EPLO
European Public Law Organization

Report

of

THE EPLO GLOBAL RULE OF LAW COMMISSION

on

THE RULE OF LAW IN AFRICA

CONTENTS

LIST of ACRONYMS

AAACA	African Association of Anti-Corruption Authorities
ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Commission on Human Rights and People
ACtHRP	African Court of Human Rights and People
ADR	Alternative Dispute Resolution
AfCFTA	African Continental Free Trade Area
AJIF	African Judicial Independence Fund
AMU	Arab Maghreb Union
ANAC	National Anti-Corruption Authority
APNAC	African Parliamentarians Network Against Corruption
APRM	African Peer Review Mechanism
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
CAACC	Commonwealth Africa Anti-Corruption Centre
CPI	Corruption Perception Index
DRC	Democratic Republic of Congo
EAAP	East Africa Association of Prosecutors
EAC	East African Community
EACJ	East Africa Court of Justice
EAJMA	East African Judges and Magistrates Association
ECOWAS	Economic Community of West African States
EPLO	European Public Law Organization
FGM	Female Genital Mutilation
FIDH	International Federation for Human Rights
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
GCB	Global Corruption Barometer
GDP	Gross Domestic Product
GRoLC	Global Rule of Law Commission
ICC	International Criminal Court
ICJ	International Court of Justice
JAS	Judiciary Automated Systems
JSC	Judicial Service Commission
IGRoL	Institute for the Global Rule of Law
IIAG	Ibrahim Index of African Governance
IVS	Interactive Voice Systems

KQ	Key Question
MENA	Middle East and North Africa
MONUC	UN Organization Mission in the Democratic Republic of the Congo
MONUSCO	UN Organization Stabilization Mission in the Democratic Republic of Congo
NACA	National Anti-Corruption Authority
NACIWA	Networks of National Anti-Corruption Institutions in West Africa
NDPP	National Director of Public Prosecution
NGO	Non-Governmental Organization
NPA	National Protection Agency
OAU	Organization of African Unity
ODPP	Office of the Director of Public Prosecution
OECD	Organization for Economic Cooperation and Development
OHADA	Organization for the Harmonization of Business Law in Africa
RECs	Regional Economic Communities
RTI	Right to Information
SADC	Southern African Development Community
SACJF	Southern African Chief Justice Forum
SAFLII	South African Legal Information Institute
SGBV	Sexual or Gender Based Violence
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Human Rights
WACAP	West African Network of Central Authorities and Prosecutors

A. Introduction

1. Foreword

African philosophical and legal traditions offer unique perspectives on the rule of law. They are characterized by their strong diversity, reflecting a broad spectrum of indigenous knowledge systems and cultural practices. Far from representing a single intellectual bloc, African legal traditions offer multiple approaches to justice, authority, and governance. Common threads, such as an emphasis on social cohesion, restorative justice, and consensus-based governance challenge dominant Western legal paradigms and offer valuable alternatives that prioritize social and global harmony. In this sense, Western and other legal cultures stand to gain significantly from engaging with indigenous African legal philosophies, which offer rich and underexplored resources for rethinking the rule of law in more inclusive terms.

The periods of Roman, Byzantine and Islamic conquests, colonialism and post-colonialism all played a significant role in the transformation of justice and governance systems across the African continent. During the eras of conquest and colonialism, indigenous legal orders were most often suppressed or reshaped, giving way to hybrid legal systems composed of both imposed and indigenous norms. Understanding this historical legacy is essential for appreciating the complexity and pluralism of Africa's legal and justice systems today.

The commitment to the rule of law occupies a central place in the constitutional and legislative frameworks of many African states and the supranational framework of the African Union played a vital role in advancing a continental vision of governance rooted in democracy, human rights, and the rule of Law. Through key instruments such as the *African Charter on Democracy, Elections and Governance*, and the *Agenda 2063: the Africa we want*, the African Union has given impetus to building strong institutions that reflect Africa's shared values and aspirations. These efforts aim to reinforce legal legitimacy, foster citizen trust, and promote inclusive and accountable governance across member states.

However, the empirical reality across much of the continent reveals a persistent and often widening gap between the African Union's aspirations and national formal commitments to the rule of law on the one hand and actual state practice on the other. This disjuncture is rooted in the enduring strength of countervailing forces across the African continent such as entrenched political patronage systems, under-resourced institutions and selective enforcement of the law. The persistence of these dynamics erodes the legitimacy of legal norms and undermines the consolidation of democratic governance. Enduring civil conflicts and the recent resurgence of unconstitutional changes of government in several African countries further underscore this disconnect, highlighting the fragility of the rule of law despite several decades of formal progress in Africa.

Efforts to uphold and strengthen the rule of law in Africa are not only a matter of justice and governance, they are foundational to achieving sustainable socio-economic development. Strong legal institutions enhance transparency, reduce corruption, protect property rights,

and create a stable environment for investment and innovation. Ultimately, these conditions support broader economic growth, reduce inequality, and improve the quality of life for all citizens.

This Report on the Rule of Law in Africa is especially timely in light of ongoing governance challenges, rising civic demands, and dynamic socio-political shifts. Drawing on numerous case studies, it offers critical insights into the strengths and vulnerabilities of legal institutions across the continent, while also highlighting pathways for reform that draw on regional specificities and inspiring legal innovations.

2. Report Concept and Methodology

The objective of this report is to contribute to the establishment of a comprehensive global understanding of the rule of law aligned with UN Universal Values and embracing diversity. To achieve this goal, the report examines the various principles - or indicators - of the rule of law in the African continent, analyzing some of the key challenges in their implementation and highlighting illustrative case-studies which can serve as inspirational models.

A. The Concept of the Rule of Law

The rule of law is a powerful idea that has been key to the development of human civilization.

The concept of submitting human communities to the rule of abstract and general rules and thus removing them from the contingency of arbitrariness and the will of a single or few rulers, be they in public or private positions of power, is a compelling and revolutionary idea central to contemporary culture.

Everyone in a position of authority should be constrained by an -*a priori* defined- framework of rules that guide his or her actions; rules that should be neither discretionary nor arbitrary. The rules should be publicly adopted as defined by previously established proceedings, binding on every institution and every individual.

The rule of law is foremost about government: those who exercise public powers must operate against a framework of law in everything they do and be accountable to the law should they infringe their powers. Such a framework of law encompasses procedural and formal elements, as well as substantive ones, concerning the core protection of human rights. The foundational element that underpins the national and international legal orders that emerged after World War II is human dignity. It demands that the rule of law also be concerned with protecting equality, fundamental rights and the liberties of individuals.

It was after World War II that the distinction between ‘rule of law’ and ‘rule by law’ became clear. Rule by law occurs when those in power use legal rules rather than *ad hoc* arbitrary decisions, even if those rules are oppressive or unfair, granting significant privileges to rulers. In this case, public power changes the law whenever it is useful for it and the law is at the service of policy rather than policy being subject to the law. On the other hand, the rule of law is democratic and libertarian, as it imposes limitations on the actions of those in power, ensuring that the law governs their conduct.

In addition to the challenges posed by public powers, the rule of law faces contemporary threats from private entities, particularly in the digital age where technology and multinational

corporations wield significant influence. The growing dominance of tech giants like Alphabet and Meta, and other private powers raises concerns about the protection of individual freedoms. These entities, with immense resources and global reach, can impact societies in ways that may undermine the principles of the rule of law. The rule of law therefore demands initiatives to safeguard individual freedoms. These initiatives extend beyond governmental actions and address the potential abuses of power by private entities.

A part of legal scholars suggest that the rule of law is contested, vague, and disputed.

For the Global Rule of Law Commission (GroLC), the rule of law is, first and foremost, an ideal: an aspirational guiding principle embedding not only the language of lawyers but human culture in its entirety.

The GRoLC acknowledges that contestation abounds on the meaning of the rule of law and its normative and empirical implications in each geographical, temporal, and historical context. Thus, it makes every effort to fix its concrete meaning, a precarious and limited task. Whereas some might regard the common law as the bulwark of protection against tyranny, others will claim that the rule of law will demand nothing less than judicial review of legislation and administrative courts separate from the remaining judiciary.

Different iterations of the rule of law only highlight the richness of diverse legal cultures, something that this Commission is bound to cherish and respect in accordance with its founding statute – recognizing that a global concept of the rule of law can only be determined by introducing a dialogue of civilizations, respecting universal values, and recognizing the diversity and equal and intrinsic worth of different legal cultures.

It should be noted that the GRoLC and the working group set up by the Institute for the Global Rule of Law (IGRoL) conducted substantive research by reviewing the numerous distinguished rule of law theorists and key international sources, focusing on relevant United Nations (UN) documents. They weighed the various points of view, trying to offer as balanced and universally applicable a solution as possible.

In accordance with the deliberations of the GRoLC, the following definition has been adopted:

The Rule of Law is an ideal set of principles of governance that informs a legal system to a greater or lesser extent. Such a system englobes separation of powers, a government and private actors accountable by law, and an independent and accessible justice system. Its rules should be promulgated and public, stable, clear, non-contradictory, general and prospective, be enforced equally and provide for individual freedom.

To guide the analytical work of the GRoLC reports, the above-defined concept of the rule of law comprises the following indicators:

Indicator 1: Separation of powers

- Separation between lawmaking, law enforcement and adjudication based on the law
- Effective control of the separate branches and limitation of political powers by law
- Transition of power is subject to the law
- Electoral justice is guaranteed as well as free and fair elections

- The lawmaking process should respect the will of the citizens and conditions for an effective lawmaking craftsmanship

Indicator 2: Access to justice

- Judicial accountability
- Transparency of the judiciary
- Prosecution service and support for victims of crime
- Legal aid, judicial fees, and digitalization
- Standard length of proceedings, effective and efficient justice
- Anti-corruption measures, criminal, and preventative measures
- Supporting the role of the civil society

Indicator 3: Independence of the judiciary

- Clear, strict, and written rules for recruitment, appointment, promotion, demotion, discharge of judges and judicial recusal
- Impartiality and integrity (absence of bias) of judges
- Implementation of court decisions
- Prosecutorial independence
- Protection of judges from political attacks
- Independence of lawyers and bar associations

Indicator 4: Government Accountability

- Institutional effectiveness
- Effective investigation and prosecution of high-level officials and judicial review of governmental action
- Protection of whistleblowers
- Right to access public information (transparency)
- Anti-corruption measures and criminalization tools, application of sanctions
- Quality of court bureaucracy
- Openness of government work

Indicator 5: Legal Certainty

- Measures for legal awareness
- Prospective, general, public, and accessible laws and court decisions
- Hierarchical structure of rules

- Predictable laws

Indicator 6: Protection of Rights

It must be noted at this point that the present Report does not offer an extensive analysis of Indicator 6 and the specific conditions upon which its fulfillment and realization rest. The GRoLC does not consider this Indicator to be of lesser importance. Rather, the conscious choice to exclude from this Report a detailed analysis of the implementation and adherence to human rights standards in Africa springs from their omnipresence in all other Indicators (e.g. independence of the judiciary is a feature of the right to a fair trial). The notion of human dignity, inherent in human rights, must be understood also as the endpoint of the rule of law. As noted by Raz: "observance of the rule of law is necessary if the law is to respect human dignity."[1]

B. Report Objectives

The first and primary objective of the GRoLC, as stated in the Regulation of the EPLO establishing it, is to develop and propose a global concept of the rule of law, through examination and study of the various rule of law traditions around the world. In this way, the GRoLC aims to contribute to a dialogue of civilizations, one of the bases on which the EPLO has been founded by its constitutive Treaty and Rules.

The present Report, dedicated to the "The Rule of Law in Africa" is the third report prepared by the GRoLC. The first report of the GRoLC submitted to the UN General Assembly in July 2024 was dedicated to "the Rule of Law in Europe and its development through time, with a special focus on seminal matters", and the second report was dedicated to "The Rule of Law in the United States and Canada". There have been significant national political developments and geopolitical shifts since the publication of these reports, which contribute to the timeliness of the present report dedicated to Africa. Many of the trends highlighted in the following chapters are found in other regions of the world or have an impact much beyond the boundaries of the African continent.

The EPLO understands the fact that the World has developed on the basis of diverse legal cultures and, despite the fact that the predominant element in all of them is their reference to the Roman Law tradition, the Organization respects local cultures, which always color the Law and give it specific characteristics.

In view of the above, the GRoLC Reports aim to be different in relation to other reports on similar matters prepared by authoritative institutions around the globe. Our Reports do not aim at denouncing violations of the rule of law here or there, but at constructively approaching the subject so that the considerations presented can be helpful to States and other public authorities, as well as various national and international NGOs, think-tanks and other members of civil society, in seeking to protect and promote the rule of law. Moreover, the central aim remains to understand the world and its multiculturalism, multicentric development, and to promote State equality.

[1] J. Raz, 'The Rule of Law and its Virtue', in *The Authority of Law: Essays on Law and Morality*, Oxford University Press (OUP),1979, p.221.

C. Report Methodology

The present Report has been prepared in line with the methodology discussed within the GRoLC. Under President Giuliano Amato's guidance, all GRoLC members participated in the process, providing contributions and joining in dedicated meetings held in January and July 2025.

A specific "Africa Task Force" constituted of Giuliano Amato, President of the Commission, Carlos Feijó, Full Professor of Law at the University of Agostinho Neto in Angola, Jorge Carlos Fonseca, Former President of Cabo Verde, Lúcia da Luz Ribeiro, President of the Constitutional Court of Mozambique and Professor at the Law Faculty of Eduardo Mondlane, and Raychelle Awuor Omamo, Ambassador, Former Minister for Foreign Affairs of Kenya, all members of the Global Rule of Law Commission, held regular drafting review meetings.

The EPLO Institute for the Global Rule of Law relied on the support of a research team composed of professors from the EPLO European Law and Governance School who contributed to the research and helped the GRoLC prepare the Report.

The chapters dedicated to the research focus areas do not purport to give an exhaustive description of all rule of law issues in Africa, but to present significant features and developments. It should be underlined that the GRoLC through this Report approaches the concept of the rule of law by targeting its most important aspects. Being fully aware and conscious of the inexhaustible nature of the matter, the GRoLC opts to analyze only those issues it considers to be of a seminal or fundamental character for the elaboration of the concept.

States can turn to the GRoLC for advice and expertise on how best to follow the Report's assessments and implement reforms that will enable them to develop their practices according to the GRoLC's rule of law benchmarks. The analysis, which was conducted on the basis of the indicators outlined above, was enriched by the study of best and worst practices in the research focus areas of the Report, thus providing valuable insight into the main rule of law issues as they are regulated and experienced on the African continent.

The authors worked on the basis of predominantly African data and sources, such as the African Union Governance Reports and the Ibrahim Governance Report of 2024. They also researched data from the World Bank, United Nations Reports, the World Justice Project and the International Bar Association.

B. Focus area: Africa

1. Introduction

The African continent is one of remarkable diversity. It is home to over 3000 ethnic groups and more than 2000 languages.[2] Its cultural diversity is as vast as its geographical landscapes, climate variety and resource endowments. However, the African continent is as well shaped by a sense of shared destiny, with similar cultural values and a shared history of struggle against colonialism and pursuit of self-determination, freedom, peace and prosperity. With 60% of the African population under 25 years of age, the African continent is moreover the world's youngest and most dynamic continent.[3]

African ancient civilizations shaped African history and laid the foundations for various cultural and social structures seen in Africa today. The Arab expansion in Africa between the 7th and 14th centuries, as well as the colonial era, marked by European conquest and partitioning of Africa, had a lasting impact on the continent's culture. Conquerors and colonial powers imposed their languages, religions, and governance structures, which clashed with indigenous practices. The struggle against colonialism and the subsequent fight for independence was a strong factor in both shaping national identities and a shared African culture and identity.

The continent demonstrated politically its strong sense of unity, shared purpose and aspirations with the transformation of the Organization of African States into the African Union (AU) in 1999. More recently, the adoption in 2016 of *Agenda 2063: "The Africa We Want"* set a road map for social and economic development, continental and regional integration, democratic governance, peace and security.

Good governance under the principle of the rule of law is one of the AU member States' shared objectives. It is not only enshrined in the Preamble of the AU Constitutive Act but also stands out as one of the key aspirations of the Agenda 2063, expressed as "*An Africa of good governance, democracy, respect for human rights, justice and the rule of law".* Moreover, it recognizes governance as an essential component in the efforts to achieve continental development goals. It acknowledged the relationship between the rule of law, democracy and economic development, for example by linking the respect for civil and political rights with the right to development in the New Partnership for Africa's Development (NEPAD). The 'condemnation and rejection of unconstitutional changes of governments' and the 'rejection of impunity' are other examples of principles adopted by the AU member States that demonstrate their joint commitment to the rule of law.

The principle of the rule of law is also explicitly recognized at the national level in the constitutions of at least 23 African countries.[4] Nevertheless, its recognition in principle does

[2] UNESCO Department for Intangible Cultural Heritage, see also: https://www.unesco.org/en/articles/unesco-and-promotion-languages-africa-cultural-diversity-and-multilingualism, all links have been accessed the 17th of September 2025.

[3] UN World Population Prospect 2024.

[4] Namely those of Algeria (Preamble and art 203); Angola (arts 2, 6, 11, 129, 174, 193, 202, 211, 212 & 236); Cameroon (Preamble); Cape Verde (Preamble and arts 2 & 7); Central African Republic (Preamble and art 18); Chad (Preamble); Comoros (Preamble); Egypt (arts 1, 94, 198 and the whole of chapter 4); Ethiopia (Preamble and art 52); Madagascar (Preamble, arts 1, 43, 107, 112, 113, 118 & 136); Gabon (art 9);The Gambia (sec 60); Ghana (Preamble and art 36), Kenya (Preamble, arts 10, 91, 146, 238 & 258); Lesotho (sec 154); Namibia (art 1); Nigeria (sec 315); Rwanda (Preamble and art 10); Senegal (Preamble); South Africa

not predicate its implementation in practice. Implementing the principles of governance under the rule of law largely depends on contextual interpretations as well as cultural, political, economic and societal factors.[5]

Among some of the most salient characteristics of the African continent which impact the rule of law are the following:

- Juridical pluralism characterizes most African States, which means that local legal traditions and community-driven practices, also understood as "customary law",[6] are an integral and significant part of the legal framework, alongside statutory law and international laws. Customary laws are based on traditional norms and values, typically unwritten, passed through oral tradition, and enforced by community institutions, such as local chiefs, elders, or community leaders. Customary Law usually has jurisdiction over land disputes, inheritance, family/marriage issues and local conflicts, while statutory law usually addresses criminal cases, constitutional matters, civil disputes and commercial law. Customary systems are popular for reflecting local values and customs, and being delivered in local languages by respected community members, usually free of charge or lower in cost compared to formal courts. Their aim is to maintain social harmony, with emphasis placed on reconciliation and compensation rather than punishment. In comparison with other regions of the world, the highest level of recognition of customary law is found in African constitutions, both in terms of the number of countries with relevant provisions and the breadth of aspects of customary law covered. Of 54 African constitutions, 33 refer to customary law in some form,[7] by recognizing either the principle of legal pluralism, traditional institutions, the rights and traditions of indigenous populations, as well as the recognition of customary courts or dispute resolution mechanisms, as long as all of the above are consistent with constitutional principles and values.

- Collective rights often hold greater significance than individual rights, which are predominantly rooted in Western liberal thought. African societies have historically emphasized social cohesion, and collective ownership, particularly regarding land, natural resources, and cultural heritage. The African Charter on Human and Peoples' Rights, for instance, explicitly articulates collective or "peoples'" rights such as the right to self-determination, freely dispose of natural resources, development, peace and security, and a satisfactory environment. These collective rights are essential for preserving group identities, as well as achieving social justice and sustainable development in many African States. On this basis, frictions can arise in some African States where liberal democracies, emphasizing individual rights and personal freedoms, clash with traditional collective values, leading to philosophical interrogations whether liberal democracy, rooted in Western individualism, truly fits Africa's communal traditions.

(sec 1); South Sudan (Preamble, secs 46, 48, 125, 151, 156, 157 & 159); Tanzania (Preamble, arts 1, 6, 8 & 265); and Zimbabwe (Preamble, arts 3, 90, 114, 164, 165 & 206).

[5] According to the 2024 Ibrahim Index Report on African Governance, 33 countries saw their governance indicators improve, while 21 saw them deteriorate over the period 2014-2024. At the continental averages level, overall progress has come to a standstill in 2022.

[6] We will use the brand definition of Swiderska et al.: "Customary 'laws' include customary worldviews, principles or values, rules and codes of conduct, and established practices. They are enforced by community institutions, and can have sanctions attached. (..) Some practices and beliefs acquire the force of law. They are locally recognised, orally held, adaptable and evolving.", Kr. Swiderska et al., *Protecting Community Rights over Traditional Knowledge: Implications of customary laws and practices. Key findings and recommendations 2005-2009*, IIED, 2009, p.5.

[7] K. Cuskelly, *Customs and Constitutions: State recognition of customary law around the world*, IUCN, 2011, p.6.

- Religious beliefs and practices play a central role in shaping African identity and structuring social interactions, political institutions and economic activity. In addition to African Indigenous religions, Christianity and Islam, which make up for 99% of the religious affiliations, there are several minority religions usually associated with specific ethnic groups or diaspora communities, such Hinduism, Buddhism, Judaism and Bahá'í Faith. Christianity and Islam both have a long history and strong presence in Africa, and have also been shaped by African cultural, social and political contexts. A significant number of African States incorporate Islamic law (Sharia) and Islamic jurisprudence into their legal systems and governance, either partially or fully, specifically in Egypt, the Maghreb, the Sahel, and the Swahili Coast. Similarly to other regions of the world, militant Islamic violence poses a serious threat to democratic governance and the rule of law in some parts of Africa, in particular in the Sahel, Somalia and the Lake Chad basin.[8]

- Conflicts pose challenges to the rule of law in the majority of African States: no less than 35 armed (non-international) conflicts taking place in Africa on the continent in 2024[9] involving a multitude of armed non-state actors. The majority of such conflicts are connected to a country's attempt to transition to a stable rule (e.g. South Sudan & Libya), while certain conflicts relate to terrorist attempts to destabilize an otherwise established regime (e.g. Somalia, Kenya, Mozambique). Some of them are long-lasting and hence pose insurmountable challenges to the consolidation of the rule of law in those States (e.g. Democratic Republic of Congo & Central African Republic).

