decide on the dispute referred to it, without violating the decision of the SDC.

But, if the SDC has, as a general rule, compulsory jurisdiction concerning disputes mentioned in article 187 above, it doesn't have the competence to decide on matters relating to the exercise by the ISA of its discretion conferred upon it by the eleventh Part of the UNCLOS, as it cannot replace the discretion of the ISA with its own discretion.

Also, although the aforesaid SDC has the competence to deliver advisory opinions when requested by the ISA Assembly or by the ISA Council, it does not have the competence to give an opinion on the consistency of the ISA's rules, regulations, and procedures with UNCLOS. Rather, its competence is limited to adjudicating allegations that the application of any of the regulations, rules, and procedures established by the ISA in specific cases is incompatible with obligations stipulated in the contract concluded by the disputing Parties, or with their obligations pursuant to the Convention. Also, it has the competence to adjudicate allegations of abuse of jurisdiction or abuse of powers, and claims for financial compensation for damages or other compensation due to a party's breach of its obligations under the contract or under UNCLOS.⁴⁸

CONCLUSION

Overall, in light of this study, it can be said that seabed disputes are highly distinct from other maritime disputes. This is primarily because the United Nations Convention on the Law of the Sea (UNCLOS) and its Annex VI allow individuals and legal entities subject to national law to be parties before the Seabed Disputes Chamber (SDC) exclusively in seabed-related disputes, and to defend their interests before the International Tribunal for the Law of the Sea.

47 United Nations Convention on the Law of the Sea. (December 10, 1982). Annex VI: Statute of the International Tribunal for the Law of the Sea, 1833 U.N.T.S. 397.

48 Ibid.

However, for this advantage to be realized, certain conditions set forth by UNCLOS must be met. Without them, seabed disputes become just like other maritime disputes regulated by the Convention regarding the parties to the case. The first of these conditions is that the interested natural or legal person must be sponsored by at least one State Party to the UNCLOS. Secondly, the sponsoring State must refrain from intervening in the dispute, even after being invited to do so. This is because, pursuant to Article 190 of the UNCLOS, a State sponsoring a natural or legal person – whether as a claimant or a respondent – has the right to intervene in the proceedings on their behalf and submit its written or oral pleadings. In other words, if the sponsoring State accepts the request referred to it by the other party to the dispute before the SDC to substitute the person it sponsors, the dispute shifts to become between two States, rather than between a State and a person subject to domestic law.

As for the second specific advantage, it lies in the non-consensual nature of litigation before the SDC. The UNCLOS allows cases brought before the SDC, or before an ad hoc chamber formed by it, to be heard upon the mere request of one of the parties, without requiring the consent of the other party in this case. In contrast, establishing jurisdiction for a tribunal in other maritime disputes requires the mutual consent of both parties.

Consequently, it can be said that while the subject-matter jurisdiction (*ratione materiae*) of the SDC is limited, given that seabed disputes are exclusively defined in Article 187 of the UNCLOS, its personal jurisdiction (*ratione personae*) is very broad. One or both parties to a case brought before the Chamber may be international legal entities (States or international organizations), or one of the parties may be a person subject to domestic law, which is unusual in litigation before international tribunals.

We believe that this modern approach represents a significant step forward. Outside of human rights cases and those involving international civil servants, we do not find any

international judicial body whose statute allows individuals to appear before it against States. We also believe that this trend is highly positive. Granting individuals and private entities the capacity to participate in activities regulated by the UNCLOS should be matched by expanding the rules of liability to address any breach they might commit during these activities. At the same time, it requires granting them the right to defend their interests before the SDC in disputes relating to the interpretation and application of this Convention and the contracts arising from it, in the event that the sponsoring State refrains from defending them.

Nevertheless, it can be said that this modern approach established by UNCLOS, granting individuals the right to litigate before the SDC even if the opposing party objects, clashes with what could be described as a shortcoming that might render this approach meaningless. Ultimately, the matter depends on the States Parties to the Convention accepting the jurisdiction of the ITLOS to hear disputes related to the application or interpretation of its provisions. In other words, if these States choose to submit their maritime disputes, regardless of their nature, to the International Court of Justice or to arbitral tribunals, this will nullify any expansion of the personal jurisdiction of the ITLOS, as well as the rules of liability for breaching international law, to include individuals.

In reality, the facts reveal that the expansion of the personal jurisdiction of the SDC has not been put into practice to this day. Since its establishment, the ITLOS has only heard, or is currently hearing, 29 cases. The majority of these involve the mandatory jurisdiction of the Tribunal, and none of them include persons subject to domestic law. This is the case despite the International Seabed Authority (ISA) having signed contracts with 22 contractors for the exploration of polymetallic nodules, polymetallic sulphides, and cobalt-rich ferromanganese crusts on the seabed.

Accordingly, we believe that international debate, both now and in the future, should

focus on ways to impose the mandatory jurisdiction of the ITLOS and its SDC over all seabed disputes, without this being dependent on an explicit declaration by States Parties. Only through this approach, we believe, can

the unique characteristics of seabed disputes, namely the ability of domestic persons to appear before international tribunals, be put into practice.

REFERENCES:

Scholarly literature:

- Anton, D. K. (2012). The principle of residual liability in the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea: The Advisory Opinion on Responsibility and Liability for International Seabed Mining (ITLOS Case No. 17). *McGill International Journal of Sustainable Development Law and Policy*, 7(2);
- Benzing M. (2006). Community Interests in the Procedure of International Courts and Tribunals, *The Law & Practice of International Courts and Tribunals*, 5(3). <https://doi.org/10.1163/157180306778938719>;
- Borchard, E. M. (1913). Basic elements of diplomatic protection of citizens abroad. *American Journal of International Law*, 7(3). <https://doi.org/10.2307/2187430>;
- Borgerson, S. G. (2009). The national interest and the law of the sea (Council Special Report No. 46). Council on Foreign Relations. <http://www.jstor.com/stable/resrep00295.11>;
- Boyle, A. (2011). Introductory remarks by Alan Boyle. *Proceedings of the ASIL Annual Meeting*, 105, 424. <https://doi.org/10.5305/procannmeetasil.105.0423>;
- Dingwall, J. (2020). Commercial mining activities in the deep seabed beyond national jurisdiction: The international legal framework. In C. Banet (Ed.), *The law of the seabed: Access, uses, and protection of seabed resources*, 148. Brill. https://doi.org/10.1163/9789004391567_009;
- Dupuy, P.-M. (2012). Back to the future of a multilateral dimension of the law of State responsibility for breaches of obligations owed to the international community as a whole. *The European Journal of International Law*, 23(4);
- Freestone, D. (2011). Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area. *American Journal of International Law*, 105(4), 755. <https://doi.org/10.5305/amerjintelaw.105.4.0755>;
- Hopkins, J. (1971). Review of the book *Nationality and diplomatic protection: The Commonwealth of Nations*, by C.-J. Joseph. *The Cambridge Law Journal*, 29(2). <https://doi.org/10.1017/S0008197300089960>;
- Leigh, G. I. F. (1971). Nationality and diplomatic protection. *International and Comparative Law Quarterly*, 20(3). <https://doi.org/10.1093/iclqaj/20.3.453>;
- Lillich, R. B. (1975). The diplomatic protection of nationals abroad: An elementary principle of international law under attack. *American Journal of International Law*, 69(2). <https://doi.org/10.2307/2200272>;
- Longobardo, M. (2021). The Standing of Indirectly Injured States in the Litigation of Community Interests before the ICJ, *International Community Law Review*, 23(5);
- Noyes, J. E. (1999). The International Tribunal for the Law of the Sea. *Cornell International Law Journal*, 32(1);

- Plakokefalos, I. (2012). Seabed Disputes Chamber of the International Tribunal for the Law of the Sea: Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the Area, Advisory Opinion. *Journal of Environmental Law*, 24(1). <https://doi.org/10.1093/jel/eqr021>;
- Russell-LaMotte, K. (2011). Introductory note to the International Tribunal for the Law of the Sea: Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the Area. *International Legal Materials*, 50(4). <https://doi.org/10.5305/intelegamate.50.4.0455>;
- Seeborg-Elverfeldt, N. J. (1998). The settlement of disputes in deep seabed mining: Access, jurisdiction and procedure before the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea. Nomos Verlagsgesellschaft, Baden-Baden;
- Seymour, J. (2006). The International Tribunal for the Law of the Sea: A great mistake? *Indiana Journal of Global Legal Studies*, 13(1). <https://doi.org/10.2979/gls.2006.13.1.1>;
- Strati, A. (1991). Deep seabed cultural property and the common heritage of mankind. *The International and Comparative Law Quarterly*, 40(4). <https://www.jstor.org/stable/760492>;
- Tomlinson, M. L., Becker, M.-A. (2008). International law of the sea. *The International Lawyer*, 42(2). <https://www.jstor.org/stable/40708115>;
- van Zyl, U. (1993). The “common heritage of mankind” and the 1982 Law of the Sea Convention: Principle, pain, or panacea? *The Comparative and International Law Journal of Southern Africa*, 26(1). No. 0286. (December 9, 2016). <https://www.isa.org.jm/national-legislation-database/>;
- International Seabed Authority Assembly. (July 27, 2012). Decision relating to the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area (Decision ISBA/18/A/11). https://www.isa.org.jm/wp-content/uploads/2022/04/isba-18a-11_0.pdf;
- International Seabed Authority Assembly. (May 7, 2010). Decision relating to the regulations on prospecting and exploration for polymetallic sulphides in the Area (Decision ISBA/16/A/12/Rev.1). <https://www.isa.org.jm/>;
- International Seabed Authority Council. (2011). (ISBA Doc. ISBA/17/C/20). <https://isa.org.jm/documents/isba17c20/>;
- International Seabed Authority Council. (July 22, 2013). Decision relating to amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and related matters (Decision ISBA/19/C/17). https://isa.org.jm/wp-content/uploads/2022/06/isba-19c-wp1_0.pdf;
- [International Seabed Authority. Database on national legislation with respect to activities in the Area. https://isa.org.jm/national-legislation-database/](https://www.isa.org.jm/national-legislation-database/);
- ITLOS. (2021). Rules of the Tribunal (ITLOS/8). <https://www.itlos.org/en/main/documents/basic-texts/rules-of-the-tribunal/>;
- The Nauru International Seabed Minerals Act. (October 23, 2015). Reprinted in International Seabed Authority National Legislation Database. https://www.isa.org.jm/files/documents/EN/Nat-Leg/Nauru_ISM.pdf;
- United Nations Convention on the Law of the Sea. (December 10, 1982). 1833 U.N.T.S.