- The problem of underdevelopment, in particular in rural Africa, remains a major challenge. The inequalities of wealth, low literacy rate, combined with language barriers in several African countries, contribute to the unequal access and participation of some segments of the population in political democracy and governance. Women face additional financial, cultural and social barriers to access justice and are significantly under-represented across the continent in governance and legal systems.

- Under-resourced and often inefficient institutions have a devastating effect on the implementation of the rule of law in general and on the application of justice in particular. Legal and administrative processes are often too complex, bureaucratic, expensive and lengthy in duration, all of which contribute to citizens seeking alternative ways of resolving legal disputes or administrative procedures.

- Factors like resource extraction and international financial pressures have largely contributed to undermine the rule of law in many African countries, where States focused more on controlling resource wealth than building accountable systems, and resource revenues bypassed formal institutions. Structural Adjustment Programs put in place by the International Monetary Fund or the World Bank in the 1980 and 1990s have also contributed in several cases to weakening state institutions, including the judiciary, while foreign direct investments often bypass local laws or exploit legal loopholes.

[8] According to data collected from the African Centre for Strategic Studies,2025, escalating violence has caused fatalities linked to militant Islamist groups in Africa to surge by 60% since 2023, https://africacenter.org/spotlight/en-2025-mig-10-year/.
[9] According to the 'Rule of Law in Armed Conflict' portal of the Geneva Academy of International Humanitarian and Human Rights.

- The lack of respect for procurement rules and the corruption of public officials represent a major impediment to the rule of law. According to the 2024 Corruption Perceptions Index (CPI) published by Transparency International, 6 of the 10 countries with the lowest scores are in Africa (Somalia, South Sudan, Eritrea, Libya, Sudan and Equatorial Guinea) and most African nations were either stagnant or failing to make progress in the fight against corruption.

While these features are not exclusive to Africa, they have an impact on the interpretation, understanding and implementation of the rule of law in the African continent. Some of the aforementioned characteristics contribute to a general distrust in governments and public institutions, making it more difficult for those governments and public authorities wishing to strengthen the rule of law. According to findings from Afrobarometer surveys in 39 African countries between 2021 and mid-2023, Africans generally trust key institutions and leaders less than they did a decade ago, despite progress in strengthening institutions and legal frameworks.[10] Religious leaders, the army, and traditional leaders still enjoy majority trust, while political institutions are trusted least.

This report also aims to highlight the many examples of effective and innovative strategies to promote, defend and strengthen the rule of law in Africa. It is generally recognized that young States have more room for creative development than older States: older constitutions are more difficult to change than recently adopted constitutions and have less room for innovative interpretations of the law, as judges are more inclined to follow the national case-law acquis. Moreover, African young people are pushing for better governance, transparency, and justice through youth-led constitutional reform movements. The African youth is also driving innovation in access to justice: digital tools, legal technology, and civic education platforms are being created by and for youth, and their development holds much potential for civic transformation and the development of a new culture of upholding the rule of law.

Lastly, African lawmakers are not confining themselves to pushing the boundaries of the law in their realm, but have also made significant contributions to international law, for example regarding the “right to development”, linking human rights to environmental justice, and emphasizing collective rights over individual rights, which are predominant in Western legal frameworks.

2. Context and Historical Background

The development of the rule of law in Africa is rooted in indigenous and ancient legal traditions and has undergone significant transformations through the successive conquests and expansion of the Roman Empire, the Byzantine Empire, Islam and European colonialism, followed by independence, national authoritarianism, and democratic renewal.

African ancient societies operated under customary legal systems that were often unwritten but widely understood and respected within communities. These frameworks were rooted in communal values, social harmony, restorative justice, and consensus-based decision-making. Authority was often decentralized, with village elders, chiefs, and councils acting as custodians of customary law, ensuring justice was both participatory and culturally embedded.

[10] Available at: https://www.afrobarometer.org/topics/democracy-freedom-citizen-engagement/

Africa's ancient civilizations achieved a high intellectual, social and material standard, in comparison with other parts of the world. In particular the long-lasting ancient Egyptian civilization was one of the main centers of universal civilization in ancient times and influenced Greece, the Mediterranean region, as well as the Indian sub-continent, through the development of trade routes[11].

The legal system and governance structure of Ancient Egypt were complex and evolved over millennia. Law was considered a divine order embodied in the concept of "Ma'at", which represented truth, justice, and cosmic balance, and was enforced by the pharaoh as both a political and religious figure. While no formal legal codes like those of Mesopotamia have survived, evidence from legal papyri and administrative texts reveals a functioning judiciary, with local and central courts adjudicating civil and criminal matters. Governance was highly centralized under the authority of the pharaoh, but delegated through a sophisticated bureaucracy of viziers, governors, and scribes who maintained records, collected taxes, and administered justice. This integration of law, religion, and centralized power made the Egyptian system both enduring and adaptable across dynastic changes.

The Roman conquest of Carthage in 146 BCE led to the establishment of the *Africa Proconsularis* as a Roman Province in modern day northern Tunisia and parts of Libya and Algeria. From then on, Rome gradually extended control over Numibia and Mauretania and later Egypt. Roman law was introduced as the governing legal system in these regions: it combined civil law (*ius civile*) for Roman citizens, and provincial law applied to non-citizens, which was gradually influenced by Roman legal norms. The Courts were overseen by Roman governors and applied both imperial edicts and local customary law under Roman supervision. The Roman legal and political structures supported the growth of cities like Carthage, Leptis Magna, Timgad, and Alexandria. These cities had municipal councils (*curiae*) and magistrates who administered Roman law locally. Local elites were often co-opted into governance, creating hybrid Roman-local legal cultures.

After the downfall of the Roman Empire in the 5th century CE, the Vandal Kingdom took over the Roman Provinces on the African continent. The Byzantine expansion into Africa in the 6th century restored much of Roman North Africa to imperial control: the territories of modern Tunisia and parts of Algeria and Libya were reorganized as the *Exarchate of Africa*, a semi-autonomous province centered in Carthage. The region was governed primarily through Justinianic legal code, however, with Christianity now the state religion, canon law governed many aspects of daily life, especially marriage, morality, charity, and church property. The Byzantine rule in North Africa ended with the Arab-Muslim conquests and the fall of Carthage in 698 CE, yet the Roman-Byzantine legal influence left a legacy and persisted in Islamic law through adaptation of administrative practices.

The introduction of Islamic law (Sharia) during the Arab expansion into North and East Africa in the period from the 7th century to the 14th century marked another significant transformation in African legal history. As Islam spread through trade routes, religious scholarship, and military conquests, it brought with it a comprehensive legal and moral system that gradually integrated into existing African legal traditions. In regions such as Egypt, the Maghreb, the Sahel, and the Swahili Coast, Islamic jurisprudence (fiqh) became deeply embedded in governance, dispute resolution, and personal status laws, particularly in areas concerning marriage, inheritance, and commerce. This marked a clear departure from purely customary legal systems, introducing new legal institutions and codified norms based on Quranic principles and the Hadith. Over time, Islamic law was not only

[11] UNESCO (1990): General History of Africa, Volume 2, *Ancient civilizations of Africa*, G. Moktar (ed.), pp.407-408, available at: https://unesdoc.unesco.org/ark:/48223/pf0000134375.

institutionalized through Islamic courts and legal scholars (ulama) but also hybridized with indigenous norms, creating plural legal systems that persist in many African countries today. The enduring legacy of Sharia is evident in the contemporary legal frameworks of nations such as Sudan, Somalia, Nigeria (particularly in the northern states), and Mauritania, where Islamic law continues to play a central role alongside statutory and customary laws.

A further major rupture in African legal history occurred during the European colonial conquest of the 18th and 19th centuries, which fundamentally disrupted existing legal systems almost across the entire continent. Dutch-Roman law was introduced to South Africa by Dutch settlers in 1652, when the Dutch East India Company established a station at the Cape of Good Hope. Their legal procedures were modeled after those in the Netherlands and became entrenched in the Cape legal system. Roman Dutch law persisted even after the British colonization from 1795, though it was later overlaid with elements of English common law, especially in procedure and commercial law. The “West Africa Conference” in Berlin in 1884-1885 led to the partition of the African continent and the establishment of formal European empires. The European colonial powers imposed their foreign legal frameworks, such as British common law, French civil law, as well as Portuguese, Belgian, Italian and Spanish legal codes, all of which largely ignored or marginalized indigenous and Islamic legal traditions. These systems were introduced to support colonial administration and economic exploitation, often through a dual legal structure: one for European settlers and administrative authorities, and another for the indigenous populations governed through a distorted version of customary law administered by appointed local chiefs. This legal transplant not only weakened precolonial legal institutions but also entrenched hierarchies of race, class, and power, severing the organic link between law, culture, and community that had defined African normative systems for centuries.

Following the wave of independence in the 1950s and 1960s, newly sovereign African states adopted written constitutions as symbols of national unity and legal modernization. These constitutions, often modelled on Western liberal democratic ideals, introduced formal guarantees of fundamental rights, separation of powers, and the rule of law. The highly centralised governance systems, which were inherited from the colonial administration systems, were widely accepted by the new African elites and even further strengthened by the new ruling parties. The 1970s and 1980s were indeed characterized by the strong geopolitical impact of the Cold War and the world’s bi-polarization, with a significant number of African States embracing soviet models of governance with single-party systems, authoritarian regimes, in which the rule of law was subordinated to political control, and judicial independence was frequently compromised. Notably, during this period, few opposition parties were able to gain power through democratic elections, while ruling parties consistently maintained control through manipulated electoral processes.

A turning point came in the 1990s, with a new surge for democratization, coinciding with the end of the Cold War, the end of Apartheid in South Africa and the declaration of independence of Namibia, which was the last country on the African continent to achieve sovereignty in 1990. Both internal pressures and external influences brought about significant political change across the entire continent. This period sparked a surge in constitutional reform that continues to this day. It represented a shift toward more inclusive and participatory processes, shaped by lessons learned from the earlier failed attempts. There was renewed optimism, as citizens in many African nations were, for the first time, directly involved in shaping their constitutions, and grassroots movements advocating for human rights and democracy gained momentum.

Between 2000 and 2024, the African continent experienced tremendous economic and political growth, including remarkable improvements in political governance. The number of Ombudspersons doubled, from 23 in 2001 to 46 in 2024[12], providing African citizens with a recourse to realize their rights and promoting the good governance of public entities. The chapter devoted to "50 years of the Ombudsman in Africa" in the *Research Handbook on the Ombudsman*[13] finds that the institution has evolved beyond mere complaint-handling to become a multi-dimensional actor in many States, including helping ordinary people, pushing for systemic reforms and contributing to governance and development, although their effectiveness varies greatly depending on legal powers, resources and political will.

Africa's democracy largely improved through the holding of free and fair elections. Strong multi-party democracies enabled previously marginalized groups to take on more significant roles in the political process. In particular, new constitutional, legal, and institutional frameworks enhanced the participation of women in political and electoral affairs across the continent. In North Africa, the 2010–2011 uprisings known as the "Arab Spring" reflected the growing demand from youth for political reform, social justice, and economic opportunity throughout the region.

Yet, the period from 2007 until 2024 also showed a noteworthy decline in respect to political and civil rights on the continent, as a resurgence of unconstitutional changes of governments, a general backsliding of democracy and deterioration of safety and the rule of law.[14] The "War on terrorism" allowed States to reinforce executive powers and weaken the rule of law. During the COVID-19 pandemic, governments in countries like Uganda and Zimbabwe invoked emergency powers, often using them to suppress dissent, restrict media freedoms, and curtail civil liberties under the guise of public health measures. These actions undermined public trust in legal institutions and revealed the susceptibility of legal frameworks to executive overreach during emergencies. Since 2020, Africa has witnessed a proliferation of attempts to overthrow elected governments (11 in total: Democratic Republic of the Congo 2024, Nigeria 2024, Mali 2020 & 2021, Burkina Faso 2022 & 2024, Sudan 2021, Guinea 2021, Chad 2021, Gabon 2023, Niger 2023) leading to a worsening security situation in some cases (e.g. Burkina Faso & Mali).

Electoral processes in Africa are playing an increasingly central role in advancing democratic governance. While some election processes have been accompanied by violence and tensions over alleged fraud, irregularities, and a widespread lack of trust in judicial institutions to fairly arbitrate disputes (Senegal, Ghana, and Mozambique in 2024), it is important to acknowledge the notable democratic progress achieved through these electoral processes. In Senegal, the 2024 election marked indeed a turning point, as voters decisively rejected authoritarian tendencies of the outgoing President who had attempted to delay and undermine the electoral process. The ascent to power of Senegal's opposition leader has therefore been widely seen as a reaffirmation of democratic and rule-of-law principles. Similarly, the 2023 general elections in Nigeria, particularly the presidential vote held on 25 February 2023, were marked by significant unrest, logistical failures, and public mistrust, yet they also underscored the deep popular commitment to democratic governance and accountability. Despite the unrest, opposition leaders chose legal channels to contest the results, not inciting mass violence or rejecting constitutional order.

[12] Data from the African Ombudsman and Mediators Association, and its affiliated Research Centre: https://law.ukzn.ac.za/african-ombudsman-research-centre/.
[13] V. Ayeni. "Fifty years of the ombudsman in Africa." In *Research Handbook on the Ombudsman* in M. Hertogh & R. Kirkham (eds), Edward Elgar Publishing, 2018, pp. 212-235.
[14] 2024 Ibrahim Index of African governance.

Finally, at the global level, Africa has emerged as a key political actor in the multi-polar world since the beginning of 21st century, asserting greater influence through strengthened governance frameworks and more cohesive continental institutions. As we will see in the next section, the African Union plays a central role in articulating a collective political vision, advancing regional integration, and shaping a rules-based order. In general, African policymakers, and institutions are increasingly taking the lead in crafting homegrown solutions to complex challenges, from peace and security to constitutional reform and climate governance. Since 2010, African lawyers, diplomats, and jurists have become particularly prominent in international law and UN bodies like the International Law Commission, the International Court of Justice, and the United Nations Human Rights Council, and have played a pivotal role in advancing international rule of law principles, as well as global frameworks and targets such as the 2030 Agenda for Sustainable Development and international climate negotiations.

3. The international institutional framework for the protection of the rule of law

The rule of law is protected and enforced in Africa by a comprehensive institutional framework that operates in national, supranational and international settings. In the national setting, this framework comprises courts, civil society associations, media, and institutions charged with protecting constitutional democracy. On the supranational setting, there are the African Union Treaties, Institutions and Mechanisms. In the international setting, there are the Treaties, Institutions and bodies of the United Nations and sub-regional organizations.

A. The supranational setting in Africa: the African Union

The African Union (AU) is made up of 55 Member States which represent all the countries on the African continent. Similar to the European Union, it is an association of States which has direct powers with respect to the citizens of its Member States and plays an important role in setting standards for its Member States.

The AU replaced the Organization of African Unity (OAU) and its creation in 2002 marked a new era in African integration. The AU was endowed with broader competences and new institutional mechanisms. Article 5 of its Constitutive Act provided for the establishment of the following institutions: The Assembly of the Union, the Executive Council, the Pan-African Parliament, the Court of Justice, the Financial Institutions, the Commission, the Permanent Representatives Committee, the Specialized Technical Committees, the Economic, Social and Cultural Council and the African Committee on the Rights and Welfare of the Child. Another key institution, which was not directly established by the Constitutive Act, is the AU Peace and Security Council.

The AU's normative framework to protect constitutionalism and uphold the rule of law consists of various treaties, protocols, declarations and decisions,[15] the most important of which are the African Charter on Human and People's Rights (also known as the Banjul Charter), adopted in 1981 and entered into force in 1986, and the African Charter on

[15] The main instruments for promoting constitutionalism and the rule of law are: The African Charter on Human and Peoples' Rights, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, The African Charter on Democracy, Elections and Governance, The Declaration on Democracy, Political, Economic and Corporate Governance and The African Charter on Values and Principles of Public Service and Administration.

Democracy, Elections and Governance, which was adopted in 2007 and entered into force in 2012 (referred to as the Governance Charter).

The African Court on Human and Peoples' Rights (hereafter the Court) and the African Commission on Human and Peoples' Rights (hereafter the Commission) are the two main AU mechanisms that have supported rule of law principles. While the AU itself often operates through diplomacy and political engagement, these bodies have issued legal rulings reinforcing human rights and constitutionalism on the continent. In the case Mitkila vs. Tanzania for example, the African Court held that Tanzania's ban on independent political candidates contradicted the principles and protection of political rights, participation in government and equality before the law, as stipulated in the African Charter of Human and People's rights. It directed Tanzania to take constitutional, legislative, and other necessary measures within a reasonable time to remedy these violations.

It must be noted however that while 54 of the 55 Member States of the AU, with the exception of Morocco, have ratified or acceded to the African Charter and have, therefore, committed themselves to respecting the principles set out therein, only 34 Member States have so far ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights and out of these, only eight States have deposited a Declaration under Article 34 (6) of the Protocol by which they accept the competence of the Court to consider applications filed by individuals and NGOs, namely Burkina Faso, Gambia, Ghana, Guinea-Bissau, Malawi, Mali, Niger and Tunisia[16].

The "Governance Charter" is a legally binding instrument that seeks to promote a culture of democracy, enhance adherence to the rule of law, and foster better political, economic and social governance. In its Preamble, the member States reiterate their "collective will to work relentlessly to deepen and consolidate the rule of law, peace and security and development". Its Article 3 lists the main principles that guide member states in fulfilling their obligations while implementing the charter: the respect for human rights and democratic principles; the separation of powers; political pluralism; holding regular, transparent, free and fair elections; and promoting a representative system of government, and Article 32 calls on state parties to institutionalize good political governance through "entrenching and respecting the principles of the rule of law".

The African Court on Human and People's Rights affirmed that the Governance Charter is a human rights instrument, making its provisions justiciable before the Court and thereby expanding the Court's jurisdiction to include cases related to democratic governance and electoral processes. To give an example , in the case APDH v. Côte d'Ivoire, the Court ruled that Côte d'Ivoire's electoral law (Law No. 2014-335) violated the Governance Charter by failing to establish an independent and impartial electoral body. The court found the composition of the Independent Electoral Commission was imbalanced, with overrepresentation of government-affiliated members, undermining its independence and impartiality. The Court therefore ordered Côte d'Ivoire to amend its electoral law to comply with the Charter and other relevant human rights instruments. As a result, the government of Côte d'Ivoire initiated a process of reform of the Independent Electoral Commission: a new Bill (Bill No. 2019-708 of 05 August 2019) was introduced in Parliament in line with the African Court's judgments and it has taken some steps toward recomposing local commissions. However, full compliance is still incomplete: there are persistent problems in operationalizing the reforms, especially at the local level, in nomination processes, and in

[16] Four States that withdrew their Declaration under Article 34 (6) of the Protocol; Rwanda (in 2016), Tanzania (in 2019), Côte d'Ivoire (in 2020) and Benin (in 2020), cf. https://www.african-court.org/wpafc/declarations

ensuring fair inclusion in the electoral roll. This mixed picture demonstrates that the Court's judgments do push states to reform laws and structure institutions, but effectiveness is constrained by political resistance, administrative capacity, and competing political interests.

Most significantly, the Governance Charter prohibits unconstitutional changes of government and provides for sanctions against the perpetrators and suspension of the state concerned. Thus, shifting from a tradition of 'non-interference' under its predecessor the OAU, to a culture of 'non-indifference',[17] the AU has gradually adopted a more proactive stance towards improving the governance structures of its member states. This has been demonstrated on several occasions in the context of coups and post-electoral conflicts[18], for example, the Commission and AU Peace and Security Council jointly pressured states like Mauritania (2008) and Madagascar (2009) after coups, resulting in suspensions and eventual return to civilian rule. However, the African Union's more recent policy actions have not yielded the expected results in addressing the military coups and complex security situations that led to the suspension of six of its members (Burkina Faso, Gabon, Guinea, Mali, Niger and Sudan). In general, the implementation of the Governance Charter and the domestication of its principles by state parties remain a challenge. As of 2024, the Governance Charter has been signed by 46 countries, and ratified by 36; some of Africa's most stable democracies, such as Cabo Verde, Botswana, Mauritius and Senegal, have signed but not yet ratified it.

A practical mechanism for promoting democracy among the member states of the AU is the African Peer Review Mechanism (APRM), a voluntary self-monitoring tool for political, economic and corporate governance, launched in 2003. The APRM evaluation consists of a self-assessment by the participating country with the involvement of relevant stakeholders, and an external independent evaluation, culminating in a peer review by fellow Heads of State and Government. So far, 42 states have subscribed to the APRM, most of which have been peer reviewed. Four countries have undergone a second-generation APRM evaluation: Kenya, Nigeria, Mozambique and Uganda.

The AU is also a regular election observer on the continent alongside regional organizations, and has conducted numerous missions over the years. It continues the work of its predecessor organization, the OAU, which conducted the first observation in Namibia in 1989, and has contributed through its electoral observation to successful multi-party elections, most recently in Angola and in Kenya.

B. Sub-regional organizations

The African Union institutional framework envisages a considerable outsourcing of responsibilities to various sub-regional organizations, usually referred to as Regional Economic Communities (RECs). These RECs are voluntary associations of geographically contiguous states that have grouped within their respective subregions for greater economic and political integration and cooperation.

[17] T. Murithi, 'The African Union's Transition from Non-Intervention to Non-Indifference: An Ad Hoc Approach to the Responsibility to Protect?', 2009, p. 94, https://library.fes.de/pdf-files/ipg/ipg-2009-1/08_a_murithi_us.pdf.

[18] For example, in the Central African Republic (2003), Togo (2005), Mauritania (2005), Comoros (2007), Guinea (2008), Madagascar (2009), Niger (2010), Mali (2012), Guinea-Bissau (2012) and Egypt (2014) with regards to unconstitutional changes of government and in Kenya (2007) and Côte d'Ivoire for post-electoral conflicts.

The main RECs covering Africa's five sub-regions are : the East African Community (EAC), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the Intergovernmental Authority on Development (IGAD), the Economic Community of Central African States (ECCAS) and the Arab Maghreb Union (AMU).

Whilst their primary purpose has been to facilitate regional economic integration, most RECs have broadened their mandate over time to include the coordination of peace, security and governance issues, having acknowledged and recognized the fact that peace, security and stability are *a sine qua non* ingredient for regional integration and development. Apart from the AU, therefore, most African RECs recognized by the AU have developed strategies and instruments to promote democracy, the rule of law and human rights and to prevent and constrain unconstitutional changes of government. In effect, the RECs have introduced "a new layer of supranational protection and promotion of human rights in Africa".[19] Their courts now play an important role in the protection of human rights through the determination of human rights cases.

In particular the Community Court of Justice of ECOWAS has emerged as a model regional court in Africa, known for its activist and progressive interpretations, especially in the areas of human rights and democratic governance. Its willingness to hold member states accountable has made it a beacon of the rule of law at the regional level in West Africa[20]. Nevertheless, the withdrawal of Burkina Faso, Mali, and Niger from ECOWAS in 2025 marks a fracture in West African regionalism, driven by tensions between military-led governments and ECOWAS's clear pro-democracy stance. It reflects the resistance by certain States of the region to perceived Western interference and highlights the bloc's struggle in addressing regional security and finding effective solutions to transnational threats like terrorism and illicit trafficking[21].

C. The role of the United Nations System

The United Nations (UN) aims to stand as a cornerstone in the international framework dedicated to upholding the rule of law. Its multifaceted contributions include the General Assembly's role in fostering international law adherence through member State dialogue and cooperation. The Security Council, guided by the UN Charter, prioritizes peaceful dispute resolution and upholds the sovereignty of nations. The International Court of Justice (ICJ) contributes to this cause by interpreting and applying international law.

The ICJ has played a constructive role in promoting the rule of law in Africa, particularly in peaceful dispute resolution and legal norm-setting among States. It provides a neutral legal forum for resolving territorial, maritime, and boundary disputes, helping to prevent escalation into armed conflict. Among the notable cases involving African States, the ICJ resolved a territorial dispute over the Aouzou Strip, reaffirming treaty-based sovereignty and promoting peaceful resolution in *Libya v. Chad* (1994), it adjudicated the long-standing Bakassi Peninsula dispute in *Cameroon v. Nigeria* (2002), and more recently settled a maritime boundary dispute in *Somalia v. Kenya* (2021). While the ICJ's direct impact is limited by structural constraints (only States can bring cases and States must consent to ICJ jurisdiction), its presence reinforces the primacy of law over force in inter-state relations and

[19] See AU Governance Report of 2023.
[20] W. Sadurski, *Constitutional Public Reason*, Oxford University Press, 2023, Chapter 9.
[21] S. Balima, *The AES Countries' Exit from ECOWAS and Building of Regional Security*, Analytical note nr. 2, Friedrich Ebert Stiftung Peace and Security Centre of Competence for Sub-Saharan Africa, 2024.: https://library.fes.de/pdf-files/bueros/fes-pscc/21558.pdf

contributes to a broader international legal order that African states are actively shaping and participating in. As a matter of fact, the African engagement with the Court has stimulated growth in international law expertise in African legal systems and in return led to the increased participation of African judges at the ICJ (e.g., Judge Abdulqawi Yusuf of Somalia served as ICJ President).

Specialized UN agencies like the UN Development Program (UNDP) and the UN High Commissioner for Refugees (UNHCR) further promote the rule of law by addressing development, humanitarian, and human rights issues. The Rule of Law Unit in the Executive Office of the Secretary-General actively catalyzes UN efforts to strengthen the rule of law through technical assistance and capacity-building initiatives. While the rule of law is considered to have been at the center of the UN's mandate since its inception,[22] It was only in the 1990s that the obligation to comply with the rule of law was clearly expressed as an objective in itself by the UN Human Rights Council and formally recognized by the Organization's member States as part of the UN World Summit Outcome of 2005. The principle gained high momentum in connection with the UN's Agenda 2030 and the adherence to the rule of law stands out as an important target under the 16th Sustainable Development Goal dedicated to achieving "Peace, Justice and Strong Institutions".

Despite the wide array of institutions and early-warning mechanisms in place, the UN has repeatedly failed to uphold the rule of law on the African continent, particularly in contexts marked by mass atrocities and protracted conflict. Its inaction during the 1994 Rwandan genocide, despite clear early warnings and the presence of UN peacekeepers, remains one of its most profound moral and operational failures.[23] In the Democratic Republic of the Congo, decades of UN involvement through the peace-keeping missions of MONUC and MONUSCO have done little to prevent systemic violence, war crimes, or the exploitation of civilians.[24] Similarly, in the Republic of Sudan, the UN was unable to prevent or effectively respond to atrocities in Darfur, while its peacekeeping missions in the Central African Republic have been criticized for their limited capacity and sporadic misconduct.[25] These cases illustrate not only a pattern of institutional paralysis in the face of mass violence, but also a broader failure to develop and enforce robust legal and political frameworks capable of addressing structural impunity and protecting civilians.

D. The International Criminal Court

The International Criminal Court (ICC) is a court of last resort for the prosecution of serious international crimes, including genocide, war crimes, and crimes against humanity. As a court of last resort, it seeks to complement, not replace, national Courts. While not a United Nations organization, the ICC has a cooperation agreement with the United Nations. When a situation is not within the Court's jurisdiction, the UN Security Council can refer the situation to the ICC granting it jurisdiction. This has been done in the situations in Darfur (Sudan) and Libya.

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[22] The Preamble of the Universal Declaration of Human Rights states that "human rights should be protected by the rule of law".

[23] R. Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, Carroll & Graf, 2003.

[24] P. Natulya, *Understanding the Domocratic Republix of congo's Push for the Departure of MONUSCO* 2024; UNHCR, Report on Torture and other cruel, inhuman and degrading treatments in RDC from 2019 to 2022, 2022: https://www.ohchr.org/sites/default/files/documents/issues/torture/2022-10-04/041022_Joint-report-on-torture-in-the-DRC-01042019-to-30042022.pdf

[25] International Crisis Group (2015) "Central African Republic: The Roots of Violence," Africa Report No. 230, https://www.crisisgroup.org/africa/central-africa/central-african-republic/central-african-republic-roots-violence.

Despite its symbolic significance, the ICC has had limited practical impact on the African continent. Since its establishment, the Court has opened investigations in only a handful of African countries[26], with a low number of convictions relative to the scale of documented atrocities.[27] High-profile cases, such as those involving Kenyan political leaders, were ultimately dismissed, reflecting challenges in evidence collection and witness protection. The Court's reliance on state cooperation has further constrained its effectiveness, as seen in the failure to arrest individuals like Sudan's former president Omar al-Bashir.[28] Moreover, the ICC has been criticized for disproportionately targeting African States, which has led to accusations of neo-colonialism, strained relations with the African Union, and calls for African-led alternatives to international justice. These limitations underscore the Court's struggle to serve as a meaningful deterrent or accountability mechanism in many African contexts.[29]

[26] As of 2025, the ICC had officially opened investigations in 9 African countries: Uganda, Democratic Republic of the Congo , Central African Republic (twice), Sudan (Darfur), Kenya, Libya, Côte d'Ivoire, Mali, and Nigeria, cf https://www.icc-cpi.int/cases

[27] The ICC has delivered 7 convictions in over two decades, many of them for relatively narrow charges (e.g. enlistment of child soldiers), as outlined on the website of the ICC: https://www.icc-cpi.int/cases?f%5B0%5D=accused_states_cases%3A358

[28] International Criminal Court, Situation in Darfur, Sudan: Omar Hassan Ahmad Al Bashir: https://www.icc-cpi.int/darfur/albashir.

[29] T. Murithi (2013), "The African Union and the International Criminal Court: An Embattled Relationship?" *Institute for Justice and Reconciliation*, Policy Brief No. 8., pp. 3-4., available at https://www.ijr.org.za.

C. Seminal Matters

1. Separation of powers

Introduction

The excessive concentration of power and the accompanying abuses have long been among the most significant obstacles to Africa's development, particularly in its efforts over the past two decades to establish political systems that uphold constitutionalism, good governance, democracy, and the rule of law.

How do various African political systems interpret and apply the doctrine of separation of powers, and to what extent have they been successful in fulfilling its objective of limiting the abuse of power?

Africa has historically grappled with the dangers of centralized power, and the separation of powers represents a time-honored solution. As the continent increasingly focuses on state-building, the nuanced implementation of such solutions has taken on greater significance. The doctrine of separation of powers is now so integral that all post-1990 African constitutions, likely to demonstrate a commitment to constitutionalism, include provisions that explicitly or implicitly enshrine it. However, the critical question remains whether the separation of powers, as outlined in contemporary African constitutions, will effectively prevent the abuses of power that often arise from its concentration.

A. The foundations: The origins of the separation of powers principle in the African states

Colonialism, a fundamental cause of Africa's persistent challenges with authoritarianism and the lack of stable structures for accountability, continues to shape the legal frameworks that address these issues today.[30] The post-colonial legacy of concentrated power persists, particularly in the high prevalence of dominant party systems across the continent. These political structures derive their strength from the one-party traditions of socialist revolutions and various forms of African-style socialism, and they will remain a central topic of debate.

The distinctions between civil and common law traditions, as well as the differences between Anglophone, Francophone, Lusophone, and Hispanophone states, hold significant importance, especially in relation to institutional frameworks, procedures, and the professional norms and expectations of legal practitioners. The concept of the separation of powers requires responses to a range of questions, including how readily different systems allow members of one branch to assume tasks typically or conceptually associated with another. Additionally, the extent to which African states have distanced themselves from their colonial legal legacies varies. Anglophone states, following global trends, have moved away from the unwritten constitutional conventions of their former colonial rulers. The U.S. Constitution has influenced many of these systems, though the range of constitutional models has expanded as written constitutions have become more widespread. Anglophone

[30] J. Fawkes & Ch. M. Fombad, “Introduction” in: Ch. M. Fombad (ed.), *Separation of Powers in African Constitutionalism,* OUP, 2016, p.1.

states, however, generally maintain parliamentary systems, with Kenya and Nigeria standing out as notable exceptions.

In contrast, Francophone systems typically adopt the executive-driven model of the French Fifth Republic as their foundational structure. These systems have encountered similar challenges, including the unrealistic assumption that the party of the president, elected separately, will also control the legislature. Some African states, like France itself, have implemented significant reforms, particularly in the area of judicial review, as seen in Benin, which stands out as a notable legal success in Francophone Africa. However, other states still closely resemble the traditional Gaullist model, where the executive often prevails when deemed necessary, and the other branches are relegated to secondary roles at best.

Since African systems did not have national monarchies, the distinct British roles of head of state and head of government have been consolidated into powerful presidencies. Moreover, since no African constitution has achieved the status of the U.S. Constitution, appeals to the "will of the people" are more often invoked in the name of executive rather than constitutional authority. This has resulted in a hybrid political arrangement that requires its own theoretical framework. Westminster parliamentary supremacy has been displaced by constitutional supremacy, to the point where appeals to popular sovereignty are no longer primarily used to justify strong executives and dominant parties. However, these constitutions generally continue to perceive parliaments, in the Westminster tradition, as the key institutional check on the executive, a role that is increasingly supported by constitutional texts, though its practical application remains inconsistent.

It is essential to recognize that colonial powers made little, if any, attempt to govern their colonies according to any form of constitutional framework. The primary aim was to maintain social stability at all costs in order to exploit the colonies to their fullest potential rather than to uphold the principles of constitutional governance. In no African colony was political organization founded on constitutional principles such as the separation of powers or institutional checks. Colonial administrators, who governed the colonies as if they were personal enterprises, were granted broad discretionary powers, which they often exercised with impunity. A significant body of literature has addressed the atrocities committed in Africa during the colonial period, often rationalized under the guise of benevolent paternalism (*mission civilisatrice*).

The first generation of African constitutions primarily facilitated the transfer of power from colonial rulers to national elites who had led the independence struggle in the late 1950s and early 1960s. These constitutions were largely crafted by the departing colonial powers—Belgium, Britain, and France—in their capitals, with limited consultation with emerging African leaders and little involvement from the broader population. As a result, they were imposed and did not fully reflect the will of the people. Nonetheless, these constitutions introduced European liberal democratic values such as the separation of powers, checks and balances, limited government, and the protection of rights. However, their foundations were too weak to prevent the continuation of colonial authoritarian practices into the post-colonial era. The primary focus of these independence constitutions was the transfer of power to national elites, with little attention given to limiting that power. Consequently, while liberal principles were enshrined, the new elites, having learned authoritarian methods from their colonial rulers, were not prepared to embrace constitutional rule.

The colonial powers implemented systems they believed were best suited for governance without considering the unique needs of the African context. Despite lacking a formal written constitution, the British had experience crafting constitutions for their former colonies.

However, the parliamentary systems they introduced did not promote strong governments, leading nationalist leaders to consolidate power in a manner similar to the colonial governors. In contrast, the French imposed the 1958 Fifth Republic Constitution—a blend of parliamentary and presidential elements—on Francophone Africa in the early 1960s, despite its limited testing in France. This system, originally designed to address France's post-World War II instability, created a strong executive that was widely adopted in Francophone Africa. However, the excessive concentration of power in the presidency, coupled with insufficient checks on executive power, facilitated the rise of dictatorships. In former Belgian colonies like Burundi, DR Congo, and Rwanda, the introduction of constitutionalism was abrupt, and weak parliamentary systems led to political instability, which the new elites exploited to solidify their control. In general, it can be said that despite the liberal underpinnings of the independence constitutions, there is a consensus in legal doctrine that they were characterized more by continuities than discontinuities in relation to the colonial state[31].

The second generation of constitution-building in Africa began shortly after independence, when African leaders and elites began questioning the assumptions of the first-generation constitutions. They felt that concepts like democracy, multi-party competition, and the separation of powers did not address the immediate needs of newly independent nations. In the name of promoting national unity, given the artificial borders drawn during the 1884 partition, many liberal principles from the independence constitutions were gradually repealed. This partition, which was formally adopted by the Berlin Congress of 1884–1885, divided the African continent among European powers with little regard for existing ethnic, cultural, or political boundaries. Despite the varying governance approaches in these early constitutions, there was a trend toward presidential systems, characterized by the extreme concentration of power in a personalized executive who controlled both the legislature and judiciary.

The inability of weak judiciaries to curb abuses of power was compounded by the rise of one-party systems in many countries and military dictatorships in others.[32] With ineffective judiciaries and parliaments controlled by the executive, there were few mechanisms to prevent power abuses and widespread human rights violations. By the 1990s, this system had fostered some of Africa's most repressive regimes, leading to political instability, economic crises, unemployment, civil wars, and famine—issues the continent is still grappling with. Like the first generation, the second failed to establish constitutions that promoted constitutionalism or provided a solid foundation for the stability and development needed for social peace.

The third generation of constitution-building in Africa emerged alongside the "third wave"[33] of democratization in the early 1990s. This period saw the active involvement of ordinary

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[31] F. Reyntjens, 'Authoritarianism in Francophone Africa from the Colonial to the Postcolonial State', *Third World Legal Studies*: Vol. 7, Article 3,p. 59; and Y. Ghai, 'A Journey Around Constitutions: Reflections on Contemporary Constitutions', *South African Law Journal*, Vol.122, 2005, p. 810,.

[32] It is worth noting that little attention was paid by the colonialists to building the judiciary or training judicial personnel to handle disputes, a situation that was particularly acute in the former Belgian and Portuguese colonies, S. Fullerton Joireman, 'Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy', *Journal of Modern African Studies*, Vol.39, 2001, p.571, especially at 581 where the author points out that by the time Belgian and Portuguese colonies gained independence, they had virtually no trained legal professionals. See also Kri. Mann and Richard Roberts, *Law in Colonial Africa*, Heinemann, 1991

[33] L. Diamond, 'Is the Third Wave Over?' *Journal of Democracy* , Vol. 7, 1996, pp. 20–1, and see Larry Diamond et al (eds), *Consolidating the Third Wave of Democracies,* John Hopkins University Press, 1997 Julius Ihonvbere and Terisa Turner, 'Africa's Second Revolution in the 1990s', *Security Dialogue*,1993, pp.349–52.

citizens in the constitution-making process, particularly in both Anglophone and Francophone countries. In Francophone Africa, national conferences, starting in Benin, became a widespread phenomenon, bringing broader participation into the process.

Colonial powers imposed their legal systems on African colonies to maintain control and facilitate exploitation. Even territories under League of Nations mandates and later UN trusteeship agreements were subjected to these laws. During this time, English common law was introduced to Anglophone Africa, French civil law to Francophone Africa, and Portuguese and Spanish civil law to Lusophone and Hispanophone Africa, respectively.

Anglophone African countries inherited Westminster-style constitutions, often drafted in Whitehall, while the French simply imposed the 1958 Fifth Republic Constitution on most of their colonies, except for Guinea, which rejected association with France at independence. The constitution of the DR Congo, the Loi Fondamentale of 1960, was heavily influenced by the Belgian constitution, as was the indigenous constitution of Burundi.

Although no single constitutional model has achieved global dominance, it is clear that the radical constitutional changes since the 1990s have largely remained within the framework of legal traditions inherited at independence. In summary, the majority of African constitutions adopted after 1990 have firmly established the fundamental principles of modern constitutionalism. However, despite an encouraging beginning—marked by the removal of some long-standing dictators during early multi-party elections—the past decade has witnessed troubling signs of a resurgence of authoritarian rule.[34]

Two dominant constitutional traditions have significantly influenced current developments on the continent: the common law tradition, derived from the Westminster system with elements of the U.S. Constitution, widely adopted in Anglophone Africa, and the civil law tradition, based on the French 1958 Constitution, prevalent in Francophone Africa and, to some extent, Lusophone and Hispanophone Africa. These traditions differ notably in their approaches to the separation of powers, though some of these differences may be more apparent than real.

B. Meaningful features of separation of powers in Africa

While some African political systems can be reasonably interpreted as manifestations of revolutionary constitutionalism, akin to the United States, the majority likely cannot. Contemporary African constitutions often embody significant reforms; however, they frequently maintain continuity in the power structures, with the same groups and individuals holding authority both before and after the constitutional changes. Although revolutionary legitimacy may not be readily available for judicial bodies to invoke, courts may still draw upon the reformist imperative—seeking to avoid past mistakes—as a basis for legitimate authority. It is crucial to emphasize that the separation of powers serves as a mechanism to ensure an efficient distribution of responsibilities among the branches of government, tasks which are best suited to each respective branch. This function is often overlooked in discussions that focus solely on limiting executive power, but it should remain a central consideration in the context of African systems.

[34] Ch. M. Fombad, 'Constitutional Reforms in Africa and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects,' *Buffalo Law Review*, Vol. 59, 2011, p.1007ff; see also A. Cabanis & M. L. Martin, *Le Constitutionnalisme de la Troisième Vague en Afrique Francophone*, Bruylant-Academia SA, 2010.

The models of separation of powers employed by the two most prominent colonial powers in Africa, the British and the French, have had a profound influence on the continent. However, two important points must be highlighted. First, the British approach was distinctive in that it operated within a system that lacked a written constitution. When drafting constitutions for its colonies, the British, followed later by African constitutional drafters, drew inspiration from the U.S. model. The French approach, while also unique, bore significant similarities to the systems used in many civilian jurisdictions across Europe. As a result, this model was adopted not only by Francophone African countries but also by Hispanophone and Lusophone nations on the continent.

At the same time, it is important to emphasize the decisive role that the interaction between military power and executive authority plays in democratic governance and the rule of law in some African countries. In Egypt and Tunisia, for example, this dynamic has profoundly influenced political institutions and contributed to democratic backsliding. In Egypt, the military has long been a dominant political force, with President Abdel Fattah el-Sisi—himself a former general—rising to power through a military-led ousting of an elected government in 2013. Since then, the armed forces have entrenched their control over key sectors of the state and economy, with constitutional changes further institutionalizing their role as guardians of the regime. Similarly, in Tunisia, President Kais Saied has increasingly relied on the military and security apparatus to consolidate executive power since his 2021 suspension of parliament. In both cases, the fusion of military and executive power has weakened institutional checks and balances, eroded judicial and parliamentary independence, and contributed to the broader decline of democratic norms. Three key issues mainly arise from the preceding discussion. The first concerns whether a general understanding of the separation of powers can be inferred. The second pertains to the impact of Western influences on trends and developments in Africa.

The third point to note is that the French model was easily transplanted to Africa and adopted with minimal modifications. In contrast, the British had to adjust and adapt their model to fit the context of a written constitution. As a result, many elements of the American model were integrated into the British framework that was replicated in Africa, leading to what can more accurately be described as an Anglo-American model in Anglophone Africa. Despite the extensive constitutional reforms that took place after 1990, the adoption of the separation of powers doctrine largely remains within the inherited colonial frameworks. Consequently, we can speak of an Anglo-American model in Anglophone Africa, a French model in Francophone Africa, and a civilian-influenced model in Hispanophone and Lusophone African countries[35].

To further explore how these models were adopted, three critical issues—reflecting the three common interpretations of the separation of powers—will serve as the basis for analysis:

(i) the extent to which there is a fusion or admixture of power;
(ii) the degree to which one branch intervenes in and controls the work of another; and

(iii) the extent to which one branch assumes the functions of another.

1. The Anglo-American Influence in Anglophone Africa

[35] About twenty-five of Africa's fifty-four countries are Francophone, five Lusophone (Angola, Cape Verde, Guinea Bissau, Mozambique, and Sao Tome & Principe), whilst one (Equatorial Guinea) is Hispanophone. Also, Western Sahara, which is not recognized by many countries, is also considered Hispanophone due to its historical ties with Spain (former Spanish colony).