Normative acts:

French Ordinance Concerning the Maritime Zones Falling Within Sovereign Authority or Jurisdiction. Official Journal

Courts decisions:

- ICJ. (1955). Case of Nottebohm, Liechtenstein v. Guatemala, No. 131. The Hague;
- ICJ. (2007). Ahmadou Sadio Diallo case, Republic of Guinea v. Democratic Republic of the Congo, No. 103. The Hague;
- ITLOS. (2011). Case of Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion). Case No. 17. Hamburg. <https://www.itlos.org/en/main/cases/list-of-cases/case-no-17/>;
- PCIJ. (1924). Case of Mavrommatis Palestine Concessions, Greece v. U.K., No. 9. The Hague;
- PCIJ. (1939). Panevezys-Saldutiskis Railway Case, Estonia v. Lithuania, No. 74. The Hague.



THE SPECIFICITY OF CONSENT IN SMART CONTRACTS IN THE CONTEXT OF ARTIFICIAL INTELLIGENCE AND ITS IMPACT ON CONSUMER PROTECTION: AN ANALYTICAL AND COMPARATIVE STUDY UNDER ALGERIAN LEGISLATION

Bessadi Noura 

*Ph.D in Economic Law and Environment Laboratory
University of Oran 2 Mohamed Ben Ahmed, Algeria*

 bessadinoura@gmail.com

ARTICLE INFO

Article History:

Received	14.07.2026
Accepted	24.08.2026
Published	30.09.2026

Keywords:

Smart contracts, Consumer consent, Obligation to provide information, Electronic contract, Consumer protection

ABSTRACT

The field of electronic transactions is undergoing rapid development driven by the digital revolution and technological advancement, resulting in the emergence of new contractual models, among the most prominent of which are smart contracts based on blockchain technology. These contracts rely on the automatic execution of contractual obligations in accordance with predetermined programming commands. Despite the advantages they offer in terms of speed, efficiency, and transparency, smart contracts raise legal issues concerning the validity of consumer consent, given the particularities of their formation and execution mechanisms. They also present challenges relating to the provision of contractual information, the consumer's understanding of the legal and technical implications of the contract, and the adequacy of traditional legal rules in accommodating this emerging contractual model.

This study examines the legal issues associated with consumer consent in smart contracts by analyzing the nature of smart contracts and the legal framework governing them. It further assesses the adequacy of general legal rules and the rules governing electronic contracts in providing legal protection for consumers in the absence of specific legislative regulation, while drawing on selected comparative legislative experiences. The study adopts analytical and comparative approaches and concludes that the particularities of smart contracts require the development of the legal framework governing them in a manner that strengthens the protection of consumer consent, reinforces the obligation to provide information, and keeps pace with the rapid developments occurring in the digital environment.

INTRODUCTION

The digital revolution has brought about a profound transformation in the legal environment of transactions, driven by the rapid development of information and communication technologies and the increasing use of artificial intelligence and blockchain technologies across various fields, including contractual relations. This development has contributed to the emergence of smart contracts as a novel contractual model based on programming and the automated execution of obligations. As a result, smart contracts have reshaped several traditional concepts underlying contract theory, foremost among them consent as an essential element in contract formation.

Despite the advantages offered by smart contracts in terms of speed, efficiency, and transparency, their association with artificial intelligence technologies and automated execution raises legal issues concerning the validity of consumer consent. These issues are particularly significant given the reliance on digital means and software for the expression of contractual intent, as well as the challenges this may pose to the consumer's informed understanding of the content and effects of the

contract. They also raise questions concerning the adequacy of traditional legal rules in providing effective consumer protection within this emerging contractual model.

These concerns are further heightened by the absence of specific legal regulation of smart contracts in Algerian legislation, despite the regulation of certain aspects of electronic contracting. This raises questions as to the extent to which general legal rules and the rules governing electronic contracts can be applied to smart contracts, and whether such rules are capable of accommodating the particularities of consent in this type of contract.

The importance of this study stems from the novelty of the subject and the rapid development of its practical applications, which underscore the need for legislation to keep pace with technological developments in a manner that balances the promotion of digital innovation with the protection of consumers. Its significance also derives from the limited number of Arab legal studies addressing the particularities of consent in smart contracts in the context of artificial intelligence, particularly within the framework of Algerian legislation.

This study aims to analyze the particularities of consent in smart contracts in light of the

use of artificial intelligence technologies and to clarify their impact on consumer protection. It examines the extent to which traditional legal rules and the rules governing electronic contracts are adequate to accommodate the legal and technical characteristics of this contractual model. It also evaluates the position of the Algerian legislator in light of selected comparative legislation, with a view to proposing legal mechanisms that may contribute to strengthening the protection of consumer consent and keeping pace with developments in the field of digital contracting.

Based on the foregoing, the study raises the following research question:

To what extent do the particularities of consent in smart contracts, in light of the use of artificial intelligence technologies, affect consumer protection, and to what extent are the existing legal rules adequate to address the issues arising from them?

METHODOLOGY

To address the research question, this study adopts an analytical approach to examine the legal rules relevant to smart contracts, electronic contracting, and consumer protection, and to assess the extent to which the general rules of Algerian law are capable of accommodating the specific characteristics of smart contracts, particularly with regard to the expression of consent, automated contract performance, and the duty to provide information. The study also employs a comparative approach by examining selected legislative experiences, particularly those of the United States, Belarus, France, and the United Arab Emirates, in order to identify the similarities and differences between these approaches and the Algerian legal framework.

These jurisdictions were selected because they reflect diverse approaches to blockchain technology and smart contracts, ranging from the legal recognition of certain applications to the regulation of specific aspects without establishing a comprehensive legislative frame-

work. The comparison is conducted according to several principal criteria, namely the extent of legal recognition of electronic transactions and blockchain technology, the evidentiary value of electronic means, the capacity of general legal rules to accommodate the automated performance of contracts, and the adequacy of rules relating to transparency, information disclosure, and consumer protection. The study also adopts a descriptive approach when presenting the fundamental concepts and the technological and legal characteristics of smart contracts.

FINDINGS AND DISCUSSION

1. THE CONCEPTUAL AND LEGAL FRAMEWORK OF THE SMART CONTRACT IN THE ARTIFICIAL INTELLIGENCE ENVIRONMENT

The contemporary world is witnessing significant developments in the field of information technology, and the rapid advancement of digital technologies has led to the emergence of new contractual forms, among the most prominent of which is the smart contract. This contractual model relies on blockchain technology for the conclusion of contracts and the automatic execution of contractual obligations, thereby bringing about a transformation in traditional concepts of contracting.

Given the novelty of this type of contract and the legal issues it raises concerning its legal characterization and the adequacy of existing legislative regulation to accommodate it, it is necessary to examine the concept and characteristics of the smart contract. It is equally important to address the legal framework applicable to smart contracts in the absence of specific legislative regulation and to distinguish them from electronic contracts. These elements constitute the fundamental basis for examining issues related to the formation of consent and consumer protection in the digital environment.

1.1. The concept of the smart contract and its characteristics

The smart contract is one of the recently developed contractual models resulting from rapid technological advancement in the digital environment. It raises several legal issues that require, as a preliminary matter, an examination of its concept and the principal characteristics that distinguish it before addressing its impact on consumer consent. Such an examination is essential because these elements form the basis upon which the various legal effects of smart contracts are established and determine their implications for the formation of consent and consumer protection.

1.1.1. Definition of the smart contract

Given the relatively recent emergence of smart contracts and their highly technical nature, legal scholarship has not yet reached a universally accepted definition of the concept. Rather, a variety of definitions have been advanced, reflecting the diversity of smart-contract applications and their intersection with different technological and legal concepts. It is therefore necessary to examine the principal doctrinal and statutory definitions that have been proposed.

Some scholars define a smart contract as “a piece of computer code stored on a blockchain network and used to execute transactions or agreements automatically upon the fulfilment of specified conditions. This type of contract does not require human supervision or the involvement of an external enforcement authority, since the programmed instructions are executed as soon as the relevant conditions are satisfied, thereby reducing costs and limiting potential disputes between the parties”.¹

Other scholars define a smart contract as “computer code operating on a blockchain and containing a set of rules pursuant to which the

parties to the contract have agreed to interact with one another; once the predetermined rules are satisfied, the agreement is automatically executed”.² A smart contract has also been defined as a computer program consisting of a set of codes incorporating the terms and particulars agreed upon by the contracting parties, which is automatically executed upon the fulfilment of predetermined conditions through the use of dedicated technological platforms, such as the Ethereum platform.³

The foregoing definitions are notably focused on the technical dimension of smart contracts, particularly their reliance on blockchain technology and their automatic execution once predetermined conditions have been fulfilled. This technical dimension, however, is not sufficient on its own to identify the distinctive legal characteristics of smart contracts, especially where one of the contracting parties is a consumer. In such circumstances, particular questions arise concerning the clarity of the terms to which the consumer gives consent and the extent to which the consumer understands the legal consequences arising from those terms.