Constitutional governance in Africa has been systematically undermined since independence, primarily due to the ability of executives, particularly presidents, to abuse their powers with minimal regard for the weak constitutional constraints present in the independence-era constitutions. In general, both the legislative and judicial branches across the continent have been too weak to effectively curb the recurring lawlessness of the executive.

Because African systems lacked national monarchies, the distinct British roles of head of state and head of government have been consolidated into powerful presidencies. In the absence of an African constitution that has achieved the symbolic and foundational status of the American Constitution, invocations of the 'will of the people' tend to legitimize executive authority more than constitutional governance. According to Venter, this has produced a hybrid system that calls for its own theoretical framework[36].

While Westminster-style parliamentary supremacy has largely given way to constitutional supremacy—especially in contexts where popular sovereignty no longer solely reinforces strong executives or dominant parties—most African constitutions still conceive of parliaments in the Westminster mold, as the primary institutional check on executive power. This legislative oversight role is receiving growing textual endorsement, although its practical implementation remains inconsistent.

The shift toward constitutional supremacy may now be considered a settled technical development, which Venter regards as a 'significant progress.'[37] Nonetheless, the complex legacy of institutional inheritances highlights the unfinished nature of constitutional evolution in the region.

Most constitutions grant parliament the authority to initiate impeachment proceedings against the president, deputy president, and ministers, as well as to review and approve declarations of war, confirm appointments of ministers and other senior government officials, and hold ministers accountable, either individually or collectively, in processes that could lead to their resignation or dismissal. The capacity of parliament to hold the government accountable is a crucial safeguard against arbitrary governance and the rise of dictatorships. However, the mechanisms outlined in Anglophone constitutions for such accountability are weak for two primary reasons. First, as it is often the case in advanced democracies, when a government holds a majority in parliament, members of the ruling party are generally hesitant to criticize the government publicly or vote against it. This tendency is particularly pronounced in cases where the ruling party is a dominant one.

The executive in Anglophone Africa also exerts control over parliament in at least two significant ways. First, under all constitutions, a bill passed by parliament only becomes law after receiving presidential assent[38]. While this assent is typically automatic when the government holds a majority in parliament, it remains within the president's discretion to refuse assent (see for example the article 58 of the Nigerian Constitution). A second method of control is through dissolution. In addition to situations where the president withholds assent to a bill or where there is a disagreement between the president and parliament over

[36] Fr. Venter, 'The Relationship Between the Legislature and the Executive, 3 Parliamentary Sovereignty or Presidential Imperialism?: The Difficulties in Identifying the Source of Constitutional Power from the Interaction Between Legislatures and Executives in Anglophone Africa', in Fombad n. 30, pp. 95ff.
[37] Ibid, p.97.
[38] See for example: Art 90 of the constitution of Ghana; arts 109(1), 115, and 166(1) and (2) of the constitution of Kenya; arts 56 and 64 of the constitution of Namibia; ss 79 and 81 of the constitution of the Republic of South Africa, 1996.

a bill, parliament may, under certain conditions, pass a resolution to dissolve itself. This is the case in Zambia's and also in Kenya's Constitution. According to the latter, the Parliament may trigger its own dissolution if it persistently fails to perform constitutional functions.

Finally, the question arises regarding the extent to which the executive and legislative powers overlap and exercise each other's functions. This is where the dominant position of the executive in relation to the other branches becomes evident. In most Anglophone constitutions, law-making powers are typically vested in the legislature. However, these powers are often framed in a manner that allows the legislature discretion to delegate authority. The most notable instance in which the executive assumes legislative functions occurs in the creation of secondary legislation, when it is directly or indirectly authorized by the legislature. In fact, a significant portion of legislation in Anglophone jurisdictions takes the form of subsidiary legislation, which far exceeds the volume of laws passed by parliament as Acts of Parliament. Subsidiary legislation can take various forms, such as proclamations, regulations, rules, orders, bye-laws, or any other instrument created directly or indirectly under an enactment that carries legislative effect. For a variety of reasons, delegated legislation has become an unavoidable characteristic of modern governance.

Another important point to note is that, although law-making remains the principal function of parliament, the reality is that the entire process, and in fact, the most decisive stage of initiating bills, is often entirely controlled and driven by the executive. This clearly demonstrates that the executive not only exercises some of the functions of parliament but also effectively controls it.

Moreover, the potential control exercised by both the executive and the judiciary over each other is arguably one of the fundamental aspects of the doctrine of separation of powers. Regarding the control exerted by the executive, the ability of the executive to intervene, especially in judicial appointments under the constitutions of most Anglophone African countries, is often structured to safeguard the independence of the judiciary. Judicial appointments for superior court judges are typically made by the president, as head of the executive, based on recommendations from the Judicial Service Commission. Most constitutions, particularly the more recent ones, include provisions that protect the judiciary from political interference.

However, there remains some scope for political interference due to various factors. For instance, in certain constitutions, such as those of Botswana and South Africa, the president has significantly broader discretion in appointing the heads of the highest courts compared to the appointment of ordinary judges. On the other hand, judicial oversight of the executive has become a vital feature of any modern constitutional democracy. This judicial control over executive actions is routinely exercised to protect citizens from unlawful acts by government officials, government departments, or other public authorities, ensuring that these bodies fulfil their statutory duties in accordance with the law. Such oversight often leads to conflicts between the judiciary and the executive, particularly when the latter perceives that the judiciary has intervened in a non-justiciable policy matter or a so-called political issue, which the courts are not equipped to address, or when the judiciary is seen as breaching the doctrine of separation of powers.

Regarding the control of the judiciary over the legislature, the primary method of this control is through judicial review of legislative acts to ensure their conformity with the constitution. While post-1990 Anglophone African constitutions are beginning to recognize the importance of abstract review, this has long been the predominant form of control exercised by Francophone constitutional courts.

This approach has significantly strengthened the judiciary's ability to challenge laws that violate the constitution. However, the effect of judicial review over both legislative and executive actions can be overridden by new legislation, which typically has a prospective effect but may, in certain circumstances, also have a retrospective impact.

In many Anglophone African countries, constitutional courts have traditionally been reluctant to challenge parliamentary sovereignty, reflecting the common law heritage where legislative supremacy is a foundational principle. Courts often exercise judicial restraint, refraining from invalidating laws unless there is a clear constitutional violation, which can limit their effectiveness as checks on legislative power. However, this is not an absolute norm, as notable exceptions exist—most prominently, South Africa's Constitutional Court. Following the adoption of its progressive 1996 Constitution, South Africa's court was granted broad judicial review powers that explicitly limit parliamentary sovereignty. It has consistently exercised this authority by striking down laws and executive actions that conflict with the Constitution, thereby reinforcing constitutional supremacy and protecting fundamental rights. Landmark rulings such as *Economic Freedom Fighters v Speaker of the National Assembly* (2016), which reinforced parliamentary oversight, and *Doctors for Life International v Speaker of the National Assembly* (2006), which underscored the constitutional roles of both parliament and the judiciary, highlight the court's proactive role in maintaining the separation of powers and upholding the rule of law. This judicial assertiveness distinctly sets South Africa apart from other Anglophone jurisdictions, where courts tend to be more deferential to parliament.

In the constitutional systems examined, neither the U.S. presidential model nor the British parliamentary system clearly prevails[39]. African presidencies typically merge the roles of head of state and head of government, and executives often dominate legislative processes and shape majority opinion in parliament. This dynamic fosters a form of presidential imperialism, despite the formal language of constitutionalism. In much of Anglophone Africa, legislative checks on executive power are largely symbolic, with real authority concentrated in the hands of presidents. Constitutional differences among these states tend to be superficial, with political realities—such as a president's loss of personal influence—providing a more effective check than formal parliamentary oversight.

2. The French Influence in Francophone and Other Civilian Jurisdictions in Africa

The analysis of the French approach in Francophone Africa (used in a broad sense to cover civilian-based systems whether French-speaking like Benin, Congo DR, Burundi, and Rwanda or Lusophone, like Angola and Mozambique or Hispanophone like Equatorial Guinea) will focus on specific countries.

All of the constitutions examined explicitly state that holding a position in the executive is incompatible with being a member of the legislature. This provision does not preclude a member from transitioning between the two branches, but it requires that the individuals resign from their current position before taking up a new role.

The Francophone constitutions allow for greater control and intervention of one branch into the domain of the other. Regarding executive control or intervention in the legislative domain, this occurs in at least two primary ways. One significant method is through the promulgation of bills adopted by parliament before they become law. In many Francophone constitutional systems, a bill passed by parliament does not become law until it is formally

[39] R. Krotoszynski, 'The Separation of Legislative and Executive Powers' in T. Ginsburg and R. Dixon (eds), *Comparative Constitutional Law*, Edward Elgar Publishing, 2011, pp.237–247.

promulgated by the president. This requirement gives the executive a powerful tool to delay or block legislation, even after it has been adopted. The president may refuse to promulgate a bill or request its reconsideration, thereby exerting pressure on parliament and shaping the final outcome of the legislative process. As a result, this mechanism not only reflects the close interplay between the branches but also reinforces the executive's dominant role within the institutional framework. It acts as a means of controlling parliament by putting pressure on it, as no bill can become law without the president's approval. The president's powerful position in this system contrasts with the situation in Anglophone Africa, where, in the event of a deadlock between the president and parliament, parliament must be dissolved, and fresh elections must be held. This system in Anglophone Africa pressures both branches to reach a compromise. In most Francophone constitutions, (ex. Burkina Faso, Mali or Senegal) the president is granted discretionary powers to dissolve parliament, often requiring only consultation with the presidents of both chambers of parliament. The only restriction is that this power can be exercised no more than twice during a mandate and not earlier than one year after the last parliamentary elections. The 2006 constitution of the Democratic Republic of Congo is an exception, imposing some restrictions on the president's power to dissolve parliament. Additionally, the measures to control and even sanction the executive in Francophone Africa typically apply only to the prime minister and ministers. However, these officials serve at the pleasure of the president and often only implement policies determined by the president, who remains largely unaccountable to the people's representatives for any policy failures.

Turning to how these branches exercise each other's functions, the balance again tilts in favor of the executive. Unlike in Anglophone constitutions, where the executive assumes legislative functions primarily through the creation of secondary legislation, the civilian model of separation of powers expressly provides for executive law-making under the constitutions of many Francophone countries. This is characterized by two main features. First, the constitutions in these countries usually state that both the executive and parliament have the right to initiate bills. While, as in the Anglophone system, most bills are initiated by the executive, the law-making function is split into three distinct areas: matters exclusively reserved for legislative enactment (exclusive legislative domain), matters falling outside these areas that are reserved for the executive (exclusive regulatory domain), and matters within the exclusive legislative domain that parliament may authorize the executive to regulate, usually through decree-laws or ordinances, subject to subsequent parliamentary ratification. Two key points are worth noting here. First, although in practice, most modern laws in Anglophone Africa are initiated by the executive, which also has broad powers to make secondary legislation, the scope for executive law-making is far more extensive in Francophone Africa, where much of the government's regulatory work is conducted through presidential decrees, ordinances, regulations, and ministerial orders. Second, until the post-1990 expansion of judicial review in some of these countries, executive laws were completely outside the scope of judicial review for constitutional conformity, with judicial review limited to abstract review of bills before their promulgation[40]. Despite these differences, it is evident that in Francophone Africa, the executive effectively dominates and controls the legislative domain.

It is worth noting that the recent coups d'état in Mali (2020 and 2021), Burkina Faso (2022), and the Republic of Niger (2023) have significantly accelerated the decline of French influence in the Sahel region. By dismantling constitutional governance frameworks, these

[40] For a broader discussion of the role of public entrenchment of constitutional ideas see J. Fowkes & M. Hailbronner, 'Courts as the Nation's Conscience: Empirically Testing the Intuitions behind Ethicalization' in S. Vöneky et al (eds), *Ethics and Law: The Ethicalization of Law/Ethik und Recht: Ethisierung des Rechts*, Springer, 2013.

regimes have rejected political and security arrangements historically aligned with French interests. A key manifestation of this shift has been the expulsion of French troops and the suspension of bilateral defense agreements, effectively ending France's central role in regional counterterrorism efforts. Concurrently, the new regimes have sought strategic partnerships with alternative powers, particularly Russia, thereby diversifying their international alliances and undermining France's traditional diplomatic foothold. This reorientation has been accompanied by a surge in anti-French sentiment—fueled by both state rhetoric and popular mobilization—which reflects a deeper disillusionment with France's post-colonial legacy and its perceived ineffectiveness in supporting democratic governance and the rule of law.

In Francophone African countries, constitutional courts—modeled on the French *Conseil constitutionnel*—primarily conduct abstract, a priori review of legislation, assessing bills before they are enacted. For example, in Senegal**,** Ivory Coast**,** and Burkina Faso, only certain political actors such as the president or a group of parliamentarians can refer laws for constitutional review. While this system allows for preventive oversight, its effectiveness is often limited by this restricted access, which weaken court independence. Consequently, constitutional courts in these countries often hesitate to challenge legislation, especially when the executive and legislature share political alignment.

In terms of the judiciary and legislature intervening in each other's functions the scope for this interaction is, unlike in Anglophone constitutions, quite limited. Due to the absence of the doctrine of binding precedent in the civil law tradition, judicial law-making through judicial precedents is restricted. Inferior courts are not legally obligated to follow the rulings of superior courts in similar cases, although they may choose to do so to avoid having their decisions overturned on appeal. This adherence is more of a practical consideration rather than a legal duty. On the other hand, as previously noted, members of the legislature can exercise judicial functions when they initiate and participate in the trial of the president or other executive members for treason or other offenses.

Given the extensive powers of the executive and its influence over the legislature, the likelihood of the legislature initiating impeachment proceedings against the president or any member of the executive is quite slim. This issue persists not only under Francophone constitutions but also in Anglophone ones. This reality has prompted efforts by constitutional designers to broaden the scope of constitutional checks and balances, extending beyond the traditional separation of powers between the three branches of government.

In an era that emphasizes realism and political pragmatism over strict dogma, the doctrine of separation of powers now prioritizes unity, cohesion, and harmony within a system of checks and balances. It also creates space for intermediary institutions to address any gaps as well as for judges to act as checks on executive abuses.[41] Consequently, it is argued that an effective system of separation of powers, which limits the risks of excessive power concentration and the abuses that often accompany it, complemented by well-designed hybrid institutions that promote transparency and accountability, would provide a strong foundation for addressing the numerous contemporary challenges to constitutionalism, the rule of law, and good governance in Africa.

[41] M. Hailbronner, 'Independent Constitutional Institutions, Constitutional Legitimacy and the Separation of Powers: Looking Forward', in: Fombad, n. 30, p.385.

C. Key challenges

Excessive centralized power. Presidents often wield broad constitutional and informal powers, allowing them to dominate decision-making processes, control state resources, and influence or undermine the judiciary and legislature. This concentration of authority weakens democratic institutions, limits checks and balances, and can lead to authoritarianism, corruption, and human rights abuses. The lack of effective constraints on executive power undermines accountability and hampers the development of inclusive, transparent governance systems. In this context, the manipulation of constitutional frameworks by executive leaders to entrench their power and undermine democratic principles is a common phenomenon in some African countries. This often takes the form of amending or circumventing constitutional term limits, allowing presidents to remain in office beyond their originally mandated tenure. In some cases, referenda or parliamentary votes—often conducted under questionable circumstances—are used to legitimize these changes. Additionally, executives may push for constitutional revisions that expand presidential powers, reduce the independence of the judiciary or legislature, or weaken electoral commissions and other oversight bodies.

Legislative subordination to the executive. In many African countries, national parliaments function more as symbolic bodies than as truly independent and powerful branches of government. They frequently lack the institutional capacity, political will, or autonomy necessary to effectively hold the executive accountable. Executive decisions are often approved without real debate or resistance. As a result, legislation and budgets are passed with minimal scrutiny, and oversight mechanisms—such as inquiries into executive actions—are rarely exercised effectively.

Weak Judicial Review. Judicial review in many African countries often proves largely ineffective in protecting constitutional norms. In Anglophone states, the strong dominance of parliamentary supremacy and the widespread use of delegated legislation leave courts with little real power to check executive or legislative overreach. In Francophone countries, even where constitutions grant courts the authority to review government actions, judges often face political pressure, limited resources, and institutional constraints. Across both systems, these weaknesses mean that judicial review rarely serves as a genuine safeguard, leaving citizens' rights and the rule of law vulnerable.

Lack of stable structures of accountability. The absence of stable and effective accountability structures remains a significant challenge throughout much of the African continent. Oversight institutions, such as anti-corruption agencies, audit offices, and parliamentary committees, are often plagued by a lack of independence, inadequate resources, and persistent political interference. These weaknesses severely hinder their capacity to monitor government activities, expose misconduct, or hold officials accountable for abuse of power. While accountability mechanisms may be enshrined in law, they are frequently not implemented in practice, allowing impunity to thrive and eroding public confidence in state institutions.

2. Access to Justice

A. The Foundations: Access to Justice as a Cornerstone of the Rule of Law in Africa

Access to justice is not only a legal principle but a practical necessity when it comes to upholding the rule of law. It ensures that individuals are able to claim their rights, challenge injustices, and hold authorities accountable. In the African context, where many communities face historical marginalization, conflict legacies, and governance challenges, access to justice is a powerful tool for empowering citizens and promoting social cohesion. Without it, laws risk becoming hollow promises, especially for vulnerable groups who often face systemic barriers in navigating formal legal systems. Ensuring accessible, fair, and inclusive justice systems contributes to peace, strengthens democratic governance, and supports sustainable development by embedding trust in legal institutions and fostering accountability across all levels of society.

Encouragingly, a number of African countries have taken steps to embed access to justice within their constitutional frameworks. Kenya stands out with several provisions that reflect a strong constitutional commitment to securing this right. In addition to an explicit guarantee under Article 48, Article 50(2)(h) also requires the state to provide legal assistance in criminal cases where "substantial injustice would otherwise result", while Articles 49(1)(c) and 50(7) provide for the participation of paralegals in judicial proceedings on behalf of the accused or of victims. Similarly, South Africa's Article 34 enshrines the right of everyone to access courts or other impartial *fora* for resolving disputes. In contrast, Zimbabwe (Article 69) and Uganda (Article 28(1)) embed the right to access justice within the broader guarantee of a fair hearing, while Tanzania (Article 13(6)(a) of the Constitution) protects this right through its commitment to equality before the law. These provisions reflect a shared constitutional recognition across diverse legal systems that justice must be accessible, impartial, and inclusive. In practice, this has spurred important reforms such as the expansion of legal aid programs, decentralization of court services, and the institutionalization of community-based justice models. Some governments have also invested in mobile courts and paralegal networks to reach remote or underserved populations.[42] These initiatives, though varied in scope and success, highlight a growing recognition across the continent that access to justice is not a privilege for the few, but a foundational element of inclusive governance and human dignity.

A note on research methodology to evaluate access to justice in Africa

1. Key Research Questions and Evaluation Criteria

Given the multifarious challenges faced across the continent on the implementation of access to justice, the research is structured around three key questions (KQs) that guide the analysis. These questions assess the extent to which individuals can access justice (KQ1), whether the justice system operates effectively (KQ2), and the role of alternative dispute resolution mechanisms in delivering justice (KQ3). The methodology adopted here utilizes the World Justice Project's (WJP's) factors on civil and criminal justice as a starting point to provide comprehensive answers to these KQs, but does not rely exclusively on them. This is the case since the report attempts a broader and a more balanced assessment than that of the WJP. Broader, since it considers access to administrative justice as a key

[42] E.g. under the Malawi 2011 Legal Aid Act, the Paralegal Advisory Services Institute operates nationwide and offers its services to prisoners and people residing in remote and rural areas.

feature of determining the accessibility of the legal system and also the essential empirical background of the present report includes more countries than these examined in the WJP (40 compared to 37). And more balanced, since it takes into consideration additional factors that determine the level of each country's legal system accessibility.

KQ1 examines whether justice is easily accessible to individuals. It considers people's awareness of available legal remedies, their ability to access and afford legal advice and representation, and whether they can navigate the court system without facing excessive financial or procedural barriers. With respect to criminal justice, it evaluates the extent to which criminal suspects can access and challenge evidence against them, whether they are protected from abusive treatment, and receive adequate legal assistance.

KQ2 addresses the effectiveness of the justice system seen as a whole. The latter should be free from discrimination, corruption, and improper government influence. Furthermore, it should not be subject to unreasonable delays and must be effectively enforced. In addition to the above, the criminal justice system should further ensure an effective investigation process and a correctional system that reduces criminal behavior. The presence or absence of these factors determines whether justice systems across African nations function efficiently or whether systemic issues hinder their performance.

KQ3 focuses on the efficiency of alternative dispute resolution mechanisms. These mechanisms must be accessible, impartial, and effective in providing fair resolutions outside of formal court systems.

2. Correlation with Governance Indicators

To establish a correlation between access to justice and broader governance indicators, the study compares a country's access to justice record with the Freedom House report on "Freedom in the World". The analysis reveals a distinct pattern: countries classified as "free" generally exhibit higher scores in both civil and criminal justice, whereas "partly free" countries show moderate performance, and "not free" countries rank lowest in terms of access to justice. Botswana, for example, which is categorized as a free country, ranks among the top States as to the accessibility of its justice system. Ditto, Mauritius, that achieves a very high freedom score. South Africa and Namibia also demonstrate strong performances, reinforcing the correlation between democratic freedoms and a well-functioning legal system. In contrast, partly free countries such as Kenya and The Gambia perform at a moderate level. Both States have functional legal systems but still face notable challenges in ensuring equitable access to justice. At the lower end of the spectrum, countries classified as not free consistently perform poorly in guaranteeing access to justice (e.g. Sudan and the Democratic Republic of the Congo face considerable challenges in this respect). These cases underscore the strong correlation between restricted freedoms, weak legal systems, limited judicial access, and higher levels of corruption and inefficiency.

However, certain exceptions challenge this general pattern. Rwanda and Zambia have low freedom scores, however, they perform exceptionally well in securing access to justice in their legal systems. These anomalies indicate that while governance and access to justice are strongly linked, other factors may contribute to legal system efficiency in specific cases.

B. Meaningful features on Access to Justice in Africa

1. Challenges to Accessing Justice

In assessing access to justice, the research identifies ten major challenges that align with the three KQs. One of the most significant barriers is geographical distance, as rural and remote areas often lack sufficient infrastructure and legal services. This severely limits the ability of marginalized populations to seek legal remedies. Furthermore, the high costs associated with legal proceedings, including court fees and legal representation, create financial obstacles for individuals, particularly those from low-income backgrounds. Many people, especially in rural areas, are also unaware of their legal rights or the mechanisms available to seek justice. This lack of awareness is compounded by inadequate legal aid services, which remain underfunded and inaccessible to a significant portion of the population. The increasing reliance on digital justice mechanisms further marginalizes individuals who lack access to technological resources.

Beyond accessibility, weaknesses in legal infrastructure pose additional challenges. In many African countries, judicial systems suffer from outdated legal frameworks, inadequate court facilities, and limited financial resources, which result in inefficiencies and prolonged delays. Corruption and bribery further undermine public trust and impede the delivery of fair and impartial justice. Gender inequality remains another critical issue, as women and girls often encounter legal barriers shaped by discriminatory laws and societal norms. Political interference further erodes judicial independence, preventing legal institutions from operating in a fair and impartial manner.

The effectiveness of alternative dispute resolution mechanisms is also impacted by legal pluralism. Many African nations operate a dual legal system that includes both statutory and customary legal frameworks. While traditional justice mechanisms can offer accessible and culturally relevant solutions, they may also lack consistency with formal legal systems, leading to conflicts in legal interpretations and outcomes.

By applying this methodology, the research aims to provide a comprehensive assessment of access to justice in Africa, highlighting both systemic strengths and areas in need of reform. The findings offer valuable insights into how legal systems have been structured to ensure justice for all individuals, particularly those from marginalized communities.

2. Ten factors to assess access to justice in Africa - Country Examples

The following 10 factors present the main challenges to Access to Justice, organized according to the three KQs identified above: KQ1 the extent of accessibility to justice; KQ2 the effectiveness of the justice system; and KQ3 the efficiency of alternative dispute resolution mechanisms. Despite there being three KQs the factors are organized in four sections because, two factors cross-cut KQs1 and 2, so they will be examined in a separate section.

A. KQ 1 Accessibility to Justice

1. Geographical Barriers

Geographical barriers, where rural and remote areas lack proper infrastructure and legal services, significantly hinder access to justice, particularly for marginalized communities. In Chad, many rural regions are isolated due to poor roads and limited legal services, which

means residents often struggle to access courts and legal representation.[43] The mobile courts set up by the UN made only occasional visits, rarely addressing sexual violence cases.[44] Similarly, Mozambique faces difficulties in reaching remote communities, where the lack of infrastructure and few legal professionals leave large populations without support; 83% of lawyers are concentrated in Maputo, while provinces like Zambezia and Niassa have disproportionately fewer courts relative to their populations.[45] In contrast, Kenya has taken steps to improve access to justice by introducing mobile courts, such as those operated by the Kapenguria Law Court, where officials travel long distances to conduct court sessions in remote areas like Sigor and Alale, despite challenges like poor road conditions and absentee witnesses.[46] Mobile courts have been also implemented in areas like Garissa and Dadaab, where magistrates travel to communities and refugee camps to hold court sessions, overcoming distance barriers and improving public understanding of the law.[47]

2. High Costs

High costs, including legal representation and court fees, are significant barriers to accessing justice, particularly for individuals from low-income backgrounds. Uganda faces challenges with high court fees that create inequality in access to justice, particularly for those in poverty. 38% of those experiencing high poverty say they can't afford court costs, and 45% report the same for legal support.[48] Rural residents are disproportionately affected, with 36% unable to afford court fees compared to 31% in urban areas, and 42% unable to afford legal support compared to 33% in urban areas.[49] Youth and those without formal education are also more likely to face barriers to accessing legal services. On the other hand, South Africa has made developments by providing subsidized legal aid, ensuring that low-income individuals can access legal representation, in 2015 Legal Aid South Africa assisted almost 800,000 individuals who otherwise would not have been able to access justice due to the inability to afford legal fees.[50] Kenya, with the 2016 enactment of the Legal Aid Act and the 2017 launch of the National Action Plan on Legal Aid, has made significant progress in expanding its legal aid programs, ensuring a collaborative approach that improves the accessibility of legal services for vulnerable populations.[51] However, Rwanda has made notable progress by implementing low-cost or community-based legal programs

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[43] United Nations Office on Drugs and Crime (UNODC), *Access to Justice for All* (Action for Education and Promotion of Women), https://www.unodc.org/res/justice-and-prison-reform/access-to-justice-for-all_html/Action_for_Education_and_Promotion_of_Women.pdf .

[44] *Country Reports on Human Rights Practices for 2011: Chad*, U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2011, https://2009-2017.state.gov/documents/organization/186391.pdf.

[45] Bertelsmann Stiftung, BTI 2024 Country Report — Mozambique. Gütersloh: Bertelsmann Stiftung, 2024, https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2024_MOZ.pdf .

[46] Judiciary of Kenya, 'Mobile Courts: Taking Justice Closer to the People in Kapenguria', Last modified October 22, 2021, https://judiciary.go.ke/mobile-courts-taking-justice-closer-to-the-people-in-kapenguria/.

[47] T. Chopra, *Reconciling Society and the Judiciary in Northern Kenya*. Justice for the Poor, December 2008, pp. 12-13, https://documents1.worldbank.org/curated/en/590971468272735172/pdf/716920ESW0P1110ry0in0Northern0Kenya.pdf .

[48] R. Adjadeh, Fr. Male & St. Ssevume Male, *Access to Justice? As Public Trust in Courts Declines, Many Ugandans Have Their Doubts*, Afrobarometer Dispatch No. 821, 11 July 2024, www.afrobarometer.org/wp-content/uploads/2024/07/AD821-Access-to-justice-Ugandans-have-their-doubts-Afrobarometer-11july24.pdf.

[49] Ibid.

[50] International Development Law Organization, *Legal aid for Africa*, Retrieved from: https://www.idlo.int/news/highlights/legal-aid-africa This is an organizational webpage highlighting the topic of legal aid in Africa. Legal Aid South Africa has a mandate from the South African Constitution to help the poor get tax-funded legal assistance.

[51] Global Access to Justice, 'Global Overview: Kenya', https://globalaccesstojustice.com/global-overview-kenya/.

such as Abunzi Mediation, showcasing that with effective solutions, access to justice can be made more affordable.[52]

3. Lack of Awareness

Lack of awareness about legal rights and remedies is a significant barrier to accessing justice, particularly in rural areas where people are often unaware of their legal entitlements or how to seek justice. In Central African Republic, the situation is worsened by limited resources and a lack of outreach, leaving many citizens without any understanding of their legal rights.[53] In contrast, Kenya has made efforts to address this challenge through initiatives like the National Legal Aid Service (NLAS) and the Legal Aid and Awareness Programme (NALEAP). Established in 2008, NALEAP develops national legal aid policies and legislation, while NLAS promotes legal literacy through public outreach, mass media campaigns, and community visits. Legal Awareness Week, organized by the Law Society of Kenya, also plays a crucial role in extending legal knowledge to the public and providing pro bono services, thereby improving access to justice.

Further, Rwanda has made significant steps in improving access to justice. Since 2009, Legal Aid Week, organized by the Legal Aid Forum (LAF), has provided legal education and assistance to vulnerable groups. Over 3,000 community-based paralegals operate nationwide, offering legal advice, mediation, and referrals. LAF also collaborates with media outlets to educate the public on legal rights through TV and radio programs, enhancing legal literacy and access to justice.

4. Gender Inequality

Gender inequality continues to shape the way women experience access to justice across the African continent. It continues to be a significant barrier to justice in many African countries, where women face discrimination due to outdated laws, cultural norms, and societal attitudes. Some States formally recognize this and adopt corrective legislation. Article 27 of the Kenyan Constitution explicitly prohibits gender discrimination in access to justice, while the Legal Aid Act of 2016 prioritizes women in accessing State-funded legal aid. Further, Section 9(2)(e) of the Gender Equality Act of 2013 in Malawi authorizes the Human Rights Commission of the country to promote and facilitate access to remedies for any dispute concerning gender issues. In pursuing justice, women often turn to customary and religious justice systems, which are generally closer to communities, less costly, and easier to navigate than state courts, though they frequently reflect traditional and patriarchal norms.[54] In Burundi, for example, the *bashingantahe* informal system works alongside the formal judiciary but tends to deliver gender-biased rulings in family disputes. In Somalia, the absence of reliable alternatives has pushed some women to seek justice from Al-Shabaab courts. Gender bias in rulings is another concern: in many States female judges tend to issue judgments more responsive to the women victims in the cases of violence against the woman, while male judges often reflect traditional views. In Benin for example, women

[52] L. Ospina, 'Abunzi Mediation: Traditional Conflict Resolution for Community Empowerment and Participation', June 3, 2023, https://www.sdg16.plus/policies/abunzi-mediation-traditional-conflict-resolution-for-community-empowerment-and-participation/.

[53] The World Bank Group, *Understanding Access to Justice and Conflict Resolution at the Local Level in the Central African Republic (CAR)*, Social Cohesion and Violence Prevention Team, Social Development Department, February 24, 2012, p. 52, https://documents1.worldbank.org/curated/en/722571468739196328/Understanding-access-to-justice-and-conflict-resolution-at-the-local-level-in-the-Central-African-Republic-CAR.

[54] UN Women Multi-Country Analytical Study on Access to Justice for Victims and Survivors of Violence against Women and Girls in East and Southern Africa, UN Women, 2021, p. 22.

judges have interpreted equality clauses in the constitution and in basic law to fight for women's equality, as well as advocating for women's rights outside of courts in civil society.[55] South Africa has made great strides, establishing progressive laws to provide women with better access to justice, including the Gender-Based Violence and Femicide National Strategic Plan. Rwanda again stands out as one of the leaders in promoting gender equality and justice for women in Africa. A significant initiative is the Access to Justice Bureaus, which provides free legal services to victims of violence, helping combat impunity and promote sustainable peace. Through legal representation, community mobilization, and multi-sectoral collaboration, these bureaus have played a vital role in improving access to justice for women, though challenges remain in fully eradicating violence against women.

B. KQ 2 Effectiveness of the Justice System

5. Weak Legal Infrastructure

Weak legal infrastructure in many African countries is characterized by outdated laws, inadequate court facilities, insufficient resources, and geographical barriers, which create delays and limit access to justice. In contrast, Sierra Leone, after its brutal civil war (1991-2002), has made significant progress in improving access to justice. The Justice Sector Coordinating Office has implemented a community-based justice system that is responsive and transparent, with a focus on legal assistance for marginalized groups. Notable improvements include the establishment of an SGBV Court to address gender-based violence, increased deployment of magistrates, and stronger coordination between the security and justice sectors. Additionally, the Human Rights Commission of Sierra Leone has earned "A" status, reflecting robust human rights protections. These reforms highlight Sierra Leone's commitment to strengthening its justice system post-conflict.

6. Corruption and Bribery

Corruption among the institutions engaged with the delivery of justice can severely undermine access to justice. This is why this issue must be examined from a holistic justice ecosystem perspective, including the police, public prosecutors, and not just sitting judges. Some countries have made notable progress in combating corruption when it comes to access to justice, nevertheless corruption constitutes an acute problem across the African continent. As far as citizens' perception regarding corruption of police officers is concerned, the most recent data from 39 countries demonstrate great disparities: Capo Verde, Mauritius and the Seychelles excel in this respect while Liberia, Nigeria, Sierra Leone and Uganda lag behind.[56] According to the same survey, police is the most corrupt public institution in 19 African countries.[57] According to the Transparency International Corruption Perceptions Index, leading African countries fighting against corruption are Botswana and Rwanda.[58] Botswana excels with its transparent governance, strong anti-corruption laws, and an independent judiciary, ensuring fair access to justice. Rwanda has also made significant steps, with 14 court officials prosecuted for corruption in the past five years and disciplinary action taken against corrupt judicial employees. Recent measures include enhanced whistleblower protections, technology adoption, and public awareness campaigns aimed at

[55] A. Kang, 'Benin: Women Judges Promoting Women's Rights' in Gretcher Bauer and Josephine Dawuni, (eds) *Gender and the Judiciary in Africa: From Obscurity to Parity?,* Routledge, 2016, p. 119.
[56] Afrobarometer, *Law enforcers or law-breakers? Beyond corruption, Africans city brutality and lack of professionals among police failings*, Afrobarometer Policy Paper no. 90, 2024, p. 10ff.
[57] Ibid. p. 12.
[58] Transparency International Corruption Perceptions Index, 2024, https://www.transparency.org/en/cpi/2024/index.

dismantling networks of fraudulent “commissioners” who mislead citizens into believing that bribery is necessary to win cases. Despite these efforts, corruption remains a challenge, with a total 4,437 corruption-related cases investigated in the past five years affecting 9000 individuals.[59] Other States like Somalia, for example, continue to struggle with widespread corruption within the judiciary itself, leading to biased rulings and unequal access to justice, particularly for vulnerable groups. Despite the sporadic efforts to fight corruption, as of September 2025, Somalia does not have an active, established central anti-corruption commission as the National Anti-Corruption Commission, foreseen in the provisional constitution, has not yet been formally established or implemented since being outlined in a 2019 anti-corruption bill. Also, it does not have a functioning Judicial Service Commission - mandated to advise the Federal Government on the administration of justice including recruitment, dismissal, and any legal action taken against judges and decide on any matters relating to the functioning of the judiciary- as provided for in Article 109 of the provisional constitution.

7. Political Interference

Political interference in the judiciary remains a major challenge in many African countries, where governments manipulate the judicial system to safeguard their power and control. While it will be covered in detail in the next Chapter, a reference to this factor affecting critically the functioning of the judicial system and access to justice in particular is in order here. In countries like Benin, the president has used special courts to target political opponents, manipulating the judiciary to undermine democratic processes. Similarly, Kenya has witnessed judges facing political pressure and intimidation, with some even forced to resign after issuing rulings that went against the government's interests. In Uganda, South Sudan, and Zimbabwe, political leaders have used their influence to appoint loyalists to key judicial positions, ensuring that court rulings favor the government. In the Democratic Republic of Congo (DRC), the President has control over the judiciary through appointment powers entrenched in the Constitution; the President chairs the High Council of the Judiciary, the body constitutionally charged with overseeing judges’ careers and discipline. Also, the President appoints and removes magistrates on the proposal of the High Council according to Article 82 of the Constitution. Further, senior judicial officers (President of the Constitutional Court, Prosecutor General, members of the Conseil d’État) are nominated directly by the President and, finally, the *Loi Organique sur le Conseil Supérieur de la Magistrature* and other implementing laws maintain the President’s dominance in judicial appointments, promotions, and transfers. Despite these widespread issues, there have been notable instances of judicial independence in Senegal, Kenya, and Malawi, where courts have ruled against sitting governments, demonstrating that an independent judiciary can still uphold democracy.

C. Challenges pertaining to both KQ1 & KQ2

8. Inadequate Legal Aid Services

Inadequate legal aid services remain a significant barrier to accessing justice, particularly for marginalized individuals who cannot afford legal representation. In Nigeria, with a population of 229.2 million and approximately 140,000 lawyers, there is one lawyer for every 1,638 people.[60] However, this statistic does not account for lawyers working outside

[59] Rwanda Dispatch, ‘Judiciary strengthens anti-corruption efforts with new measures’, February 2025, https://rwandadispatch.com/judiciary-strengthens-anti-corruption-efforts-with-new-measures/.
[60] Website of Nigerian Bar Association, www.nigerianbar.org.ng.

mainstream legal practice, many of whom are not readily available to provide legal aid. Additionally, most lawyers are concentrated in urban areas, leaving rural populations underserved. In Kenya, with a population of 56.2 million and over 23,000 practicing lawyers, there is one lawyer for every 2,439 people.[61] As a result of the limited number of practicing lawyers, community-based paralegals play a critical role in assisting citizens to navigate the legal system. Paralegals help bridge the gap by providing essential legal information, guidance, and support in a cost-effective manner, particularly in rural and underserved areas.

Many African countries, including Kenya, Nigeria, Ghana, Mozambique, and Uganda, have community-based paralegals who play a crucial role in bridging the gap created by the low number of practicing lawyers. However, the recognition of these paralegals within legal systems varies. For instance, Kenya officially recognizes community paralegals, while countries like Nigeria and Ghana do not. In contrast, Tanzania and Zambia have incorporated community-based paralegals into their legal frameworks. South Africa, as a positive example, institutionalized Community Advice Offices in 2016, supporting paralegals through training and integration into the legal system to improve access to justice.

9. Technology and Digital Divide

The digital divide remains a major challenge globally, with technology access varying significantly across regions. Kenya and Rwanda have made remarkable progress in digitalizing their judicial systems, enhancing access to legal services through virtual courts, e-filing systems, case management tools, and toll-free helplines. These innovations have been especially beneficial for vulnerable populations in remote areas. Tanzania is also at the forefront in East Africa, integrating AI into its judicial processes, including AI-driven transcriptions and translations to improve efficiency and accuracy.

Other examples of successful socio-legal innovations include Barefootlaw Uganda, which leverages social media, virtual counseling, interactive voice response systems (IVR), SMS, and a call center to provide free legal assistance, empowering citizens to safeguard their rights. Afriwise is another platform connecting top African law firms, offering affordable access to legal alerts and expert advice through a user-friendly online portal. Additionally, HeLawyer, a mobile application developed by volunteer lawyers in Benin, offers free legal support, enabling citizens to better understand and protect their rights and property.

D. KQ3 Efficiency of Alternative Dispute Resolution Mechanisms

10. Legal Pluralism

Legal pluralism, where formal state sources of law coexist with traditional or customary sources can be at the same time beneficial and detrimental to the effectiveness of the legal system. Legal pluralism can enhance political stability, manage diversity, and help build nationhood. And it often falls upon a traditional justice system running alongside the official justice system to overview the implementation of traditional sources of law. In Botswana, Kenya, Ghana and Mozambique these judicial mechanisms have been formally integrated in the country's judicial framework and enjoy widespread legitimacy. Community courts in Kenya, for example, whose functioning -along with other alternative dispute resolution (ADR) mechanisms such as reconciliation, mediation and arbitration- is promoted by Article 159 of

[61] Law Society of Kenya Strategic Plan 2023-2027, https://lsk.or.ke/wp-content/uploads/2023/11/LSK-Strategic-Plan-2023-2027-16-11-2023-f-1.pdf.

the Kenyan Constitution, complement the official judicial system, are widely used, they are trusted by the citizens and reduce costs and delay.[62]

However, in case of poor coordination between different legal sources, legal pluralism may lead to conflicts and inconsistencies that make it difficult for marginalized groups to access justice. In Nigeria, for example, customary law can contradict national laws on issues like inheritance, often disadvantaging women. Somalia faces similar challenges, with clan-based justice systems often overriding state law, as detailed in the Heritage Institute's report.[63] Despite ongoing efforts to build a formal justice system, clan-based practices still dominate, making legal outcomes inconsistent and complicating access to justice. However, some countries have successfully addressed these issues.

South Africa and Ghana have successfully leveraged traditional courts and other ADR mechanisms. South Africa is currently discussing revisions to its criminal justice system, including the ADR in criminal cases. A recent South African Law Reform Commission's discussion paper explores the potential use of ADR for adult diversion in criminal matters, emphasizing restorative justice, mediation, and reconciliation to reduce court backlogs and promote rehabilitation.[64] Ghana has fostered community-based dispute resolution through its Alternative Dispute Resolution Act (2010), which formally integrates ADR into the justice system. The Legal Aid Commission also promotes the use of mediation to resolve disputes at the community level, particularly in rural areas where access to formal courts is limited. This framework has helped to resolve conflicts more efficiently and has increased trust in the justice system.

C. Key Challenges

The 10 factors influencing access to justice, as outlined in the previous sections, can be categorized into three distinct groups, reflecting their relative significance as key challenges to justice in Africa.

The most crucial challenges include:
i. **Geographical Barriers**, which hinder access to legal services and courts, especially in remote or rural areas;
ii. **High Costs**, which make legal proceedings prohibitive for many, particularly those from disadvantaged backgrounds;
iii. **Corruption and Bribery**, which undermine public confidence in the justice system and create obstacles for individuals seeking fair legal outcomes; and
iv. **Legal Pluralism**, where conflicting systems of law—such as customary and national legal frameworks—can lead to unequal treatment, especially for women and marginalized groups. These challenges significantly hinder access to justice and require immediate attention.

The next set of challenges includes:

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[62] In November 2024, Kenya's Chief Justice Martha Koome reported that 71% of Kenyans resolve disputes through ADR mechanisms rather than the formal courts, 'Most Kenyans resolve their conflicts through Alternative Dispute Resolution (ADR) – CJ Koome' *The Judiciary,* 18 November 2024. : https://judiciary.go.ke/most-kenyans-resolve-their-conflicts-through-alternative-dispute-resolution-adr-cj-koome/?utm.

[63] Heritage Institute, *State of Somalia 2023 Report,* https://heritageinstitute.org/wp-content/uploads/2024/05/SOS-REPORT-2023-.pdf .

[64] South African Law Reform Commission, Discussion Paper 164, *Review of the Criminal Justice System: Alternative Dispute Resolution in Criminal Matters – Pre-Trial Processes*, https://www.justice.gov.za/Salrc/dpapers/DP164-Project151-ADR-PartB-AdultDiversion-CriminalMatters.pdf.

i. **Lack of Awareness**, where many individuals, especially in underserved regions, are unaware of their legal rights and the available legal resources;
ii. **Gender Inequality**, which is prevalent in both formal and informal justice systems, often resulting in discrimination against women and limiting their access to justice;
iii. **Weak Legal Infrastructure**, where underdeveloped courts, insufficient legal professionals, and inadequate resources cause delays and inefficiencies in legal proceedings; and
iv. **Political Interference**, which disrupts judicial independence and compromises the integrity of the legal process. These challenges also play a critical role in limiting access to justice and require focused reforms and capacity-building initiatives.