Accordingly, for this study, a smart contract may be understood as a computer program based on blockchain technology that incorporates predetermined programmed terms and automatically performs the obligations agreed upon once the relevant conditions are satisfied, thereby giving rise to particular legal considerations concerning consumer consent and consumer protection.

Certain comparative legal systems have sought to establish statutory definitions of smart contracts. In the United States, Arizona House Bill 2417 of 2017, concerning blockchain technology, defines a smart contract as an event-driven program that operates on a dis-

1 Ben Tria, M. (2019). Smart contracts integrated into blockchain. *Journal of Law, Kuwait International Law School*, 1(4), 482.

2 Hassan, H. M. M. (2023). Smart contracts concluded through blockchain technology. *The Legal Journal (A Specialized Journal in Legal Studies and Research)*, 16(1), Egypt, 10. https://jlw.journals.ekb.eg/article_297185.html.

3 Bourgueda, N. M. (2017). *Contracts concluded through modern systems* (Doctoral dissertation). Faculty of Law, University of Algiers, 3.

tributed, decentralized, shared, and replicated ledger and that is capable of taking custody of assets and issuing instructions for their transfer. Likewise, Decree No. 8 of 2017 on the Development of the Digital Economy in the Republic of Belarus defines a smart contract as software code designed to operate on a blockchain or another distributed information system for the automated execution of transactions or other legally significant acts.⁴

An examination of the substance of these statutory definitions reveals that they focus primarily on the programmatic nature of smart contracts, their connection with blockchain technology, and their capacity for automated execution. They do not, however, specifically address the issue of consumer consent or the extent to which consumers understand the terms that are implemented through computer code. This omission highlights the importance of examining the distinctive features of consent in smart contracts concluded with consumers.

1.1.2. Characteristics of smart contracts

Smart contracts possess several characteristics that distinguish them from other forms of contracts, whether traditional or electronic. The most important of these characteristics are as follows:

- **Electronic nature:** A smart contract is distinguished from a paper-based contract by the fact that it is concluded exclusively through electronic means. It consists of symbols or codes representing the obligations of the parties in preparation for their subsequent execution. The parties are bound by a digital agreement designed to execute the contractual terms or obligations, provided that the conditions required for execution are fulfilled.⁵

- **Self-Verification:** One of the most important characteristics of a smart contract is its ability to automatically verify whether the contractual conditions agreed upon in advance have been fulfilled. This verification is carried out through the blockchain network and its consensus mechanisms, without requiring intervention by the contracting parties or a centralized authority to verify compliance with those conditions.⁶
- **Conditional Nature:** A smart contract operates on the basis of predetermined conditions that are translated into computer code according to conditional logic. Thus, once a particular condition is satisfied, the corresponding predetermined outcome is automatically executed. In this way, certain contractual provisions are converted into executable programming instructions. For example, a contractual provision may require the payment of compensation in the event of a breach of an obligation, and such a provision may be automatically executed once the specified condition is met.⁷ In this respect, smart contracts provide a distinctive mechanism, as they operate from the outset according to predefined conditions. For instance, ownership is not transferred to the new purchaser until the price and other relevant conditions have been agreed upon and incorporated in detail into the smart contract.⁸
- **Self-Execution:** Smart contracts are regarded as self-executing contracts because the contractual terms are directly incorporated into lines of computer code.

4 Arizona Revised Statutes, § 44-7061, added by House Bill 2417 of 2017 (Arizona, United States) ; Decree of the President of the Republic of Belarus No. 8 of 21 December 2017, "On Development of Digital Economy". [in English]

5 Hewett, N., Lehmacher, W., Wang, Y. (2019). Inclusive deployment of blockchain for supply chains: Part 1 –

Introduction. Geneva: World Economic Forum, 13.
6 Mekki, M. (2018). The contract as the object of smart contracts (Part 1). Dalloz IP/IT: Intellectual Property and Digital Law, No. 7, 410.

7 Bouandel, W. (2024). Artificial intelligence as a contracting party. Journal of Social Sciences, 9(3), 513.

8 Ali, S. H. M. (2024). Artificial intelligence and its role in concluding commercial contracts. Journal of Legal and Economic Research, 14(90), 818.

Consequently, the contract automatically executes the relevant provisions once the predetermined conditions have been satisfied, thereby reducing or eliminating the need for intermediaries.⁹

- The fundamental role of a smart contract lies in utilizing blockchain technology to automate certain stages of the contractual relationship, particularly the performance of contractual obligations. Accordingly, smart contracts contribute to simplifying the execution process and ensuring that obligations are performed in accordance with the conditions agreed upon in advance. They may also reduce the likelihood of breaches of contractual obligations and enhance the effectiveness of contractual performance.¹⁰
- This characteristic is particularly significant in contracts concluded with consumers, since the performance of certain obligations becomes directly linked to programmed conditions. This raises questions as to the extent to which consumers are aware of, and have consented to, the consequences of such automated execution at the time the contract is concluded.
- **Immutability:** A smart contract is characterized by the difficulty of modifying its computer code once it has been deployed and recorded on the blockchain network. This may limit its flexibility in responding to circumstances that arise after the contract has been concluded. Consequently, this characteristic may constitute an obstacle for contracting

parties when they need to amend contractual terms or adapt them to changing circumstances.¹¹

1.2. Legal Regulation of the smart contract and its distinction from the electronic contract

The legal framework governing smart contracts constitutes a complex and evolving field at the intersection of technology and legal regulation. The absence of specific legal regulation of smart contracts in Algerian legislation raises questions concerning the legal rules applicable to them and the extent to which the provisions governing electronic contracting are adequate to accommodate their technical and legal particularities. It is therefore necessary to examine the legal rules that may serve as a basis for regulating smart contracts and to determine the extent to which the rules governing electronic commerce may be extended to this emerging form of contracting.

1.2.1 The legal framework of the smart contract

Smart contracts have given rise to numerous legal issues, particularly because they are concluded within a digital environment and therefore depart, in certain respects, from some of the rules traditionally associated with the general theory of contract. This has led legal scholars to draw attention to the existence of a legislative gap concerning their legal regulation. Consequently, there is an increasingly pressing need to establish a legal framework governing smart contracts with sufficient flexibility to enable their adaptation to the evolving contractual environment.¹²

9 Al-Mahasneh, Y. O. M. (2024). The legal nature of smart contracts programmed using blockchain technology. *International Journal of Legal Research and Legal Studies*, 3(4), 16.

10 Dondero, B. (2017). Smart contracts. In *Civil law in the digital age: Proceedings of the conference of the Master 2 in General Private Law and the Civil Law Laboratory* – Paris II, 21 April 2017. LexisNexis, 20.

11 Hassan, H. E. H. A. (2023). Smart contracts: A comparative analytical study. *Security and Law Journal*, 31(1), 464.

12 Homsî, M. (2025). Rules governing distance contracting in light of recent legal transformations (Doctoral dissertation). Faculty of Law and Political Science, University of 8 May 1945 Guelma, 43.

Although legal scholarship has highlighted the existence of a legislative lacuna in the field of smart contracts, most legal systems have yet to establish a comprehensive regulatory framework specifically governing them. Nevertheless, some jurisdictions have moved towards recognising smart contracts and regulating certain aspects of their operation. In this context, several U.S. states have recognised blockchain technology and smart contracts. In 2016, the State of Vermont recognised the legal validity of commercial records incorporating blockchain technology. Subsequently, in 2018, the State of Arizona introduced amendments to its legislation governing electronic commercial transactions, thereby recognising the lawful use of blockchain technology and smart contracts and providing that a contract may not be denied legal effect or enforceability solely on the ground that it was concluded in electronic form.¹³

It may be observed that this legislative approach is primarily based on recognizing the legal validity and evidentiary effect of the technologies underlying smart contracts, without establishing a specific and comprehensive legal regime governing such contracts.

This approach is broadly comparable to that adopted by the Algerian legislature, which has likewise refrained from establishing a specific legal framework for smart contracts. Nevertheless, smart contracts may potentially be accommodated within the general rules governing electronic contracting, as will be demonstrated through an examination of the relevant Algerian legal provisions.