Finally, the remaining challenges include:
i. **Inadequate Legal Aid Services**, which leave vulnerable populations without sufficient access to legal representation, and
ii. **Technology and Digital Divide**, where the lack of access to technology and digital literacy inhibits the use of modern legal tools, further excluding individuals from justice. While these challenges are more closely tied to evolving trends and require long-term strategies, addressing them is essential to ensuring a more equitable and accessible justice system in the future.

Table 1

Countries in the 2024 WJP Report *vs* Countries not included in the 2024 WJP Report

1. Algeria
2. Angola
3. Benin
4. Botswana
5. Burkina Faso
6. Cameroon
7. Democratic Republic of the Congo
8. Republic of the Congo
9. Cote d' Ivoire
10. Egypt
11. Gabon
12. The Gambia
13. Ghana
14. Guinea
15. Kenya
16. Liberia
17. Madagascar
18. Malawi
19. Mali
20. Mauritania
21. Mauritius
22. Morocco
23. Mozambique
24. Namibia
25. Niger
26. Nigeria
27. Rwanda
28. Senegal
29. Sierra Leone
30. South Africa
31. Sudan
32. Tanzania
33. Togo
34. Tunisia
35. Uganda
36. Zambia
37. Zimbabwe

1. Burundi
2. Cape Verde
3. Comoros
4. Djibouti
5. Equatorial Guinea
6. Eritrea
7. Eswatini
8. Ethiopia
9. Guinea-Bissau
10. Lesotho
11. Libya
12. Sao Tome & Principe
13. Seychelles
14. Somalia
15. South Sudan
16. Central African Republic
17. Chad

Countries considered in this report that are not included in the 2024 WJP Report

1. Somalia
2. South Sudan
3. Central African Republic
4. Chad

3. Independence of the judiciary

A. The foundations: Judicial Independence as a fundamental asset to democracy in Africa

The principle of judicial independence and its significance to the rule of law are broadly recognized. It is considered to be one of the fundamental pillars of democracy and at the same time it is indispensable to the separation of powers and access to justice. In Africa, different legal systems continue to develop and in this democratic route the judicial branch marks a vital component of everyday life for protecting human rights alongside promoting democratic values. The pre-colonial, colonial and post-colonial eras of African legal history have influenced the evolution of the principle. And it was after the post-independence period that the most significant efforts to establish judicial autonomy and independence took place when the new states were trying to build strong, independent institutions, despite the historical legacy and the various weaknesses of the previous periods.[65] Nowadays, the continental and national constitutional provisions affirm the independence of the judiciary as a core element for ensuring the rule of law. Nevertheless, these provisions alone are insufficient to ensure an independent and impartial tribunal. As the always-relevant Dakar Declaration (1999) states, in practice, opaque appointment procedures, executive interference, lack of security of tenure and remuneration and inadequate resources usually undermine judicial independence.[66]

What follows is a brief presentation of the theoretical and practical foundations that form the independence of the judiciary in Africa at the continental, regional and national levels, taking into consideration, in principle, that these foundations have been undoubtedly shaped within the relevant international instruments (e.g. to name a few: The United Nations Basic Principles on the Independence of the Judiciary (1985), Article 10 of the Universal Declaration of Human Rights (UDHR), Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR), the UN ECOSOC Bangalore Principles of Judicial Conduct (2002), the Commonwealth Latimer House Principles (2003), the United Nations Office on Drugs and Crime (UNODC) declaration on judicial independence on 2018 and many more). Given Africa's vast geographical and legal diversity, the country examples referred to in this unit are meant to provide an indicative demonstration of the continent's efforts to strengthen judicial independence. They combine research-based findings alongside the aim of the authors of this report to acknowledge the developments that have been made and are still being made by the various African legal systems.

To begin with, judicial independence is included in the legal frameworks that have been developed at the continental level and especially by the African Union (AU). According to its

[65] Ch. M. Fombad, 'An overview of the crisis of the rule of law in Africa' *African Human Rights Law Journal*, Vol.18, 2018, pp. 213-243; Ch. M. Fombad, 'The Struggle to Defend the Independence of the Judiciary in Africa', in S. Shetreet et al (eds), *Challenged Justice: In Pursuit of Judicial Independence*, Brill, 2021, pp. 223–248; Fombad, n.30; J. M. Mbaku, 'Threats to the Rule of Law in Africa' *Georgia Journal of International & Comparative Law*, Vol.48, 2020, p. 293; M. Mutua, 'Africa and the Rule of Law' *SUR 23,* 2016, pp. 159 - 173; St.. Pfeiffer, 'Notes on the Role of the Judiciary in the Constitutional Systems of East Africa Since Independence', *Case Western Reserve Journal of International Law*, Vol.10*,* 1978, p.11ff; St. Ellman, 'The Struggle for the Rule of Law in South Africa', *New York Law School Law Review*, Vol.60, 2015-2016, p.57ff; C. M. Fombad, The Separation of Powers and Constitutionalism in Africa: The Case of Botswana, *Boston CollegeThird World Law Journal*, Vol.25, 2005, p. 301ff.

[66] Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa, adopted at the African Commission on Human and Peoples' Rights Seminar, Dakar, Senegal, 9–11 September 1999, Resolution on the Right to Fair Trial and Legal Aid in Africa - ACHPR/Res.41(XXVI)99.

Constitutive Act, the respect of the democratic values and the promotion of good governance are among its objectives underlining the need for impartial courts as a prerequisite for democracy (Preamble, Article 4(m), Article 3(e-h)). The core of this foundational principle and its implementation within the African continent lies in Article 26 of the African Charter on Human and People's Rights (Banjul Charter). This article stipulates the obligation of the states to guarantee the independence of the courts and to support as well the creation of national institutions in order to promote and protect simultaneously the rights and freedoms enshrined in the Charter. In parallel, Article 7(1) of the Banjul Charter recognizes the right to a fair trial and outlines its distinct aspects: the right to a competent and impartial court, legal defense, the presumption of innocence as well as the right to appeal. The mutual connection of the above provisions and their combined implementation in founding and sustaining the independence of the judiciary is apparent; the right to a fair trial presupposes an impartial and independent court, without the existence of which the actual and practical realization of both legal guarantees is weakened, if not completely threatened to their foundational core.

Another significant continental framework that includes certain provisions regarding judicial independence is the African Charter on Democracy, Elections and Governance (ACDEG Charter). According to its Preamble and Articles 2(2), 3(2), 4(1) and 32(8), the ACDEG Charter recognizes and promotes fair and transparent legal systems, constitutional order and human rights protection. In this regard, it considers judicial independence as a significant element of democracy, and good governance. Based on the principle of the rule of law, judicial independence (Article 2(5)) is included among its objectives and it declares that the member states are obliged to ensure stable and fair governance through an independent judiciary (Article 32(3)).

In line with the above framework, the legal bodies of the AU are committed to the principle: the African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights (ACtHPR) play a distinct, important role and each one respectively under its own competence reinforces and safeguards judicial independence. The ACHPR has published numerous resolutions underlining the need for strong, impartial and unbiased judiciary. It has developed the "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa" which complement and analyze further the legal requirements of the aforementioned Articles 26 and 7 of the Banjul Charter. The Principles and Guidelines provide comprehensive criteria for judicial independence and fair tribunals, describing the judges' transparent appointment procedures, their security of tenure, their freedom from external and executive interference and bias as well as the branch's financial autonomy. The predecessors, among others, have been the "Resolution on the Respect and Strengthening of the Independence of the Judiciary" and the "Resolution on the "Right to a Fair Trial and Legal Aid in Africa" (the Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa). These Resolutions called upon African states to withdraw all their legislation that undermines judicial independence, to adopt transparent appointment and tenure procedures, to allocate adequate resources for the judges and to protect them from external pressures and threats.

Moreover, the ACHPR, through the cases it has handled and continues to handle, contributes meaningfully to the interpretation and enforcement of judicial independence, acting as a quasi-judicial body. It has adjudicated on issues such as executive interference, legislative ouster clauses, non-compliance with judgments, inadequate resources etc, all of which it considers to be violations of Article 26 and of the Banjul Charter's rights in general (e.g., Kevin Mgwanga Gunme and others v. Cameroon, Communication 266/03, Justice Thomas S. Masuku v. The Kingdom of Swaziland, Communication 444/13, Ibrahim Almaz

Deng & Others v. Sudan, Communication 470/14, Lawyers for Human Rights v Swaziland (Eswatini), Communication 251/2002, Wetsh'okonda Koso and Others v. Democratic Republic of the Congo, Communication 281/03). In the case Civil Liberties Organization v. Nigeria (Communication 129/94), the ACHPR held that Article 26 goes beyond the right to a fair trial by requiring from the states to create those appropriate and necessary institutional conditions in order to explicitly protect and promote human rights. Likewise, in Sir Dawda K Jawara v. The Gambia (Communication 147/95 and 149/96), the ACHPR reiterated that a state's failure to have independent, impartial and competent courts violates Article 26. The evolution of its decisions over the years has formulated the standards of the independence of the judiciary, as outlined in the related Resolutions, and reaffirms the ACHPR's commitment to uphold the autonomous and impartial function of the courts in Africa.

In a similar way, the ACtHPR, the highest continental judicial body for the protection of human rights, plays an important role in guarding judicial independence, since it interprets Article 26 and addresses its potential violations, among the other human rights of the Banjul Charter. Its rulings have gradually reinforced the independence of the judiciary in cases regarding executive interference, judicial appointments, the judiciary's role in governance, electoral disputes etc. Through its case law, the ACtHPR has repeatedly stressed the obligation of the African states to uphold the independence of the judicial system and to prevent any undue influence over its operation (e.g., Houngue Éric Noudehouenou v. Republic of Benin, ACtHPR, Application no. 028/2020, Judgement 1st December 2022).

Particularly, in the case Ajavon v. Benin (App. n. 062/2019, Judgment of 4 December 2020), the ACtHPR found that Article 26 was violated and reaffirmed that judicial independence constitutes "one of the fundamental pillars of a democratic society". It clarified that courts have to be able to execute their functions "free from external interference and without depending on any other authority". It further noted that this principle has two sides: the institutional one and the individual one, meaning that the former refers to the autonomous distinction of the three branches and that the latter coincides with the personal autonomy and independence of the judges. The ACHPR underlined that the obligation to uphold judicial independence includes both of its aforementioned aspects. Indisputably, the ACHPR's rulings act as precedents and provide substantial interpretation and legal guidance as to strengthen the implementation of the principle. However, it should be noted that there is a recognized gap between the judgments of the African Court of Human Rights (ACHPR) and their effective implementation by States. First of all, the ACHPR does not have a strong enforcement mechanism. It relies heavily on the goodwill of States to voluntarily implement decisions. Secondly, several States have refused to comply with judgments they find politically sensitive or inconvenient.[67] Thirdly, some States like Rwanda, Benin, and Cote d'Ivoire, have withdrawn from Article 34(6) declaration, which allowed individuals and NGOs to bring cases against them. Finally, in cases where States claim to comply, the actual steps (like changing laws) are often delayed or symbolic. For instance, in the case of Mtikila v. Tanzania (2013), the Court held that the ban on independent candidates was a violation, and Tanzania did not implement the judgment, and even withdrew its declaration under Article 36 (4).

Judicial independence is also reinforced by the regional judicial bodies that are established under the African Regional Economic Communities (REC). In specific, the founding treaties of the East African Community (EAC) and the Economic Community of West African States (ECOWAS), include references related to judicial independence in the establishment of their

[67] C. Rickard, African Court's existence threatened by lack of coorperation from AU States, 26 March 2021, https://africanlii.org/en/articles/2021-03-26/carmel-rickard/african-courts-existence-threatened-by-lack-of-cooperation-from-au-states.

regional courts, though without mentioning the principle itself (e.g. Articles 24 EAC Treaty [additionally, articles 6(d) and 7(2) referring to the principles of the rule of law and democracy] and Article 15 ECOWAS Treaty). The rulings of the regional courts demonstrate their commitment to protect judicial independence. The ECOWAS Court of Justice (ECOWAS CJ) has delivered important rulings that directly strengthen judicial independence and point out the responsibilities of national governments to uphold constitutional protections and the duty of the states to protect judges from political interference (e.g. Justice Joseph Wowo v. The Republic of The Gambia, Judgment on 27 February 2019, Mr. Gabriel Messan Agbéyomé Kodjo v. The Togolese Republic, Judgment on 24 March 2022, Counsellor Muhammad Kabine Ja'neh v. Republic of Liberia and Another, Judgment 10 November 2020).[68] The East African Court of Justice (EACJ), on the other hand, despite the fact that it mainly interprets and applies the respective treaty, it has also issued judgments that reinforce national obligations to preserve judicial independence and autonomy (e.g., 15/14 Baranzira Raphael Ntakiyiruta Joseph v. Attorney General of Burundi).

Moving onto the national level, a general review of the constitutional provisions among the countries in North, West, East, Central and Southern Africa reveals their commitment to enshrine judicial independence.[69] From a theoretical point of view, the constitutional stipulation of the principle proves the broad recognition and acceptance of independence of the judicial branch as a stable column of the rule of law and democratic governance in Africa. The Constitution of South Africa, for example, states in Chapter 8 (Article 165) that the courts are independent and subject only to the Constitution and the law. Also, Article 160 of the Constitution of Kenya establishes an independent judiciary. The Constitution of Ghana as well protects judicial autonomy from the interference of the executive (Article 125(1)). In a similar way, the Constitutions of Angola, Cape Verde and Mozambique also determine that the courts are independent and impartial and subject only to the Constitution and the law (articles 175 and 179, art. 2(2) and 221(3), 216 respectively).

Additionally, national courts in their own competence defend and protect judicial independence since they are the primary organs that handle cases related to constitutional law, human rights and separation of powers. The Constitutional Court of South Africa is considered to be one of the best examples to follow due to its rulings with thorough analysis about judicial independence that have constrained executive intervention and protected the integrity of the judiciary. In the case Van Rooyen v. The State (2002 5 SA 246 (CC), the Constitutional Court held that judicial independence combines two different aspects: the institutional freedom of the court from the executive interference and the individual independence of each judge, which are both essential to maintain public trust and confidence in the judiciary (see also De Lange v. Smuts, South African Association of Personal Injury Lawyers v. Heath and Others, Helen Suzman Foundation v. Judicial Service Commission).

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[68] See K. Alter, L. Helfer, & J. McAllister, 'A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice', (2013) 107 *American Journal of International Law* 737; Sadurski, n. 20, Chapter 9.

[69] Indicatively, in North Africa: Algeria (Article 169), Egypt (Articles 96, 184 and 186), Tunisia (Article 102), Morocco (Articles 107, 109), Sudan (Article 30) state that the judiciary is independent. Additionally, in West Africa: Nigeria (6 and 17(2)(e) and 36), Senegal (Article 88), Gambia (Article 173) and Ivory Coast (Article 139) guarantee the principle. The same goes for countries in East Africa, like Ethiopia (Article 78 and 79(1)), Uganda (Article 128(1)),Tanzania (Preamble and Article 107B), Rwanda (Articles 61, 150 and 151)) and South Sudan (Articles 122 and 124), and in Central Africa (e.g. Democratic Republic of the Congo (Article 149), Cameroon (Article 37(2)), Gabon (Article 68), Chad (Article 146) and Central African Republic (Articles 107 and 108). Last but not least, also countries in the Southern Africa establish judicial independence (for example, Namibia (Articles 12 and 78(2)), Zimbabwe (Section 164(1)), Lesotho (Articles 12 and 118(2)), Botswana (Article 10), Zambia (Articles 18 and 122), https://constituteproject.org/countries/Africa.

The Supreme Court of Kenya has also demonstrated its autonomy and affirmed the judiciary's ability to rule without external pressure. It has established a firm jurisprudence that promotes judicial independence and constitutional accountability (e.g., Law Society of Kenya v Attorney General & 4 others, Bellevue Development Company Ltd v Gikonyo & 3 others). In the famous case Raila Amolo Odinga & another v IEBC & others, the Court annulled the results of the presidential elections (2017) due to procedural and constitutional irregularities, reaffirming its integrity. The Kenyan High Court as well has delivered various important judgments declaring that executive or legislative influence contravene Article 160 of the Constitution of Kenya, thus guarding the independence of the judiciary from undue interference (e.g. Dennis Mogambi Mong'are v. Attorney General & 3 others, Kimaru & 17 others v. Attorney General & another; Kenya National Human Rights and Equality Commission (Interested Party), Gachuiri v. Attorney General & another; Kenya Judges Welfare Association & another).

It should also be noted that, in many African countries, such as Ethiopia (1995 Constitution of the Federal Democratic Republic of Ethiopia), South Africa (Traditional Courts Bill), Uganda (Local Council Courts Act), Ghana (Chieftaincy Act), apart from the national courts, there are community courts - also known as customary courts - that play a vital role in resolving local disputes, particularly in rural areas where access to national courts is limited. These courts often operate based on traditional customs and are typically led by local elders or community leaders who rely on customary law to mediate conflicts and promote reconciliation. While they offer accessible and culturally relevant justice, their practices may sometimes lack alignment with national legal standards and international human rights norms. For instance, in Malawi, community courts were previously abolished in the 1990s due to concerns about fairness and political misuse, but they were reintroduced under the Local Courts Act 2011.

Judicial independence within these community courts varies widely; unlike national courts that are ideally insulated from political and social pressures, community courts often operate within tight-knit social structures, which can influence decisions and undermine impartiality.[70] Strengthening the accountability and oversight of these systems while respecting cultural traditions remains a key challenge in harmonizing community justice with formal legal frameworks across Africa.

In relation to monitoring mechanisms, the African Peer Review Mechanism (APRM) is established by the AU as a voluntary assessment tool that evaluates governance and the rule of law among member states. Judicial independence is assessed within the framework of separation of powers, which is directly linked to the thematic area of "Democratic & Political Governance". The APRM through thorough questionnaires and country review reports has identified that, although constitutional provisions incorporate the principle of judicial independence, challenges in its implementation, such as resource constraints and the need for continuous training of judicial personnel, still remain (e.g. country review reports

[70] Isaac Madondo, 'Accessibility, Independence and Impartiality of the Traditional Court System', *Journal of Law, Society, and Development*, Vol. 10, 2023, https://unisapressjournals.co.za/index.php/JLSD/article/view/12134.

for Namibia[71], Ghana[72], Rwanda[73], Kenya[74]). Its findings and recommendations contribute to peer accountability and promote governance and rule of law reforms. Nonetheless, the application of the APRM's recommendations and suggestions depends eventually on the political will and commitment of the member states, since they don't have a binding legal force.

Regarding the status of judicial independence within the African continent, the 2024 Mo Ibrahim Index of African Governance indicates further that some countries, such as Seychelles, Morocco and Benin, have strengthened judicial independence, whereas others like Botswana, Mauritius, Comoros and Tunisia have declined in upholding rule of law standards and, in particular, in guaranteeing judicial autonomy during the last decade.[75] Moreover, according to the Flagship Afrobarometer 2024 report, which measures the citizens' perception, more than 60% of Africans still believe that courts are subject to political influence. Even so, public trust in the judiciary has increased in specific states like Zambia and Benin because of their anti-corruption measures and legal reforms.[76] The latest Afrobarometer Annual Report 2024 (published in May 2025)[77], although it doesn't provide detailed information on surveys related to public perception on judicial independence, it underlines that the independence and impartiality of the judiciary are vital for democracy and the rule of law in Africa.[78] Another interesting report from the recently launched African Judicial Independence Fund (AJIF)[79] presents South Africa (even though its slight decline) as the best practice model given its strong judicial system and its Judicial Service Commission (JSC) along with Kenya due to a similar framework that the country adopted as well as the digitalization of the court processes that contribute towards strengthening judicial independence.[80] This report also highlights serious incidents, such as physical threats to judges in Mali and executive interference in judicial decisions in Uganda which align with the World Justice Project's 2024 Rule of Law Index that displays Rwanda (0.63)

[71] Namibia Country Review Report, African Peer Review Mechanism (APRM), 2022, https://aprm.au.int/en/documents/2024-03-08/namibia-country-review-report, Republic of Namibia, https://aprm.au.int/en/taxonomy/term/282.

[72] Ghana Country Review Report, APRM, 2005, https://aprm.au.int/en/documents/2005-08-05/ghana-country-review-report , Republic of Ghana, https://aprm.au.int/en/taxonomy/term/207.

[73] Rwanda Country Review Report, APRM, 2005, https://aprm.au.int/en/documents/2005-08-05/rwanda-country-review-report, Republic of Rwanda, https://aprm.au.int/en/taxonomy/term/283.

[74] Kenya Country Review Report, APRM, 2006, https://aprm.au.int/en/documents/2006-08-05/kenya-country-review-report, Republic of Kenya, https://aprm.au.int/en/taxonomy/term/74.

[75] 2024 Mo Ibrahim Index of African Governance Report (e.g. p. 8, 20, 62-63, 76), https://mo.ibrahim.foundation/sites/default/files/2024-10/2024-index-report.pdf.

[76] Afrobarometer, 'Let the people have a say', *Flagship Afrobarometer Report 2024, African insights 2024, Democracy at risk – the people's perspective*, https://www.afrobarometer.org/wp-content/uploads/2024/05/Afrobarometer_FlagshipReport2024_English.pdf, p. 8 and 14, More info on Afrobarometer https://www.afrobarometer.org/ . See also relevant references regarding the Flagship Report 2025 which are included in the latest Afrobarometer Annual Report 2024, https://www.afrobarometer.org/wp-content/uploads/2025/03/Afrobarometer-Annual-Report-2024-Eng.pdf, p. 2-7, 10, 20-22, 26-27. Afrobarometer Round 10survey in Zambia, 2024, https://www.afrobarometer.org/wp-content/uploads/2025/02/Summary-of-results-Zambia-Afrobarometer-R10-bh-21feb25-.pdf.

[77] Afrobarometer, Annual Report 2024, https://www.afrobarometer.org/feature/annual-report-2024/, https://www.afrobarometer.org/wp-content/uploads/2025/03/Afrobarometer-Annual-Report-2024-Eng.pdf .

[78] Regarding judicial independence, basically, the most recent Afrobarometer, Annual Report 2024, announces the launch of the Africa Judicial Independence Fund (AJIF) by Afrobarometer, which reaffirms its commitment to promoting the rule of law and the independence of the judiciary. See, ibid, p. 2, 7, 23 & 26-27.

[79] Ibid. The AJIF's mandate is to support fair and independent courts and strengthen the rule of law across Africa, https://ajif.online/.

[80] AJIF, 'The state of judicial independence in Africa, Key findings from a landscape scan', https://ajif.online/wp-content/uploads/2024/07/The-State-of-Judicial-Independence-in-Africa-AJIF-report.pdf .

and Namibia (0.61) as the best countries in comparison to Mali (0.39) and Uganda (0.39) which are found among the lowest.[81]

To conclude, the constitutional and institutional foundations established across Africa prove a broad recognition along with a focused commitment to the independence of the judiciary.

B. Features of Judicial Independence in Africa

The independence of the judiciary in Africa is reflected in the constitutional guarantees as well as in the practical mechanisms that support or undermine its implementation. The principle requires that judges exercise their duties without external influence. However, its practical application often depends on a wider set of institutional, structural and political conditions. In this unit, an overview of the main sub-indicators of judicial independence is presented through which the principle performs across the continent. These indicators, identified by the EPLO GRoLC, demonstrate mainly the progress and efforts undertaken by non-exhaustive-mentioned regional institutions and national judiciaries to consolidate the independence of the judicial branch in line with the rule of law within the African legal systems.

One important element that must be acknowledged is that judicial independence constitutes a crucial part of the Aspiration 3 of the AU's strategic framework Agenda 2063 "The Africa we want" about good governance and the rule of law. Aspiration 3 in particular is connected to goals 11 and 12 that promote institutional reforms and justice. To this effect, the independence of the judiciary is considered a core value in order to achieve democratic progress and actual legal protection. The AU's continental reports, which evaluate the member states' progress, indicate a gradual recognition of judicial independence as a basic component of good governance[82]. This recognition is reflected in the respective percentage, which has increased from 16% in 2020 to 42% in 2022, despite the regional differences. Increased domestication and ratification of the ACDEG Charter along with legal reforms, which aim to protect the judiciary from executive interference, underline the efforts to strengthen judicial independence (e.g. in Burkina Faso, to improve the judicial autonomy or in Lesotho that established anti-corruption bodies). As noted in the 2022 report, these changes have led to an increase in the percentage of public confidence as well as press freedom and transparent elections, which support indirectly judicial independence.

Another significant effort that reinforces the protection of the judiciary as a priority is the recent establishment of a "Focal Point on Judicial Independence in Africa"[83]. Specifically, the ACHPR appointed to the "Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa" the additional responsibility to examine and analyze the ongoing challenges and factors that undermine judicial independence. The Focal Point will report annually on the state of judicial independence in Africa and recommend possible measures to strengthen the judiciary's autonomy within the continent. In November 2024, the Focal Point was urged to issue a general comment on Article 26 of the Charter regarding judicial

[81] The World Justice Project Rule of Law Index 2024, https://worldjusticeproject.org/rule-of-law-index/global/2024 and https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2024.pdf, p. 10-11, 22-23, 25, 119, 130, 148, 170.

[82] E.g. *First Continental Report on the Implementation of Agenda 2063,* African Union, https://au.int/en/documents/20200208/first-continental-report-implementation-agenda-2063, p. 1 (14), 7 (20), 9 (22), 16-17 (29-30), 23-24 (36-37), 54 (67).

[83] Resolution on the Appointment of a Focal Point on Judicial Independence in Africa - ACHPR/Res.570 (LXXVII) 2023, https://achpr.au.int/index.php/en/adopted-resolutions/570-resolution-appointment-focal-point-judicial-independence.

independence. By now, the general comment hasn't been published. However, the Focal Point, in May 2025, issued a comprehensive and thorough report, which includes serious concerns about the state of judicial independence in several African countries.[84] It points out the pressure on judges by state authorities and threats of unfair dismissal or prosecution, as well as growing incidents of intimidation, arbitrary detention, and even killings of lawyers, especially those who defend sensitive cases. Further, the report refers to institutional tensions, such as conflicts between justice ministries and judicial councils or between parliaments and constitutional courts, as well as concerns over ombudsman bodies exerting oversight on constitutional courts. The Focal Point urges the states to uphold the separation of powers, ensure judicial independence and implement the ACHPR's Guidelines on the Right to a Fair Trial. The "Focal Point" initiative demonstrates the ACHPR's commitment to protect the independence of the judiciary as a basic element of democratic governance and the rule of law in Africa.

It is also worthwhile mentioning that the AU has announced the merger of the ACtHPR with the AU Court of Justice in order to establish the proposed the African Court of Justice and Human Rights (ACJHR). The purpose of this merger is to consolidate judicial mechanisms with competence over general disputes between the member states and human rights violations as well. Although the merger hasn't taken place yet and different opinions have been expressed in scholarly and political discourse about it[85], the intent to establish this court signals an institutional effort to enhance judicial independence at the continental level through the creation of a single judicial body.

Moving onto more practical aspects, undoubtedly, an integral part of judicial independence is the merit-based and transparent appointment, promotion and tenure of judges, free from political relationships or external control. These elements determine whether judges are able to serve without fear of arbitrary removal or political reprisal. Several African countries, in this respect, have established JSCs to oversee the respective procedures and guarantee that they are free from executive influence, further protecting the judiciary. Some best practices demonstrate that the use of JSCs is a way of maintaining political interference away from judicial appointments.[86] In these cases, selection is made on merit and qualifications, integrity and public interviews to increase transparency and legitimacy. How effective these councils are varies in between the countries; this is noted because the executive could still influence the procedure, where for instance the President decides over the final selection of the judges.

According to AJIF's report, South Africa has established a JSC, which is often described as a best practice example, because it implements a structured procedure and transparent public interviews. Although the final selection of judges takes place by the President (on the advice of the JSC), it is the JSC's procedure that ensures that the appointments are based

[84] Report of the Special Rapporteur on Human Rights Defenders, Focal Point on Judicial Independence, 83rd Ordinary Session, 2–22 May 2025, Banjul, https://achpr.au.int/index.php/en/intersession-activity-reports/special-rapporteur-human-rights-defenders, and especially Part I Activities Under The Focal Point On Judicial Independence, par. 8-20, Part II recommendations 2, par. 35.

[85] H. Mbori, 'The Merged African Court of Justice and Human Rights (ACJ&HR) as a Better Criminal Justice System than the ICC: Are We Finding African Solution to African Problems or Creating African Problems without Solutions?', June 3, 2014, http://dx.doi.org/10.2139/ssrn.2445344; R. Murray, 'The African Court of Justice and Human Rights', *African Human Rights Law Journal*, Vol. 9, No. 1, 2009, pp. 1–17; Cl. Mashamba, 'Merging the African Human Rights Court with the African Court of Justice and Extending its Jurisdiction to Try International Crimes: Prospects and Challenges', *The Tanzania Lawyer*, Vol. 1, 2017, pp. 1-68.

[86] Oa. Bethuel K. D. N. Hasic, T. Peppard & St. Hayden, 'Appointment of Judges and the Threat to Judicial Independence: Case Studies from Botswana, Swaziland, South Africa, and Kenya', *Southern Illinois University Law Journal,* Vol.44, 2020, pp. 407-432; H. Corder & J van Zyl Smit (eds), *Securing Judicial Independence: The Role of Commissions in Selecting Judges in the Commonwealth*, Siber Ink, 2017, vii, viii.

on proven qualifications and the executive does not intervene. Kenya has also established a JSC that protects judicial appointments by maintaining a similar selection process, following the South African example. Additionally, the respective JSC of Botswana seems to function without being influenced by the executive branch. At the same time, although similar commissions exist in most of the African states, there are countries that still face issues with executive influence during the appointment processes (such as Nigeria, Tunisia, Cameroon or Uganda). This proves how vulnerable the judicial system is to political influence and questions the genuine independence of the judiciary, no matter the existence of the legal protections. In practice, it is the actual institutional respect of the other branches towards the judicial branch that defines the independence of the judiciary.

Moreover, the **absence of judges' bias** is considered as an internal characteristic of an independent judiciary. Impartiality and integrity are usually affected by corruption, external pressures and political interference, which consequently lead to the decline of public trust. The WJP Rule of Law Index 2024 (factor 2 "Absence of Corruption", subfactor 2.2. that evaluates corruption within the judicial branch) underlines the progress in this field based on the countries that have adopted codes of conduct to strengthen ethical standards and have stronger oversight frameworks (e.g. Botswana). In this regard, many African states have introduced codes of conduct for the judiciary in order to strengthen the neutrality of the judicial system. South Africa, for example, has published the code of judicial conduct, which was adopted under the JSC Act. This code promotes the ethical principles of integrity, accountability and transparency. The Judicial Conduct Committee oversees the implementation of the code and handles complaints about judicial misconduct. Similarly, the Judicial Service of Kenya adopted a code of conduct and ethics in order to promote high professional standards and implement disciplinary measures for juridical misconduct. Also, Uganda's code of judicial conduct and Ghana's code of conduct for judges and magistrates promote the need for judicial impartiality. Another example is the Code of Ethics for Judicial Magistrates of Mozambique, which was approved by the Superior Council of the Judiciary and it is also applied to the Constitutional Council's judge counselors. Botswana and Nigeria are considered to be among the best practices too due to their judicial codes of conduct, which aim to preserve public confidence and promote the impartiality and integrity of judges, prohibiting conflicts of interest and other forms of misconduct and unethical behavior.

Furthermore, judicial independence requires respect and **enforcement of the courts' judgments**. It is a prerequisite to consider that the court rulings do not have just a symbolic meaning leading to selective or non-implementation at all, but an actual binding legal importance.

In 2023, more than 106 decisions reached by the Economic Community of West African States (ECOWAS) Court (representing 70 per cent), were yet to be implemented by the Member States.[87] As of June 2025, it has been reported that only 22 % of the court's judgments have been enforced by Member States,[88] despite the existence of a legal framework and the appointment of Competent National Authorities (CNAs) across the region. This low enforcement rate has raised concerns about the relevance of the Court, as member nations often disregard its judgments. Additionally, in August 2025, the Court highlighted its commitment to regional justice and human rights. However, the persistent low enforcement rate of its judgments remains a significant challenge. These statistics

[87] O. Uchechukwu, 'Over 106 court decisions yet to be implemented by ECOWAS States', International Centre for Investigative Reporting, May 10, 2023, https://www.icirnigeria.org/over-106-court-decisions-yet-to-be-implemented-by-ecowas-states/ .
[88] D. Onozure, 'ECOWAS Courts faults member states over poor compliance with rulings', PUNCH, 26 June, 2025, https://punchng.com/ecowas-court-faults-member-states-over-poor-compliance-with-rulings/.

underscore the importance of addressing the enforcement gap to enhance the effectiveness of the ECOWAS Court in promoting human rights and justice in the region.

Also, according to the ACtHPR, full compliance with court decisions corresponds to 7%, partial compliance to 18% and total non-compliance to 75%, noting that government authorities shall proceed and adopt legislative provisions and further procedures for the execution of the rulings.[89] In order to improve the level of compliance, the ACtHPR submitted the "Draft Framework for Reporting & Monitoring Execution of Judgments". This framework suggests the establishment of a Monitoring Unit that evaluates the state of compliance on behalf of the African countries and simultaneously proposes specific measures to do so, such as execution reports to be sent by the states within a specific timeframe, on-site visits and hearings in cases of non-compliance. The operation of this mechanism has been incorporated, among other objectives, into the African Court's Strategic Plan (2021-2025) with the goal to be implemented during 2025.

Simultaneously, the ACHPR has also foreseen in its Strategic Framework 2021-2025 to establish a similar monitoring, follow-up and implementation unit. Additionally, it attempts to observe and check the execution of the judgments through its established rules of procedure. In particular, rule 125 requires states to provide information by sending written reports regarding the actions taken on behalf of them about the execution of the courts' decisions within a specific deadline of 180 days from their issuance. Moreover, the ACHPR makes use of hearings with the states as a tool to assess the progress of compliance (e.g. Malawi African Association & Others v. Mauritania) and the adoption of relevant Resolutions as well (e.g. Resolution 257 regarding the Commission's decision on the Endorois case and its implementation by the Kenyan government).[90]

Also, prosecutorial independence is directly related to judicial independence, since prosecutors hold a distinct role in the initiation and progress of criminal proceedings. Prosecutions that are motivated by political reasons or failure to prosecute undermine explicitly the rule of law. Therefore, constitutional provisions and specific prosecutorial authorities do exist. For example, Article 157 of the Constitution of Kenya establishes the Office of the Director of Public Prosecutions (ODPP) with the main responsibility to undertake prosecutions independently and without interventions. In this way, the independence of the prosecutors is stipulated. The ODPP has developed guidelines, according to its competence, in order to standardize the prosecutorial procedures and decisions, ensuring impartiality, fairness and transparency. It has adopted a digital case management system too, which advances the authority in technological terms and integrates electronic prosecutorial operations with judicial processes. Additionally, the Prosecution Training Institute (PTI) has been created, which provides focused training in order to improve the skills of the prosecutors.

Also, South Africa has established the National Prosecuting Authority (NPA), based on its constitutional provision about the independence of the prosecutors. This provision stipulates that the prosecuting authority must exercise its functions "without fear, favour or prejudice" (Article 179(4) of the Constitution). Recent developments indicate South Africa's strong efforts to strengthen and secure the respective prosecutorial security due to political intervention, despite the constitutional protection. Therefore, legislative reforms are under

[89] African Court on Human and Peoples' Rights, Conference on the Implementation and Impact of Decisions of the African Court on Human and Peoples' Rights: The Dar es Salaam Communiqué, 3 November 2021, Dar es Salaam, Tanzania, En-Concept-Note-Implementation-Conference.pdf.
[90] J. Biegon, 'The impact of country-specific resolutions of the African Commission on Human and Peoples' Rights, 1994-2024', *African Human Rights Law Journal*, Vol.24, 2024, pp. 854-889.

consideration with the aim to advance transparency in the appointment procedure of the National Director of Public Prosecutions (NDPP), to address the financial and administrative independence of the NPA and separate it from the justice department/Ministry of Justice so as to improve operational independence. At the regional level, the East Africa Association of Prosecutors (EAAP) and the West African Network of Central Authorities and Prosecutors (WACAP) promote international judicial cooperation and ethical standards, hence protecting the prosecutorial independence.

Last but not least, it is important to point out that the two remaining sub-indicators, the protection of judges from political attacks and the independence of the lawyers and bar associations, are imperative for the independence of the judiciary. Although research findings regarding positive outcomes of the African countries efforts related to these indicators are limited and in fact they mostly indicate incidents of unlawful dismissals of judges, attacks on law firms and bar associations and arrests of lawyers, among others, as seen in Tunisia, Tanzania, Kenya, Burundi, South Africa, Sudan, Uganda, Zimbabwe, Eswatini, or public pressure and mistrust, especially in electoral rulings (e.g. recent local elections in Mozambique where judges were exposed to media criticism and disinformation about who has the competence to annul elections), it is noted that the East African Judges' and Magistrates' Association and the Southern African Chief Justices Forum promote solidarity and institutional support to raise awareness and protect judges from these circumstances. Similarly, the African Bar Association and the Pan African Lawyers Union defend the independence of legal professionals and their freedom from these kinds of attacks. It is without doubt that these efforts indicate a continental commitment to strengthen the judicial system and reassure that judges and lawyers (also prosecutors) may carry out their duties and responsibilities without fear or intimidation[91].

Ultimately, it is evident that judicial independence is not only about normative commitments but it is also about the protection of those who apply and uphold the rule of law.

C. Key challenges

Notwithstanding the comprehensive continental and national legal frameworks enhancing the independence of the judiciary and its widespread acceptance, as well as the significant progress made by the African states in establishing the democratic principles, the practical implementation of the independence of the judiciary continues to face substantial challenges that threaten the rule of law. These difficulties as identified by the research findings and declared by the African judiciaries on various occasions refer to all those factors that undermine judicial integrity, impartiality, autonomy and effectiveness[92]. Also, it should be emphasized that the independence of judiciary is uneven across the continent.

Political interference: Recent incidents of dismissals of judges for issuing rulings that are either critical or against important political figures indicate that political influence and attacks still remain a serious obstacle that threatens judicial independence in Africa. The fact that external interests or the executive and legislative branches force direct or indirect pressure on the judiciary to issue favorable decisions raises concern about judges' impartiality and

[91] Br. Miller, 'Most Powerful Legal Associations in Africa – Ranking Bar Associations and Legal Bodies',Legal Africa, 31 March 2025, https://legalafrica.org/most-powerful-legal-associations-in-africa-ranking-bar-associations-and-legal-bodies/.

[92] E.g. see the work done by the Africa Judges & Jurists Forum, a pan-African network of judges and jurists, who are committed to promoting justice and development in Africa by providing legal expertise to governments, intergovernmental organizations, donor agencies, private sector and civil society organizations, https://africajurists.org/.

neutrality. This intervention may not only appear in the form of unfair dismissal or removal but also includes intimidation of legal professionals, threats, harassment, forced designation or disciplinary measures against those judges who deliver decisions that contradict the various political interests or even control the appointment procedures, non-funding etc; whatever the form, the main result is the weakening and undermining of judicial independence.

Security of tenure of judges. Security of tenure for judges in Africa is a critical component in ensuring judicial independence, impartiality, and the rule of law. It protects judges from arbitrary removal and political interference, allowing them to make decisions without fear of reprisal. In most African countries, the constitution or judicial service laws establish procedures for the appointment and removal of judges, with dismissal typically reserved for cases of proven misconduct, incapacity, or incompetence. The power to dismiss judges is usually exercised by the head of state — such as the President — based on recommendations from an independent judicial or disciplinary body, such as a Judicial Service Commission or a tribunal established for that purpose. For instance, in Zimbabwe, in 2017, constitutional amendments empowered the president to directly appoint the Chief Justice, deputy, and head of the High Court—moves seen as centralizing judicial power under the executive. Additionally, in 2021, the ruling party orchestrated a contract extension for the Chief Justice beyond retirement in a manner that increased presidential leverage. Similarly, in Malawi, in 2020, the president attempted to remove the Chief Justice to influence the composition of the Supreme Court ahead of a presidential rerun, reflecting a worrying politicization of the judiciary.

The weakening of civil society and journalists. Some jurisdictions in African countries, such as South Africa (under Section 38 of the Constitution), Uganda (under Article 50 (2) 0f the Constitution) have broadened access to the Constitutional Court (*locus standi*) starting from late 1990s. Some jurisdictions allow individuals, civil society organizations, and even interest groups to challenge laws or state actions that violate constitutional rights, even if they are not directly affected. This expanded standing strengthens constitutionalism by allowing broader civic engagement in judicial review processes, although practical barriers such as cost, legal expertise, and judicial independence still limit access in many regions. On the other hand, the weakening of civil society and journalists as “watchdogs” in Africa poses a significant threat to judicial independence across the continent. When civil society organizations and the media are undermined — whether through intimidation, restrictive laws, or economic pressures — their ability to hold governments and judicial institutions accountable diminishes. This erosion creates an environment where judicial decisions may be influenced by political interests rather than legal principles, leading to compromised rulings and weakened rule of law. Without a vibrant and fearless civil society and independent journalism, abuses of power go unchecked, corruption flourishes, and public trust in the judiciary deteriorates, ultimately threatening democratic governance and the protection of human rights in many African countries.

Transparent procedures: The fair appointment procedures, as well as the justified removal of the judges and the security of their tenure, are very important factors that guarantee their independence. In many African countries, the executive and legislative branches influence the selection process of the judges by exerting significant control over it and by choosing judges loyal to the national government rather than based on their legal qualifications. The removal procedures and the security of the judiciary tenure are affected in a similar way.

Lack of enforcement of judicial decisions: Non-compliance with courts’ rulings or weak enforcement mechanisms negatively influences judicial independence. There have been

cases in African countries where courts issued fair decisions, nevertheless, national authorities avoided or delayed implementing them due to political reasons.

Corruption and public trust: Corruption affects the integrity of the judiciary and the public perception about the operation of the judicial system. Many judges may give in to bribery or pressure, to favoritism or undue influence on judicial decisions that undermine the credibility of the courts and consequently weaken citizens' confidence in the justice system. According to Transparency International (Africa Corruption Barometer in collaboration with Afrobarometer-2019 Global Corruption Barometer Report), judges and magistrates are considered among the most influenced by corruption officials, particularly in cases related to elections, land and business disputes. According to the citizens' perception, bribery in the judicial system usually happens when they are obliged to pay in order to promote faster court processes, influence courts' decisions, or obtain access to legal representation.

Financial autonomy and resource constraints: Many African courts operate under the budgets administered by the executive branch, which may lead to funding restrictions with subsequent impact on their efficiency and capacity (e.g., lack of adequate staff and sufficient resources, number of courtrooms, infrastructure and facilities, delays in legal proceedings). For example, the budget of the Mozambican Constitutional Council and all the necessary resources for the judiciary to operate are determined and approved by the executive branch. In this case, usually restricted funding is equivalent to an indirect form of political pressure that compromises judicial effectiveness. Therefore, independence of the budget of the judiciary is crucial for the well-functioning of the judicial system and judicial independence. In South Africa, a key development is the planned shift toward full institutional judicial independence in the 2025/2026; the judiciary will become a structurally autonomous arm of the State, with operational and financial control transferred to its own leadership. Similarly, in Mozambique, in March 2025, the Mozambican Association of Judges (AMJ), together with the Public Prosecutor's Office, prepared to submit a bill to the government to establish financial independence for the courts. This law is expected to address the judiciary's most pressing challenges— including wages, security, housing, transportation, and health services — and could resolve approximately 90% of existing problems.

Delays in proceedings: Many African legal systems struggle with slow judicial processes and delays in the delivery of justice which are usually caused by case backlogs, insufficient court administration and outdated procedures (or non-funding as mentioned above) that lead to excessively prolonged procedures and undermine their efficiency.