French law may also be regarded as one of the early legislative frameworks to recognize blockchain technology. The first manifestation of such recognition appeared in 2016 within the context of corporate and financial law. Ordinance No. 2016-520 of April 2016 concerning *bons de caisse* introduced a new category of such instruments known as Minibons. The Ordinance authorized the issuance and transfer of these instruments through a shared electronic

recording system capable of recording transactions in accordance with the conditions and requirements prescribed by the competent authorities.¹⁴ Subsequently, Decree No. 2018-1226 of 24 December 2018 was enacted to establish the implementing provisions necessary for the application of this regulatory framework.¹⁵ French legal scholarship further indicates that a smart contract remains essentially a reflection of the terms predetermined within its underlying program, thereby limiting its capacity to accommodate unforeseen circumstances arising in the course of automated execution.¹⁶

The United Arab Emirates is among the Arab States that moved at an early stage towards regulating blockchain technology and smart contracts through the development of legislative and regulatory provisions concerning these emerging technologies. UAE governmental authorities have also adopted blockchain technology in a number of official transactions, reflecting an institutional policy directed towards employing this technology in the recording, authentication, and verification of transactions and contracts.¹⁷

The Algerian legislature has not enacted specific legislation governing smart contracts. Nevertheless, such contracts may arguably be subject to the legal rules governing electronic contracting contained in Law No. 18-05 on Electronic Commerce, given that smart contracts are concluded within a digital environment and rely on electronic means. The provisions of the Electronic Commerce Law were drafted in suf-

13 Vermont Statutes, Title 12, § 1913, added by Act No. 157 of 2016 (Vermont, United States). [in English]

14 Ordinance No. 2016-520 of April 28, 2016, concerning cash vouchers, Official Journal of the French Republic, No. 0101, April 29, 2016 (France).

15 Decree No. 2018-1226 of 24 December 2018, concerning the use of a shared electronic recording system for the representation and transfer of financial securities and for the issuance and transfer of minibonds. Official Journal of the French Republic, No. 0298.

16 Lasmoles, O. (2018). The difficult apprehension of blockchains by law. *International Review of Economic Law*, 2018/4, Vol. XXXII, 463. <https://doi.org/10.3917/ride.324.0453>.

17 United Arab Emirates Government. (2018). UAE Blockchain Strategy 2021, launched on 11 April 2018. <https://u.ae/en/about-the-uae/digital-uae/uae-blockchain-strategy-2021>.

ficiently general and flexible terms to permit their scope of application to extend to various modern forms of contract concluded through contemporary digital technologies. This may be inferred from the legislature's reliance on general concepts such as "transactions concluded at a distance" and "electronic communications".¹⁸

The Algerian legislature has defined electronic communications as encompassing various processes involving the transmission, exchange, and receipt of signals, writings, images, sounds, data, and information by wire, optical fibre, or electromagnetic means.¹⁹ This provision demonstrates that the legislature adopted a broad conception of electronic communications without confining the concept to any particular technological medium. Such an approach affords a degree of flexibility to legal rules applicable in the digital and technological sphere, thereby enabling them to accommodate emerging technologies, including smart contracts based on blockchain technology and automated execution.

The Algerian legislature has also recognized the evidentiary value of electronic writing pursuant to Article 323 bis 1 of the Civil Code, irrespective of the medium on which it is recorded or the means by which it is transmitted.²⁰ This reflects the legislature's adoption, to a certain extent, of the principle of technological neutrality, whereby legal rules are formulated in a manner capable of accommodating continuous technological and technical development.

By contrast, the Algerian legislature has

adopted a more restrictive approach towards certain applications associated with blockchain technology. Article 117 of the Finance Law for 2018 prohibited dealings in virtual currencies, including their purchase, sale, use, and possession.²¹

A comparison between these approaches and Algerian legislation reveals a degree of convergence in the reliance on general legal rules to accommodate certain legal effects arising from blockchain-based technologies. The principal difference, however, lies in the extent of legal recognition and regulatory development. Whereas some comparative legal systems have moved toward granting legal validity to blockchain applications and adopting more specific rules governing their use, the Algerian legislature has not introduced a dedicated legal framework for smart contracts, instead leaving open the possibility of subjecting them to the general rules governing electronic contracting.

Consequently, although the Algerian legal framework is, in principle, capable of accommodating smart contracts within the broader concept of electronic contracting, it remains less equipped to address the distinctive features of the automated performance of contractual obligations. This is particularly evident with regard to ensuring that consumers are adequately informed of programmed contractual terms and of the legal consequences resulting from their automated execution. Comparative legal approaches may therefore provide useful guidance for the further development of Algerian law, not necessarily through the replication of a foreign regulatory model, but rather through the adoption of specific rules designed to ensure the transparency of programmed terms and to inform consumers of the mechanisms and consequences of automated execution, while preserving the application of general rules intended to protect the weaker contracting party.

18 Law No. 18-05 of 10 May 2018, relating to electronic commerce, Articles 5 and 6, Official Gazette of the People's Democratic Republic of Algeria, No. 28, issued on 16 May 2018.

19 Law No. 18-04 of 10 May 2018, laying down the general rules relating to postal services and electronic communications, Article 10, Official Gazette of the People's Democratic Republic of Algeria, No. 27, issued on 13 May 2018.

20 Law No. 05-10 of 20 June 2005, amending and supplementing Ordinance No. 75-58 of 26 September 1975 containing the Civil Code, as amended and supplemented, Official Gazette of the People's Democratic Republic of Algeria, No. 44, dated 26 June 2005.

21 Law No. 17-11 of 27 December 2017, containing the Finance Law for 2018, Article 117, Official Gazette of the People's Democratic Republic of Algeria, No. 76, dated 28 December 2017.

In this context, comparative approaches to consumer protection also display important differences. Within the European legal framework, particular emphasis is placed on consumer protection and the scrutiny of contractual terms, whereas certain strands of legal scholarship in the United States place greater emphasis on freedom of contract and economic efficiency. This divergence, however, remains the subject of continuing academic debate.²²

1.2.2 Distinguishing between smart contracts and electronic contracts

A distinction must be drawn between electronic contracts and smart contracts because of the frequent confusion between the two concepts in legal and technical discourse. Electronic contracts are concluded through modern digital means and technologies, such as computers, smartphones, and tablets, and may be formed through various online communication channels, including electronic mail and text, audio, or video communications. In this sense, electronic contracts encompass a broad range of transactions concluded by electronic means.

By contrast, a smart contract is a specific form of digital contracting that relies on blockchain technology and is characterized by self-executing code that determines the conditions and reciprocal obligations of the parties without requiring the intervention of a third party. This form of contracting also enables parties who may be unknown to one another to conduct commercial transactions and perform financial or legal operations in an automated and secure manner.²³

The distinctive nature of the smart contract lies in the fact that its difference from an electronic contract is not confined merely to the means by which the contract is concluded,

but extends to the mechanism through which contractual obligations are performed. An electronic contract may be concluded by electronic means without necessarily being performed automatically, whereas a smart contract is characterised by the prior programming of the conditions governing its execution. This gives rise to particular legal concerns regarding the clarity and intelligibility of those conditions and the extent to which the consumer understands the consequences of consenting to them.

Electronic contracts are broader in scope than smart contracts. In smart contracts, pre-determined procedures and conditions must be established and accepted by the parties, and once those conditions are fulfilled, execution occurs automatically. Accordingly, smart contracts are concluded and executed electronically. Electronic contracts, by contrast, are concluded electronically, while their execution may take place either electronically or through traditional means outside the digital environment. Thus, the scope of a smart contract extends to both conclusion and execution, whereas an electronic contract necessarily involves electronic conclusion but may or may not involve electronic execution, depending on the nature of the transaction and the subject matter of the contract.²⁴

An electronic contract differs from a smart contract in terms of both the manner in which contractual intent is expressed and the nature of performance. Although both operate within an electronic environment, the smart contract is characterised by more complex technological features, as the parties' intentions and the contractual terms are translated into executable computer code capable of automatic performance. This distinguishes the smart contract from the conventional electronic contract with respect to the mechanism through which its legal effects are implemented.²⁵

22 Maugeri, M. (2022). Smart contracts, consumer protection, and competing European narratives of private law. *German Law Journal*, 23(6), 904-905. <https://doi.org/10.1017/glj.2022.58>.

23 Belkaidi, F. Z., Zougar, A. (2025). Between technology and law: The future of smart contracts in the age of artificial intelligence. *Algerian and Comparative Public Law Journal*, 11(2), 637.

24 Ali, S. H. M., op. cit., 826.

25 Daoud, M., & Zerqin, A. (2022). Smart contracts integrated into blockchain: The beginning and end of traditional contracts. *Algerian Journal of Legal and Political Sciences*, 59(1), p. 527. [in Arabic]

From a functional perspective, the distinction between an electronic contract and a smart contract lies in the extent to which technology intervenes in the contractual relationship. Whereas electronic contracts generally involve the use of electronic means for the conclusion of the contract, smart contracts allow for a greater degree of automation, as computer code may, in many cases, perform the contractual obligations, while the underlying legal agreement has been concluded in natural language. In this sense, technology in a smart contract moves beyond serving merely as a means of contract formation and becomes an instrument that contributes to the performance and implementation of the contract's legal effects.²⁶

2. LEGAL ISSUES RELATED TO CONSUMER CONSENT IN SMART CONTRACTS

If defining the conceptual framework of smart contracts constitutes the necessary starting point for understanding this emerging form of contracting, their practical significance lies in examining the impact of their distinctive characteristics on the formation and protection of consumer consent. The reliance of smart contracts on artificial intelligence technologies, blockchain, and automated execution gives rise to legal challenges that extend beyond the traditional rules governing consent, particularly with regard to the manner in which contractual will is expressed and the adequacy of the safeguards established to protect consumers in the digital environment. Accordingly, this section examines the impact of artificial intelligence on the formation of consent, identifies the principal legal challenges raised by smart contracts in relation to consumer consent, and assesses the adequacy of the existing legal rules in providing the required level of protection.

2.1. The role of artificial intelligence in the formation of consumer consent in smart contracts

Artificial intelligence represents one of the most significant technological developments contributing to the evolution of smart contracts. Its role is no longer limited to providing a digital environment for the conclusion of contracts, but has extended to supporting negotiation processes, analysing data, and making certain decisions related to the performance of the contractual relationship. This development has affected the manner in which consumer consent is formed and expressed. It therefore becomes necessary to examine the role of artificial intelligence in the conclusion of smart contracts and to determine the extent to which intelligent systems and algorithms may influence the freedom and informed nature of the consumer's consent.

2.1.1. Mechanisms for concluding smart contracts based on artificial intelligence

The use of artificial intelligence in commercial contracting has recently expanded, and legal systems have differed in the terminology used to describe the role of artificial intelligence in contracting. Some have referred to it as an electronic agent, defined as "a program or electronic system of a computer that can act or respond to an act independently, totally or partially, without supervision or intervention from any other person".²⁷

Smart contracts are based on computer programs that translate the obligations agreed upon by the parties into programmable instructions, including the consequences arising from non-performance or breach. These obligations are then performed automatically through blockchain technology once the predetermined conditions are satisfied. Examples include smart contracts used in flood insurance, under which the insured amount is paid automatically upon the occurrence of a flood, and smart con-

26 Durovic, M., Willett, C. (2023). A legal framework for using smart contracts in consumer contracts: Machines as servants, not masters. *The Modern Law Review*, 86(6), 1398-1399. <https://doi.org/10.1111/1468-2230.12817>.

27 Ali, S. H. M., op. cit., 811.

tracts used in air transport, where compensation is automatically disbursed in the event of a flight delay.²⁸

In a smart contract, the offer, acceptance, and contractual terms may be incorporated into the computer code itself, so that the contract is automatically executed once the predetermined conditions are fulfilled. This mechanism, however, raises concerns regarding the parties' ability to negotiate or amend the contractual terms after the contract has been deployed on the blockchain. It therefore gives rise to questions as to the extent to which these technical characteristics are compatible with the requirements of contractual consent.²⁹

2.1.2. The effect of algorithms and smart systems on the freedom and awareness of consumer consent

Artificial intelligence provides an exceptional ability to understand the emerging needs and desires expressed by consumers through the internet. Personalization is considered one of the most prominent applications of artificial intelligence in online retail. Artificial intelligence algorithms analyze consumer data to create personalized shopping experiences, whereby artificial intelligence positively influences consumers' purchase intentions through tailored recommendations and targeted marketing messages. AI-supported personalization also leads to higher levels of consumer satisfaction and stronger loyalty, which reinforces the importance of artificial intelligence in creating attractive and personalized shopping experiences.³⁰

The impact of artificial intelligence is not limited to the analysis of consumer data; it also

extends to the use of such data to personalise contractual terms and the manner in which they are presented in accordance with the consumer's behaviour and preferences. This may, in turn, affect the consumer's understanding of the substance of the contract and the decision whether to accept it. Accordingly, although algorithmic personalisation may enhance efficiency and relevance, it may also undermine the autonomy of contractual decision-making where it is used to steer consumers toward terms or options that they might not have accepted had the information been presented in a neutral manner.³¹

Recommendation systems in e-commerce consist of sophisticated algorithms that employ machine-learning techniques and data analytics to provide users with personalised product recommendations. These systems analyse large volumes of user data, including browsing history, purchasing patterns, and preferences, to predict and anticipate individual consumer preferences with a high degree of accuracy.³²

The effects of algorithmic personalisation are not limited to facilitating consumer choice. Artificial intelligence may also personalise the information and contractual terms presented to consumers on the basis of their data, characteristics, and behaviour, thereby potentially influencing their decisions or exploiting particular vulnerabilities. This is especially the case where techniques are deliberately designed to steer consumers towards choices that they might not otherwise have made.³³ These effects may further extend to the use of AI-enabled tools designed to influence users' behaviour and choices without their full awareness, thereby giving rise to additional concerns regarding

28 Makki, Z. D. (2025). Legal challenges of smart contracts under blockchain technology. *Al-Zaytoonah University of Jordan Journal for Legal Studies*, 6(2), 55.

29 Al-Mahasneh, Y. O. M., op. cit., 16-17.

30 Ahmed, Y. A. S. (2025). The impact of using artificial intelligence technologies on consumers' purchasing decisions: An application to Amazon customers (A study of Amazon Egypt's AI-supported shopping experience). *Scientific Journal of Business Research*, No. 3 (Part 1), 295-296.

31 Scattarreggia, E. (2025). AI-driven smart contracts: Enhancing consumer protection or exacerbating consumer protection challenges? *Journal of Law, Market & Innovation*, 4(3), 610. <https://doi.org/10.13135/2785-7867/12837>.

32 Jabbar, M. S. (2025). E-commerce in the age of artificial intelligence: Digital transformation and its impact on consumer behavior. *Gulf Economics Journal*, No. 63, 224.

33 Scattarreggia, E., op. cit., 610.

the autonomy and freedom of decision-making.³⁴

The particular significance of consumer consent becomes even more pronounced in AI-enabled smart contracts where the contractual terms are predetermined by the trader and the consumer's role is limited to accepting them, thereby bringing such arrangements closer to contracts of adhesion. Artificial intelligence systems may also be used to influence consumer behaviour and induce consumers to accept particular terms by drawing upon analyses of their personal characteristics and behavioural patterns. This raises questions as to whether such acceptance genuinely reflects an informed and freely formed intention, particularly where the process of conscious deliberation over the contractual terms is effectively bypassed.³⁵ This challenge becomes particularly acute where contractual terms are expressed in the form of computer code that the parties may find difficult to understand directly, thereby potentially limiting their awareness of the contract's content and legal effects.³⁶

Given the complexity of algorithms, their reliance on data analysis, and their indirect influence on consumer choices, AI-enabled smart contracts also raise difficulties in verifying whether the contracting parties possess the requisite capacity. This concerns not only legal capacity in its traditional sense, but also what may be described as informational capacity, namely the party's ability to understand the technical and economic implications of the contract within the digital environment.

For a contract, or the parties' consent thereto, to be valid, the contracting parties must possess the requisite legal capacity to act. In other

words, they must have sufficient discernment and understanding. Verifying such capacity presupposes, in the first place, that the names and identities of the parties are known. This requirement is not always satisfied in contracts concluded through blockchain networks, since such contracts are often entered into by parties using pseudonyms, with the result that their true identities remain unknown. Consequently, it may be impossible to ascertain whether they possess the legal capacity required to contract.³⁷

Furthermore, one of the contracting parties may act under a mistake as to the identity of the other party, as may occur, for example, in cases of impersonation.³⁸ In light of these challenges, some scholars have proposed the establishment of a digital civil registry linked to blockchain platforms, in which information concerning the legal capacity of contracting parties could be recorded and verified before smart contracts are executed. Although such a solution remains technically difficult to implement at present, it may nevertheless constitute an important step towards ensuring the legal compliance of smart contracts and preventing their use by persons who lack the requisite legal capacity.³⁹

2.2. Legal challenges raised by smart contracts regarding consumer consent

The particularity of smart contracts raises a number of legal challenges that go beyond the traditional rules governing the formation of consent. While the expression of will in smart

34 López Rodríguez, A. M. (2025). Consumer protection in blockchain-based metaverses: A comparative study of cross-border legal gaps and platform governance. *Frontiers in Blockchain*, 8, Article 1675735, 4. <https://doi.org/10.3389/fbloc.2025.1675735>.

35 Ibid., 612.

36 Bassan, F., Rabitti, M. (2024). From smart legal contracts to contracts on blockchain: An empirical investigation. *Computer Law & Security Review*, 55, Article 106035, 18. <https://doi.org/10.1016/j.clsr.2024.106035>.

37 Al-Zayat, A. S. K. H. (2025). Expression of intent in contracts concluded through artificial intelligence. *Journal of Law for Legal and Economic Research*, 2(1), 16.

38 Al-Dabbous, A. M. (2020). Legal issues concerning the conclusion of smart commercial contracts by an intelligent agent in the blockchain era: Kuwait and the United Arab Emirates as a model—A comparative analytical study. *Journal of the Kuwait International Law School*, 8th year, Special Supplement, No. 8, 396.

39 Makki, Z. D., op. cit., 50.

contracts, which is based on programming code and blockchain technology, introduces new mechanisms for forming consent, it may also give rise to issues affecting the validity of such consent, particularly in terms of the consumer's awareness of its content and the possibility of proving defects that may affect it. This raises questions regarding the adequacy of the legal guarantees established to protect consumer consent in light of the technical characteristics of this form of contracting. Accordingly, this section examines the most significant of these challenges and evaluates the adequacy of the obligation to inform as a means of protecting consumer consent in smart contracts.

2.2.1. The particularity of expressing the will in smart contracts

Blockchain technology has produced a new contractual model represented by smart contracts, which are based on converting contractual terms into programming code that is executed automatically once the previously specified conditions are met. This contributes to the automation of contractual performance and limits the intervention of intermediaries. However, this technical particularity raises a number of legal challenges that may affect the validity of consumer consent, particularly regarding the extent to which the programming code corresponds to the true will of the contracting parties and the consumer's awareness of the legal effects resulting from the automatic execution of the contract. Additional challenges arise from the difficulty of modifying the contract or withdrawing from it once it has been recorded on the blockchain, as well as from the legal consequences that may result from programming errors or security vulnerabilities affecting the stability of the contractual relationship and the protection of consumers.⁴⁰

Smart contracts raise difficulties concerning the identification of the parties to the contrac-

tual relationship and the verification of their intention and legal capacity, particularly within a decentralized environment in which contracting parties may use pseudonyms and are not physically present in a single contractual setting. This makes it more difficult to verify their identities and to ascertain whether the legal requirements necessary for valid consent have been satisfied. The difficulty becomes more pronounced where the contract is performed automatically without direct intervention by the parties, thereby raising questions as to whether the technical mechanisms employed are sufficient to establish the identity of the contracting parties and verify their legal capacity.⁴¹

Some legal scholars take the view that the software used in smart contracts constitutes merely a means through which the user expresses contractual intention, in much the same way as any other technological instrument used in distance contracting, such as the telephone. Proponents of this view rely on the existence of a legal presumption that, where a person uses and relies upon smart software in forming a decision that subsequently takes the form of an offer or an acceptance, that person is deemed to have expressed an intention to contract and to have accepted responsibility for the acts and transactions generated by the software. Accordingly, the user may be held accountable for those acts as though they had been personally performed by him or her, by virtue of such legal presumption.⁴²

Acceptance in a smart contract may be expressed by assenting to the offer, including through the signing of a transaction by means of the contracting party's private key. For example, where a smart contract provides that a digital copy of a work is to be transmitted to the purchaser upon payment of a predetermined price, the purchaser's transfer of the agreed consideration and signing of the transaction may constitute acceptance. Once the relevant condition is satisfied, the smart contract may then automatically perform the corresponding

40 Al-Shahrani, A. A. H. (2026). Artificial intelligence and the legal characterization of electronic contracts in Islamic jurisprudence. *Al-Andalus Journal for Humanities and Social Sciences*, 150(13), 147.

41 Al-Dabbous, A. M., op. cit., 395.

42 Ali, S. H. M., op. cit., 836.

obligation without any direct intervention by the other party.⁴³ Autonomous artificial intelligence systems may independently undertake certain stages of the contracting process. They may be programmed to determine whether a contract should be concluded, when it should be concluded, with which party, and on what terms. As a result, the outcomes generated by such systems may, in certain circumstances, operate independently of the user's subsequent will and may be difficult to predict, thereby creating challenges in attributing the contractual expression to the direct intention of the contracting party.⁴⁴

The expression of contractual intention in smart contracts also raises the problem of the limited capacity of programming code to convey legal language. Smart contracts are drafted in programming languages, such as Solidity, which are not understood by the majority of contracting parties or legal professionals and may therefore prevent a full understanding of the content and legal effects of the contract. Programming code is primarily designed to execute instructions rather than to articulate, explain, or interpret contractual obligations. This may give rise to legal disputes resulting from programming errors or ambiguities and may limit the court's ability to interpret the contract without the assistance of a technical expert. These difficulties underscore the need for a clear legal framework governing smart contracts and ensuring adequate protection for the parties involved.⁴⁵

A recent study further indicates that offer and acceptance in smart contracts may be effected through mechanisms programmed on the blockchain, whereby the terms of the offer

and the corresponding acceptance are recorded and automated performance begins once the specified conditions are satisfied. This method, however, raises concerns regarding the genuineness of consent, the possibility of coding errors, and the absence of meaningful scope for negotiation. These characteristics may, in certain circumstances, bring smart contracts closer to contracts of adhesion.⁴⁶

In our view, although blockchain technology in smart contracts may provide evidentiary proof that a contract has been concluded, it does not establish that the intention of the contracting parties was free from defects of consent.

It follows from the foregoing that the distinctive character of the expression of intention in smart contracts does not lie merely in its electronic form, but rather in its connection with computer code that automatically performs what has been expressed. Accordingly, the technical formation of offer and acceptance and their recording on the blockchain do not necessarily resolve the question whether the electronic expression corresponds to the consumer's true intention, nor do they, in themselves, guarantee that the consumer's consent is conscious and informed.

On this basis, the application of the general rules governing electronic contracts to the expression of intention in smart contracts remains possible in principle. Nevertheless, the specific characteristics of programming and automated performance require those general rules to be supplemented by safeguards capable of ensuring the clarity and intelligibility of contractual terms, enabling consumers to understand those terms before expressing acceptance, and providing appropriate mechanisms for verifying their identity and intention, thereby ensuring effective protection of consumer consent in the digital environment.

43 Eissa, H. A-S. A. (2021). Concluding smart contracts through blockchain technology. *Journal of Legal and Economic Studies*, 7(2), 51.

44 Gaeta, M. C., Aulino, L., Troisi, E. (2023). The possible relationships between law and ethics in the context of artificial intelligence regulation. *Humana. Mente*, No. 44, 186.

45 Al-Sheikh, M. A. (2026). Smart contracts and the documentation of legal transactions through blockchain technology: A critical analytical study. *Journal of Legal and Social Sciences*, 11(1), 553.

46 Althabhwaji, N. M., Aburoub, R. F., Abd Rahman, M. R., Mihna, F. K. H., Sallal, H. A. (2025). Mutual consent in the age of smart contracts: A mixed-methods analysis of legal challenges. *IEEE Access*, 13. <https://doi.org/10.1109/ACCESS.2025.3619202>.

2.2.2. *The extent of the sufficiency of the obligation to inform for protecting consumer consent in smart contracts*

The Algerian legislature has established a framework for consumer protection by requiring traders to provide consumers with essential information concerning the product or service and the applicable contractual terms, thereby enabling them to form an informed intention before entering into the contract. This duty is regulated by Law No. 09-03 on Consumer Protection and the Suppression of Fraud, particularly Articles 17 and 18 thereof.⁴⁷ In addition, Article 8 of Law No. 04-02 laying down the rules applicable to commercial practices requires the seller, prior to the completion of the sale, to provide the consumer with “fair and truthful information concerning the characteristics of the product or service, the applicable conditions of sale, and the foreseeable limits of contractual liability arising from the sale or service”.⁴⁸

The concept of consumer information has also been extended to the digital environment through Executive Decree No. 13-378 laying down the conditions and procedures relating to consumer information. The Decree defines information relating to a product as any information addressed to the consumer on a label or in any document, “including by means of modern technological methods or through oral communication”.⁴⁹ This demonstrates that the legislature has not confined the provision of informa-

tion to any particular traditional form, thereby allowing, in principle, the duty to inform to extend to transactions concluded through digital means. Comparative studies emphasize⁵⁰ the importance of enabling consumers, prior to the conclusion of a smart contract, to review all of its terms and to understand its operational mechanisms and the consequences of its execution, particularly in light of the difficulty of reading and comprehending complex contractual terms in the digital environment.

Rapid technological development has, however, given rise to new forms of contracting, among the most significant of which are smart contracts based on blockchain technology and characterized by the automated execution and enforcement of contractual obligations. An examination of the foregoing provisions indicates that, although the Algerian legislature has not enacted specific rules governing smart contracts, the provisions relating to the protection of electronic consumers have been formulated in sufficiently broad and flexible terms to accommodate subsequent technological developments. The legislature has also expanded the permissible means through which information may be provided without prescribing a single method of disclosure.

Nevertheless, the application of the duty to provide information in the context of smart contracts gives rise to practical difficulties and a number of legal issues concerning the adequacy of existing electronic consumer-protection rules in addressing the risks arising from the technical nature of smart contracts. Contractual terms expressed in programming language may render both the content of the contract and its economic consequences difficult for the average consumer to understand. Providing consumers merely with conventional information concerning the relevant product or service may therefore be insufficient, in itself, to ensure informed consent, given the technical nature of smart contracts and their reliance on computer code

47 Articles 17 and 18 of Law No. 09-03 of 25 February 2009, relating to consumer protection and the suppression of fraud, Official Gazette of the People’s Democratic Republic of Algeria, No. 15, issued on 8 March 2009, as amended and supplemented by Law No. 18-09 of June 10, 2018, Official Gazette, No. 35, June 13, 2018;

48 Law No. 04-02 of 23 June 2004, laying down the rules applicable to commercial practices, Official Gazette of the People’s Democratic Republic of Algeria, No. 41, issued on 27 June 2004, as amended and supplemented by Law No. 10-06 of 15 August 2010, Official Gazette, No. 46, issued on 18 August 2010.

49 Executive Decree No. 13-378 of 9 November 2013, laying down the conditions and procedures relating to consumer information, Official Gazette of the People’s Democratic Republic of Algeria, No. 58, dated 9 November 2013.

50 Kasatkina, M. (2021). Consumer protection in the light of smart contracts. *ELTE Law Journal*, 2021(1), 98. <https://doi.org/10.54148/ELTELJ.2021.1.95>.

and automated execution. A consumer may have access to the essential information and data relating to the contract without necessarily being able to understand or appreciate the legal consequences arising from the smart contract before its conclusion.

In this context, the duty to provide information acquires particular significance in relation to smart contracts. It is not sufficient merely to enable the consumer to access the contractual terms; information relating to the smart contract should be made available in advance, in clear and intelligible natural language, to enable the consumer to understand its content, its mechanism of execution, and its legal effects before entering into the contract. Consumer protection therefore requires that programmed contractual terms be accompanied by an understandable translation and explanation, in order to ensure that the technical nature of the smart contract does not become an obstacle to the formation of conscious and informed consent.⁵¹ In this regard, it has been proposed that consumers should be provided with a version of the contract expressed in clear and comprehensible natural language, and that such a version should prevail in the event of any inconsistency with the underlying code. This approach would enhance the transparency and intelligibility of the contractual terms before execution.⁵²

A comparison with certain European legislative approaches shows that the issue is not confined to recognizing the possibility of concluding contracts electronically, but extends to the suitability of existing legal rules for the particular characteristics of smart contracts. In France, although Article 1366 of the Civil Code recognizes electronic writing, the application to smart contracts of requirements relating to

contractual clarity and the clear expression of contractual intention gives rise to particular difficulties where contractual terms are expressed in computer code. These concerns are especially important in consumer contracts, which are subject to a more stringent protective regime.⁵³ AI-enabled smart contracts may also take the form of contracts of adhesion, where the trader predetermines both the contractual terms and the code through which the contract operates, while the consumer's role is essentially limited to accepting them. This necessitates subjecting such contracts to more exacting requirements of transparency and protection of contractual autonomy.⁵⁴

This comparison reveals that, although the Algerian legal framework permits, in principle, the application of information duties to electronic contracting, it does not contain specific provisions requiring traders to inform consumers of the technical characteristics of smart contracts, the mechanism of their automated execution, or the consequences arising from programmed terms. Accordingly, the development of the duty to provide information under Algerian law should not be confined to broadening the means through which information is communicated. It should also extend to the substantive content of the information itself, to ensure that consumers understand the nature of the smart contract, its terms, and the effects of its execution before expressing their acceptance.

Comparative scholarship further confirms that the application of existing consumer-protection rules to smart contracts is not without difficulty, given that traditional legal rules may not fully accommodate the technical and legal characteristics of such contracts. One recent study has shown that existing legal frameworks provide a general foundation for consumer protection in transactions based on smart contracts, yet do not adequately address their distinctive

51 van Erp, S., Hanzl, M. (Project Reporters). (2022). *ELI principles on blockchain technology, smart contracts and consumer protection: Council draft*. European Law Institute, 53-54.

52 Mendoza, S. C., Fandiño, M. B. (2022). *Vicissitudes of smart contracts in consumer law, with regard to the existence and validity of the contract*. *Anuario de Derecho Privado*, No. 4, 60. Universidad de los Andes. <https://doi.org/10.15425/2022.648>.

53 Vičius, V. (2025). *Legal challenges of harmonizing smart contract regulations within the European Union*. *Teisé*, 134, 165-166. <https://doi.org/10.15388/Teise.2025.134.13>.

54 Scattarreggia, E. (2025), *op. cit.*, 612.

characteristics, particularly with regard to the protection of consumer rights and mechanisms for dispute resolution. This points to the need to update and adapt those rules in light of technological developments and evolving consumer needs.

Technological development should therefore not result in the displacement of existing legal protections. Rather, those protections should be adapted to the particular nature of smart contracts and their mechanisms of automated execution, thereby enhancing the effectiveness of consumer protection in the digital environment. By analogy, Algerian rules governing the duty to provide information may constitute an initial basis for protecting consumers in smart-contract transactions. Their effectiveness, however, requires the substantive scope of those duties to be developed so as to encompass information concerning the mechanism of code-based execution and the legal consequences of programmed terms, thereby enabling consumers to make an informed contractual decision before automated execution produces its effects.⁵⁵

The application to smart contracts of consumer-protection rules developed for electronic contracts may prove insufficient in light of their automated and potentially immutable characteristics. This calls for an adaptation of the existing protective framework so that it can respond more effectively to the specific features of smart contracts.⁵⁶ Comparative analysis further indicates that automation and the irreversibility of certain effects of smart contracts may reduce the effectiveness of traditional protective mechanisms, thereby supporting the development of legal measures capable of suspending unlawful execution or remedying its consequences.⁵⁷

55 Sari, H. B., Thalib, E. F., Meinarni, N. P. S. (2024). Implementation of smart contracts in Indonesia: An analysis of financial regulation, taxation, and consumer protection. *Jurnal Notariil*, 9(2), 68. <https://doi.org/10.22225/jn.9.2.2024.65-70>.

56 Aksoy, P. Ç., (2022). Smart contracts: To regulate or not? Global perspectives. *Law and Financial Markets Review*, 16(3), 233. <https://doi.org/10.1080/17521440.2023.2298192>.

57 D'Adda, A. (2022). Fundamental issues regarding "smart contract" in contract law. *Osservatorio del*

CONCLUSION

The study has demonstrated that the rapid development of artificial intelligence and blockchain technology has given rise to a distinctive contractual model embodied in smart contracts, which operate by converting contractual obligations into computer code and executing them automatically once predetermined conditions are satisfied. It has also shown that the particular nature of consent in this type of contract does not entail a departure from the general principles governing contract formation. Rather, its specificity lies primarily in the technological environment within which contractual intent is formed and expressed, and in the additional requirements imposed by such an environment to ensure that consumer consent is both informed and conscious.

Furthermore, through an analysis of Algerian legislation and by drawing on comparative legal approaches, the study has established that the existing legal framework provides an initial basis for protection. Nevertheless, it does not fully address the specific legal challenges and characteristics arising from this technology.

Study Findings

- Consent in smart contracts possesses distinctive characteristics arising from the technological environment through which contractual intent is expressed and contractual obligations are performed, without departing from its fundamental legal basis, namely the concurrence of the parties' wills.
- Smart contracts and blockchain technology raise legal issues relating to automated execution, the immutability of code, and the evidentiary value of transactions. Artificial intelligence further introduces challenges concerning the degree of autonomy involved in information processing and decision-making, as well as the extent to which technological

diritto civile e commerciale, Special Issue, 113-114. <https://doi.org/10.4478/106702>.

outputs correspond to the consumer's genuine contractual intent.

- Merely converting contractual terms into computer code is insufficient to ensure informed consent. Consumers must be provided, prior to the conclusion of the contract, with clear and comprehensible information regarding the content of the contract, its execution mechanism, and its legal and practical consequences.
- Algerian legislation does not currently provide a specific and comprehensive legal framework governing smart contracts. Although certain general rules applicable to electronic contracts and consumer protection may provide an initial degree of protection, they remain insufficient to address all the novel legal issues arising from smart-contract technology.
- The mere recording of a transaction on a blockchain does not, in itself, establish the validity of a party's consent or prove that such consent is free from defects. Blockchain technology primarily contributes to establishing and documenting the existence of a transaction. It is therefore necessary to distinguish between proof of the transaction itself and proof of the validity and integrity of contractual consent.
- The comparative legal analysis has shown that, despite differences in the degree of recognition and regulation of smart contracts across legal systems, comparative legislation generally tends towards adapting consumer-protection rules to the specific characteristics of smart contracts. This is particularly evident in measures aimed at strengthening pre-contractual information duties, ensuring the comprehensibility of coded contractual terms, and establishing mechanisms to address the consequences of automated execution. Such approaches may provide useful guidance for the Algerian legislature, provided

that they are adapted to the particular characteristics of the Algerian legal system.

Study Recommendations

- Adopt specific legislation governing smart contracts that defines their concept, legal nature, and legal effects, and regulates the relationship between the contractual agreement and the underlying computer code, while drawing on comparative legal approaches in a manner consistent with the specific characteristics of Algerian legislation.
- Develop the legal rules governing the expression of contractual intent and pre-contractual information duties in a manner that takes into account the particularities of smart contracts and artificial intelligence. Professionals should be required, prior to the conclusion of the contract, to provide consumers with clear and comprehensible technical and legal information concerning coded contractual terms, the mechanism of execution, and its consequences.
- Strengthen consumer-protection safeguards by establishing legal mechanisms that enable consumers to request the suspension of automated execution or the correction of its consequences where a defect in consent is established or where programmed execution is inconsistent with the parties' contractual intent. Such mechanisms should seek to strike an appropriate balance between the distinctive nature of automated execution and the effectiveness of legal protection.
- Develop the rules of electronic evidence by clearly determining the legal evidentiary value of data recorded on blockchain networks, while drawing on comparative legal solutions in a manner compatible with the particular characteristics of Algerian legislation.

REFERENCES:

Scholarly literature:

- Ahmed, Y. A. S. (2025). The impact of using artificial intelligence technologies on consumers' purchasing decisions: An application to Amazon customers (A study of Amazon Egypt's AI-supported shopping experience). *Scientific Journal of Business Research*, No. 3 (Part 1). [In Arabic];
- Aksoy, P. Ç., (2022). Smart contracts: To regulate or not? Global perspectives. *Law and Financial Markets Review*, 16(3). <https://doi.org/10.1080/17521440.2023.2298192>;
- Al-Dabbous, A. M. (2020). Legal issues concerning the conclusion of smart commercial contracts by an intelligent agent in the blockchain era: Kuwait and the United Arab Emirates as a model—A comparative analytical study. *Journal of the Kuwait International Law School*, 8th year, Special Supplement, No. 8, 389. [In Arabic];
- Al-Mahasneh, Y. O. M. (2024). The legal nature of smart contracts programmed using blockchain technology. *International Journal of Legal Research and Legal Studies*, 3(4). [In Arabic];
- Al-Shahrani, A. A. H. (2026). Artificial intelligence and the legal characterization of electronic contracts in Islamic jurisprudence. *Al-Andalus Journal for Humanities and Social Sciences*, 150(13). [In Arabic];
- Al-Sheikh, M. A. (2026). Smart contracts and the documentation of legal transactions through blockchain technology: A critical analytical study. *Journal of Legal and Social Sciences*, 11(1). [In Arabic];
- Al-Zayat, A. S. K. H. (2025). Expression of intent in contracts concluded through artificial intelligence. *Journal of Law for Legal and Economic Research*, 2(1). [In Arabic];
- Ali, S. H. M. (2024). Artificial intelligence and its role in concluding commercial contracts. *Journal of Legal and Economic Research*, 14(90). [In Arabic];
- Althabhwawi, N. M., Aburoub, R. F., Abd Rahman, M. R., Mihna, F. K. H., Sallal, H. A. (2025). Mutual consent in the age of smart contracts: A mixed-methods analysis of legal challenges. *IEEE Access*, 13, 176531. <https://doi.org/10.1109/ACCESS.2025.3619202>. [In Arabic];
- Bassan, F., Rabitti, M. (2024). From smart legal contracts to contracts on blockchain: An empirical investigation. *Computer Law & Security Review*, 55, Article 106035. <https://doi.org/10.1016/j.clsr.2024.106035>;
- Belkaidi, F. Z., Zougar, A. (2025). Between technology and law: The future of smart contracts in the age of artificial intelligence. *Algerian and Comparative Public Law Journal*, 11(2). [In Arabic];
- Ben Tria, M. (2019). Smart contracts integrated into blockchain. *Journal of Law, Kuwait International Law School*, 1(4). [In Arabic];
- Bouandel, W. (2024). Artificial intelligence as a contracting party. *Journal of Social Sciences*, 9(3). [In Arabic];
- Bourgueda, N. M. (2017). Contracts concluded through modern systems (Doctoral dissertation). Faculty of Law, University of Algiers. [In Arabic];
- D'Adda, A. (2022). Fundamental issues regarding "smart contract" in contract law. *Osservatorio del diritto civile e commerciale*, Special Issue. <https://doi.org/10.4478/106702>;
- Daoud, M., & Zerqin, A. (2022). Smart contracts integrated into blockchain: The beginning and end of traditional contracts. *Algerian Journal of Legal and Political Sciences*, 59(1). [In Arabic];
- Dondero, B. (2017). Smart contracts. In *Civil law in the digital age: Proceedings of the conference of the Master 2 in General Private Law and the Civil Law Laboratory – Paris II*, 21 April 2017. LexisNexis. [In French];

- Durovic, M., Willett, C. (2023). A legal framework for using smart contracts in consumer contracts: Machines as servants, not masters. *The Modern Law Review*, 86(6). <<https://doi.org/10.1111/1468-2230.12817>>;
- Eissa, H. A-S. A. (2021). Concluding smart contracts through blockchain technology. *Journal of Legal and Economic Studies*, 7(2). [In Arabic];
- Gaeta, M. C., Aulino, L., Troisi, E. (2023). The possible relationships between law and ethics in the context of artificial intelligence regulation. *Humana. Mente*, No. 44;
- Hassan, H. E. H. A. (2023). Smart contracts: A comparative analytical study. *Security and Law Journal*, 31(1). [In Arabic];
- Hassan, H. M. M. (2023). Smart contracts concluded through blockchain technology. *The Legal Journal (A Specialized Journal in Legal Studies and Research)*, 16(1), Egypt. <https://jlaw.journals.ekb.eg/article_297185.html>. [In Arabic];
- Hewett, N., Lehmacher, W., Wang, Y. (2019). Inclusive deployment of blockchain for supply chains: Part 1 – Introduction. Geneva: World Economic Forum;
- Homsy, M. (2025). Rules governing distance contracting in light of recent legal transformations (Doctoral dissertation). Faculty of Law and Political Science, University of 8 May 1945 Guelma. [In Arabic];
- Jabbar, M. S. (2025). E-commerce in the age of artificial intelligence: Digital transformation and its impact on consumer behavior. *Gulf Economics Journal*, No. 63. [In Arabic];
- Kasatkina, M. (2021). Consumer protection in the light of smart contracts. *ELTE Law Journal*, 2021(1). <<https://doi.org/10.54148/ELTELJ.2021.1.95>>;
- Lasmoles, O. (2018). The difficult apprehension of blockchains by law. *International Review of Economic Law*, 2018/4, Vol. XXXII, 463. <<https://doi.org/10.3917/ride.324.0453>>. [in French];
- López Rodríguez, A. M. (2025). Consumer protection in blockchain-based metaverses: A comparative study of cross-border legal gaps and platform governance. *Frontiers in Blockchain*, 8, Article 1675735. <<https://doi.org/10.3389/fbloc.2025.1675735>>;
- Makki, Z. D. (2025). Legal challenges of smart contracts under blockchain technology. *Al-Zaytoonah University of Jordan Journal for Legal Studies*, 6(2). [In Arabic];
- Mansour, D., Zerrouki, A. (2022). Smart contracts integrated into blockchain: The beginning and end of traditional contracts. *Algerian Journal of Legal and Political Sciences*, 59(1). [In Arabic];
- Maugeri, M. (2022). Smart contracts, consumer protection, and competing European narratives of private law. *German Law Journal*, 23(6). <<https://doi.org/10.1017/glj.2022.58>>;
- Mekki, M. (2018). The contract as the object of smart contracts (Part 1). *Dalloz IP/IT: Intellectual Property and Digital Law*, No. 7. [In French];
- Mendoza, S. C., Fandiño, M. B. (2022). Vicissitudes of smart contracts in consumer law, with regard to the existence and validity of the contract. *Anuario de Derecho Privado*, No. 4. Universidad de los Andes. <<https://doi.org/10.15425/2022.648>>. [In Spanish];
- Sari, H. B., Thalib, E. F., Meinarni, N. P. S. (2024). Implementation of smart contracts in Indonesia: An analysis of financial regulation, taxation, and consumer protection. *Jurnal Notariil*, 9(2). <<https://doi.org/10.22225/jn.9.2.2024.65-70>>;
- Ahmed, Y. A. S. (2025). The impact of using artificial intelligence technologies on consumers' purchasing decisions: An application to Amazon customers (A study of Amazon Egypt's AI-supported shopping experience). *Scientific Journal of Business Research*, No. 3 (Part 1), 295–296. [in Arabic];
- Scattarreggia, E. (2025). AI-driven smart con-

tracts: Enhancing consumer protection or exacerbating consumer protection challenges? *Journal of Law, Market & Innovation*, 4(3). <<https://doi.org/10.13135/2785-7867/12837>>;

van Erp, S., Hanzl, M. (Project Reporters). (2022). *ELI principles on blockchain technology, smart contracts and consumer protection: Council draft*. European Law Institute;

Vičius, V. (2025). Legal challenges of harmonizing smart contract regulations within the European Union. *Teisė*, 134. <<https://doi.org/10.15388/Teise.2025.134.13>>.

Normative acts:

Arizona Revised Statutes, § 44-7061, added by House Bill 2417 of 2017 (Arizona, United States);

Decree No. 2018-1226 of 24 December 2018, concerning the use of a shared electronic recording system for the representation and transfer of financial securities and for the issuance and transfer of minibonds. *Official Journal of the French Republic*, No. 0298. [In French];

Decree of the President of the Republic of Belarus No. 8 of 21 December 2017, "On Development of Digital Economy". [In English]

Executive Decree No. 13-378 of 9 November 2013, laying down the conditions and procedures relating to consumer information, *Official Gazette of the People's Democratic Republic of Algeria*, No. 58, dated 9 November 2013. [In Arabic]

Law No. 04-02 of 23 June 2004, laying down the rules applicable to commercial practices, *Official Gazette of the People's Democratic Republic of Algeria*, No. 41, issued on 27 June 2004, as amended and supplemented by Law No. 10-06 of 15 August 2010, *Official Gazette*, No. 46, issued on 18 August 2010. [In Arabic];

Law No. 05-10 of 20 June 2005, amending and supplementing Ordinance No. 75-58 of 26 September 1975 containing the Civil Code, as amended and supplemented, *Official Gazette of the People's Democratic Republic of Algeria*, No. 44, dated 26 June 2005. [In Arabic];

Law No. 09-03 of 25 February 2009, relating to consumer protection and the suppression of fraud, *Official Gazette of the People's Democratic Republic of Algeria*, No. 15, issued on 8 March 2009, as amended and supplemented by Law No. 18-09 of June 10, 2018, *Official Gazette*, No. 35, June 13, 2018;

Law No. 17-11 of 27 December 2017, containing the Finance Law for 2018, *Official Gazette of the People's Democratic Republic of Algeria*, No. 76, dated 28 December 2017. [In Arabic];

Law No. 18-04 of 10 May 2018, laying down the general rules relating to postal services and electronic communications, *Official Gazette of the People's Democratic Republic of Algeria*, No. 27, issued on 13 May 2018. [In Arabic];

Law No. 18-05 of 10 May 2018, relating to electronic commerce, *Official Gazette of the People's Democratic Republic of Algeria*, No. 28, issued on 16 May 2018. [In Arabic];

Ordinance No. 2016-520 of April 28, 2016, concerning cash vouchers, *Official Journal of the French Republic*, No. 0101, April 29, 2016 (France). [In French];

United Arab Emirates Government. (2018). *UAE Blockchain Strategy 2021*, launched on 11 April 2018. <<https://u.ae/en/about-the-uae/digital-uae/uae-blockchain-strategy-2021>>.

Vermont Statutes, Title 12, § 1913, added by Act No. 157 of 2016 (Vermont, United States); [in English]

ჟურნალის ელექტრონული ვერსია შეგიძლიათ
იხილოთ ჟურნალის ვებგვერდზე: www.lawandworld.ge
ელ. ფოსტა: info@lawandworld.ge
მისამართი: გურამიშვილის გამზირი 76. თბილისი. 0141
ტელეფონი: (+995 32) 2 000 171 (120); (+995 596) 171 171

The online version of the journal is available on the website:

www.lawandworld.ge

E-mail: info@lawandworld.ge

Address: 76 Guramishvili ave. Tbilisi. 0141

Phone: (+995 32) 2 000 171 (120); (+995 596) 171 171