The independence of the judiciary in Africa constitutes a rule of law indicator that needs continuous efforts and focus to ensure fair and impartial justice for all citizens. Across Africa, the judiciaries have called for measures to address these challenges and protect the judges' independence and autonomy. To this end, constitutional reforms targeted to strengthen the judicial system and procedures in order to minimize executive and political interference, increased funding which is not controlled by the executive branch, regional cooperation between the African regional legal organs in collaboration also with international organizations' support and technical assistance, focused training of the judges and activities to raise public awareness as well are a few measures that seem appropriate to be implemented. These measures, among others, play a critical role in strengthening judicial independence and enhancing the rule of law as a whole within the African continent.

4. Government accountability with particular attention to anti-corruption and transparency mechanisms

Introduction

Government accountability remains a significant challenge across Africa, despite the promises of self-rule and democratic governance that followed the decolonization era in the 1960s. While independence was expected to usher in governments that were responsive and accountable to their citizens, many post-independence regimes instead embraced authoritarianism, characterized by military dictatorships and one-party rule. These regimes weakened or eliminated accountability structures, a trend that persisted even after the democratic transitions of the 1990s.

The roots of these accountability challenges, however, run deeper and are closely tied to historical legacies. Colonial administrations in Africa were designed primarily to extract resources and maintain order rather than to foster inclusive or participatory governance. Indigenous institutions were either sidelined or co-opted, and power was centralized in colonial governors and their bureaucracies, leaving little room for transparency or citizen oversight. After independence, many African states inherited these centralized administrative structures, and post-colonial elites often perpetuated these models to consolidate their own power, further entrenching systems that lacked robust mechanisms for accountability.

Economic factors have also played a crucial role in shaping governance trajectories. The burden of external debt, especially during the 1970s and 1980s, severely constrained state capacities and limited governments' ability to provide public services, often fuelling public dissatisfaction and governance crises. The structural adjustment programs imposed by international financial institutions during this period –while aimed at economic stabilization– frequently led to the downsizing of public sectors, the weakening of state institutions, and the erosion of social safety nets. These reforms often undermined state legitimacy and accountability by reducing citizens' access to basic services and increasing their disillusionment with the state.

Despite constitutional reforms and renewed calls for accountability, governance in many African nations continues to be undermined by systemic challenges of external or internal origin, including corruption, weak institutions, inadequate checks on executive authority, and poverty. However, despite the persistence of such challenges across Africa, there is room for optimism. In recent decades, several countries have demonstrated that combating corruption and enhancing transparency and accountability is possible through effective governance reforms, stronger institutions, and public engagement. These efforts have been bolstered by the adoption and domestication of accountability instruments and mechanisms at the universal and regional levels, including international conventions, national legal frameworks, and citizen-driven initiatives.

A. The Foundations: Anti-Corruption as a Pillar of the Rule of Law in Africa

1. Corruption and its Impact on Governance and Development

Corruption is one of the most pervasive challenges affecting governance in Africa. It not only cripples economic development but also erodes trust in democratic institutions, electoral processes, and the rule of law. Many forms of corruption have become so entrenched that

they are perceived as normal in daily transactions in Africa. In several countries, corruption is systemic, making detection and control increasingly difficult. In such environments, public officials, politicians, and private actors exploit state institutions for personal enrichment, diverting resources meant for public development.

The consequences of corruption extend beyond governance, significantly impacting economic growth and investment. Estimates suggest that Africa loses over $140 billion each year –roughly 5% of the continent's GDP– to corruption, with illicit financial flows and embezzlement of public funds as primary contributors. These losses not only deprive governments of vital revenues for infrastructure, education, and healthcare but also increase dependency on foreign aid and debt, further compromising national sovereignty and development trajectories. Furthermore, Africa records some of the lowest foreign direct investment levels globally, with corruption being a major deterrent for investors. The siphoning of resources away from essential public services exacerbates poverty, weakens public administration, and undermines efforts to achieve sustainable development. Corruption particularly affects marginalized groups, including women, children, and persons with disabilities, who rely heavily on public services.

2. Corruption Trends and Regional Variations

Despite ongoing anti-corruption efforts, most African countries continue to grapple with high levels of corruption. Transparency International's 2024 Corruption Perceptions Index (CPI) indicates that Sub-Saharan Africa remains one of the lowest-performing regions globally, with a regional average score of 33 out of 100 and 90% of countries scoring below 50. The Middle East and North Africa (MENA) region has also shown stagnation or decline in anti-corruption performance, contributing to eroding public trust in state institutions.

However, there are notable variations across the continent. The countries with the highest CPI scores in Africa are Seychelles (72), Cape Verde (62), Botswana (57), Rwanda (57), and Mauritius (51), reflecting relatively strong institutional frameworks and better control of corruption compared to regional counterparts. The fact that they maintain low bribery rates makes them comparable to countries in Europe and North America.

Importantly, some countries have shown significant improvements in their CPI scores over recent years, suggesting progress in anti-corruption measures. Angola, for instance, has improved by 17 points, Côte d'Ivoire by 13, Tanzania by 11, and Zambia by 6 points. These gains point to the potential impact of sustained reforms, political will, and institutional strengthening. Conversely, countries like Nigeria, Ghana, Liberia, and Cameroon struggle with widespread corruption, particularly in public service delivery. Studies indicate that in countries such as Liberia, nearly 69% of citizens who interacted with public institutions in 2024 year paid a bribe. The police and judicial systems are often among the most corrupt institutions, further undermining justice and legal protections for the poor.

3. Citizen Perceptions and the Role of Public Participation

While the CPI reflects expert assessments of corruption levels, citizen-based surveys capture lived experiences and perceptions. Public opinion surveys reveal a growing frustration among African citizens regarding corruption. According to the latest Transparency International's and Afrobarometer's Global Corruption Barometer (GCB), published in 2019, a majority (55%) of Africans believe that corruption has worsened in their countries over the year 2018. Furthermore, only 34% of citizens feel their governments are effectively combating corruption, while 59% express dissatisfaction with government efforts. The highest dissatisfaction levels are reported in Gabon (87%), Madagascar (83%), and Sudan (81%). Conversely, countries such as Tanzania, Sierra Leone, and Lesotho demonstrated comparatively higher levels of public trust in anti-corruption initiatives, with

Tanzania notably recording the highest public confidence among all surveyed nations. Interestingly, some countries that do not rank at the very top of the CPI nevertheless record relatively strong levels of public trust in anti-corruption efforts. Tanzania, Sierra Leone, and Lesotho were among the countries where citizens expressed higher confidence in government initiatives, with Tanzania showing the highest levels of public trust across the survey sample.

Bribery remains a widespread concern, with approximately 22% of Africans admitting to paying bribes to access public services such as healthcare, education, and law enforcement. The poorest populations are disproportionately affected, being twice as likely as the wealthy to engage in bribery to secure basic services. Despite these challenges, there is a sense of optimism, as over half of surveyed Africans (53%) believe that ordinary citizens can contribute to the fight against corruption. However, fear of retaliation discourages many from reporting corrupt activities.

4.Corruption in Land Administration

Corruption in land administration is a serious rule of law challenge across Africa, particularly in West Africa, where statutory and customary land tenure systems coexist. This legal pluralism – while reflecting the lived legal realities of most Africans – can also produce ambiguity and contestation over ownership, boundaries, and inheritance rights, among others. These overlaps are frequently exploited by public officials, including land registry staff and local administrators, who solicit bribes or manipulate land records for personal or political gain.

A key consequence of this complexity is the uncertainty it creates around land tenure, especially for marginalized groups. Women, in particular, face entrenched barriers due to the intersection of patriarchal customary norms and bureaucratic opacity. In many customary systems, land is traditionally allocated through male lineage, excluding women from ownership or inheritance. Although many African constitutions – including those of Kenya, Mozambique, and South Africa – prohibit gender discrimination and uphold the supremacy of constitutional rights, the implementation of these guarantees may be weak at the local level. Women from rural or low-income communities may still be denied land rights or forced to rely on male intermediaries, making them especially vulnerable to extortion, dispossession, or procedural exclusion. According to Transparency International, nearly one in every two people in Sub-Saharan Africa has paid a bribe for land-related services. For women, the cost is not only financial but structural, reinforcing patterns of economic dependency and legal invisibility.

However, important reforms are underway. Countries such as Kenya, Rwanda, and Uganda are digitizing land records and cadastral systems to increase transparency, reduce administrative discretion, and limit opportunities for corruption. These initiatives, while still in progress and uneven in reach, offer promising tools to mitigate land-related corruption and promote equitable access.

In this context, it should be mentioned that legal pluralism should not be viewed as a flaw in the rule of law, but as a defining feature of it in African societies. Customary, religious, and statutory legal orders coexist and shape people’s experiences of justice and governance. Where customary law aligns with constitutional principles –especially regarding gender equality– it can be a powerful vehicle for justice. But where it contradicts them, statutory protections must prevail.

B. Meaningful Features of Combating Corruption in Africa

Corruption in the African continent has garnered significant international attention due to its detrimental effects on economic growth and governance. Various organizations have highlighted corruption's negative impact on development, advocating for policies that enhance anti-corruption efforts and minimize the potential for personal enrichment by corrupt public officials. Governments, civil society, and international organizations have collectively recognized corruption as a major barrier to development in Africa, leading to a surge in anti-corruption initiatives.

1. Institutional and Legal Frameworks at the Universal and Regional levels

The proliferation of anti-corruption instruments and mechanisms in Africa aligns with the World Bank's emphasis on public sector reform and corruption control as critical to economic liberalization. Efforts to combat corruption operate on two fronts: structural reforms and normative changes. Structural reforms aim to reduce opportunities for discretionary abuse by public officials through measures such as privatization, deregulation, and enhanced competition to curb monopolies. They also include strengthening institutional frameworks by promoting democratization and professionalizing public administration. In this context, bureaucratization refers not to excessive red tape but to the establishment of rule-bound, transparent, and predictable administrative procedures that limit individual discretion and reduce avenues for corrupt behavior. Normative efforts complement these reforms by raising awareness and fostering a global anti-corruption culture through international organizations and legal instruments.

The African Union Convention on Preventing and Combating Corruption (AUCPCC) provides a comprehensive roadmap for signatory parties, emphasizing good governance, strengthening independent anti-corruption authorities and whistleblower protection, and ensuring transparency in political party funding and media access to information. Since its adoption in 2003 and entry into force in 2006, the AUCPCC has sought to harmonize anti-corruption strategies across Africa. However, implementation challenges persist, particularly concerning land corruption, which remains a significant issue, as noted above.

Similarly, the Economic Community of West African States (ECOWAS) has played a key role in regional anti-corruption efforts. Many ECOWAS nations have ratified the AUCPCC and the United Nations Convention Against Corruption (UNCAC), which was also adopted in 2003 and requires state parties to create special anti-corruption institutions. The ECOWAS Protocol on the Fight Against Corruption, which entered into force in 2015 and contains similar provisions to the AUCPCC, enforces anti-corruption regulations through the ECOWAS Community Court of Justice and the Council of Ministers. Furthermore, the Intergovernmental Action Group Against Money Laundering in West Africa (GIABA), launched in 2012, complements these efforts by addressing money laundering and terrorist financing. GIABA also supports whistleblower protection, a crucial element in ensuring accountability, as will be analyzed below.

Finally, the Southern African Development Community (SADC) Protocol Against Corruption, adopted in 2001 and resembling to a large extent the aforementioned instruments, focuses on national anti-corruption mechanisms and international cooperation. It is also worth referring to the OECD Anti-Bribery Convention of 1997, which specifically deals with bribery of foreign public officials in international business transactions.

Nonetheless, despite the proliferation of these instruments, a persistent gap remains in their enforcement in practice, which is frequently selective, with anti-corruption laws applied unevenly or weaponized against political opponents. Furthermore, specialized institutions

often lack the resources, independence, capacity, or political backing required to operate effectively, while judicial systems are often weak or unable to address entrenched political patronage networks.

2. Regional Initiatives

Several regional bodies and networks complement the above institutional and legal frameworks, facilitating anti-corruption efforts, including the following:

- The African Association of Anti-Corruption Authorities (AAACA), founded in 2013, strengthens cooperation among African anti-corruption institutions.
- The Networks of National Anti-Corruption Institutions in West Africa (NACIWA, founded in 2010) and Central Africa (RINAC, founded in 2012) enhance regional collaboration and experience-sharing.
- The Observatory for the Fight Against Corruption in Central Africa, created in 2006, focuses on legal dissemination, ratification of anti-corruption agreements, and policy implementation.
- The African Parliamentarians Network Against Corruption (APNAC), launched in 1999, strengthens parliamentary oversight and governance reforms.
- The East African Association of Anti-Corruption Authorities, formed in 2007, facilitates knowledge exchange and evaluates national anti-corruption efforts.
- The Commonwealth Africa Anti-Corruption Centre (CAACC), launched in 2013, is an anti-corruption partnership between the heads of Anti-corruption Agencies.

3. National Initiatives and Their Challenges

Many African nations have established anti-corruption bodies, legislative frameworks, and national strategies as part of a broader global movement demanding greater accountability, often under pressure from international financial institutions, although the effectiveness of these initiatives varies widely across regions. It is essential to highlight in that regard, that administrative agencies –particularly those charged with oversight, audit, and enforcement– play a pivotal role in addressing corruption not merely as a reactive function, but as a proactive mechanism of governance. When functioning properly, these agencies can implement preventive measures that reduce opportunities for corruption before misconduct occurs. This preventative capacity –that constitutes a foundational element of the rule of law itself– is often more effective than relying solely on ex post judicial remedies, which can only address corruption after its consequences have already materialized.

3.1 West Africa

Since 2006, Benin has reinforced its legal and institutional framework in the fight against corruption. The National Anti-Corruption Authority (ANLC), established in 2011 under Law 20/2011 has engaged in public sensitization campaigns and the investigation of high-profile administrative irregularities. However, the agency remains vulnerable due to financial independence issues and the accountability of its members. A major obstacle is the low independence of the judiciary, preventing ANLC cases from leading to convictions. Additionally, ANLC faces challenges from executive financial control, further weakening its investigative powers.

Liberia has also sought to rebuild governance structures post-civil war, emphasizing accountability and transparency. The Liberia Anti-Corruption Commission (LACC), established under the LACC Act (2008) has initiated a number of investigations into procurement fraud and abuse of office. However, operational and financial autonomy remains a critical issue. There is a lack of political will to fully empower the LACC, and coordination with the justice system and legislative bodies is weak.

Rebuilding post-war governance structures remains an ongoing challenge also in Sierra Leone, where the Anti-Corruption Commission, established in 2000, is tasked with preventing, eradicating, and prosecuting corruption. The Anti-Corruption Commission has shown progress in recent years, especially under reforms enacted by the Anti-Corruption (Amendment) Act of 2019, which enhanced its prosecutorial powers. It has recorded several successful prosecutions and recovered significant misappropriated funds, including through asset declaration enforcement and public education campaigns. However, weak infrastructure and institutional inefficiencies continue to undermine anti-corruption efforts.

On the other hand, Nigeria has two key anti-corruption institutions: the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), which has recorded some of the most prominent anti-corruption cases in the region, including prosecutions of senior public officials and substantial asset seizures. However, the lack of coordination among agencies has led to inefficiencies. The Technical Unit on Governance and Anti-Corruption Reforms (TUGAR) was created to address this issue, yet Nigeria still lacks a national anti-corruption strategy.

Similarly, Niger has also established two institutions specializing in combating corruption. The High Authority to Combat Corruption and Related Infractions (HALCIA) leads anti-corruption efforts and has led multiple audits and administrative reviews, but its effectiveness is questioned due to government influence. The Information/Claims/AntiCorruption and Influence Peddling Office (BIR/LCTI) serves as a public complaint mechanism which has facilitated citizen reporting through regional offices, but faces criticisms regarding its independence. Despite notable reforms, Niger's anti-corruption institutions remain politicized, while the lack of autonomy and government interference continue to challenge Niger's anti-corruption system.

In Senegal, the National Commission for the Fight Against Non-Transparency, Corruption, and Misappropriation (CNLCC), established under Law 35/2003 has conducted and published investigations involving high-ranking officials and strengthened its complaints mechanism. Since 2012, Senegal has implemented significant anti-corruption reforms, including creating a Ministry for the Promotion of Good Governance and a National Office for the Fight Against Fraud and Corruption. A National Strategy on Good Governance was adopted in 2013, and asset declaration laws were introduced in 2014, while enforcement has since then increased.

Finally, Cape Verde remains committed to strengthening preventive measures and asset recovery although it has yet to develop a national anti-corruption strategy. Despite challenges, the country has shown a commitment to anti-corruption compliance, having established two anti-corruption agencies.

3.2 East Africa

Notably, another state that has showcased progress is Kenya, which employs annual corruption measurement tools through Transparency International (TI)-Kenya, producing the

Bribery Index since 2002. The Ethics and Anti-Corruption Commission (EACC) was established under Article 79 of the 2010 Constitution, replacing the Kenya Anti-Corruption Commission (KACC), and has had success with education programs and asset tracing. Despite legal reforms, however, enforcement remains a challenge, especially with respect to high-level prosecutions. The Kenya Bribery Act No. 47 of 2016 and other anti-corruption laws are in place, but political will and commitment to enforcement are lacking.

In Madagascar, Transparency International – Initiative Madagascar established an anti-corruption legal advice center in 2010 to support victims and witnesses of corruption. The center has launched several investigations and has referred numerous parliamentarians for prosecution. It collaborates with municipal governments and has successfully exposed corruption cases, including illegal logging practices. Madagascar's anti-corruption agency has recently taken legal action against numerous parliamentarians for bribery.

Finally, Lesotho introduced in 2016 a law prohibiting bribery of public officials, reinforcing its anticorruption stance. Despite government commitments, impunity remains a challenge, therefore civil society engagement is crucial in strengthening decision-making processes and ensuring greater transparency.

3.3 Central Africa

In recent years, Angola has emerged as a leading example in Sub-Saharan Africa in the pursuit of high-level corruption cases and asset recovery initiatives. The Angolan government has recently launched an ambitious anti-corruption campaign that has significantly reshaped the national governance landscape. Central to these efforts is the National Asset Recovery Service, established in 2018 under the Attorney General's Office, alongside increased engagement by the Supreme Court and the Criminal Investigation Service. The legal framework has been reinforced by instruments such as the Law on Coercive Repatriation and Extended Loss of Assets (Law No. 15/18), which permits non-conviction-based asset forfeiture. Between 2018 and 2022, Angolan authorities recovered assets exceeding $5 billion, with the case of Isabel dos Santos, daughter of the former president, standing out as a landmark example. Despite concerns regarding the political selectivity of certain prosecutions, Angola's institutional and legal advancements constitute a significant step toward strengthening accountability and transparency, though sustained progress will require judicial independence and depoliticized enforcement.

3.4 Southern Africa

Good practices are also manifest in Botswana, which has demonstrated strong political will in implementing UNCAC, maintaining robust institutions and relatively low levels of corruption.

3.5 Northern Africa

Finally, in Northern Africa, Tunisia has undertaken significant anti-corruption reforms in the aftermath of the 2011 revolution, which catalyzed a broader democratic transition. Central to these efforts was the establishment of the National Anti-Corruption Authority (INLUCC), mandated to promote integrity, receive and investigate complaints, and oversee the implementation of anticorruption policies. The Authority has received thousands of corruption complaints annually and referred numerous cases for prosecution. Tunisia's legal framework has also been progressively strengthened, notably through the adoption of Law No. 2017-10 on whistleblower protection and legislation requiring asset declarations by

public officials. Among the most tangible outcomes of these reforms has been the partial recovery of assets illicitly acquired by former President Zine El Abidine Ben Ali and his associates.

C. Ensuring Access to Public Information in Africa

1. Access to Public Information in Africa: Progress, Challenges, and the Road Ahead

The 2024 Ibrahim Index of African Governance (IIAG) records significant improvements in two key areas of transparency and accountability: disclosure of public records and accessibility of public information. This progress aligns with the principles outlined in the African Charter on Human and Peoples' Rights, which guarantees the right to access public information. Over the past twenty years, a growing number of African countries have enacted right-to-information (RTI) laws, reinforcing a commitment to transparency. Importantly, the IIAG also notes that while governance performance has deteriorated in some countries, others have recorded sustained improvement, despite broader regional challenges. For example, the Republic of Congo, Côte d'Ivoire, Equatorial Guinea, Eritrea, and Gabon are among the countries that have demonstrated progress in overall governance metrics. Recognizing these improvements within continental assessments is essential –not only to validate and encourage reform efforts in these contexts, but also to provide replicable examples of institutional strengthening across the continent.

Citizen demand for access to government-held information remains strong. Survey data show that a majority of Africans support the principle of public access to information and believe that it is essential for democracy. Moreover, when citizens feel they can easily access public records, they are more likely to trust government officials and less likely to perceive them as corrupt. This underscores the broader implications of transparency –not only as a legal or ethical obligation but also as a factor shaping public confidence in governance.

Nonetheless, the implementation of RTI laws and transparency measures reveals a significant urban–rural divide, which continues to impede equitable access. Urban populations generally benefit from better infrastructure, digital connectivity, and higher levels of administrative capacity, thereby facilitating access to public information. In contrast, rural communities often face considerable obstacles, such as limited internet penetration, linguistic diversity, lower literacy levels, and inadequate dissemination mechanisms at the local level. These disparities contribute to uneven realization of transparency goals and risk entrenching structural inequalities in citizen oversight and participation.

2. The African Platform on Access to Information (APAI) and Legislative Efforts

In 2011, the African Platform on Access to Information (APAI) was adopted by leading media and information stakeholders, declaring access to information a fundamental human right. The platform was later endorsed by the African Commission on Human and Peoples' Rights (2019) and the Pan-African Parliament (2013). It asserts that information held by public bodies is public and should be subject to disclosure and calls for legally binding and enforceable RTI laws in every African country, based on the principle of maximum disclosure.

At the time of APAI's adoption, only a handful of African nations had enacted RTI laws. However, sustained efforts from advocacy groups and the global Open Government movement have contributed to a gradual expansion. Today, approximately half of African countries have RTI legislation, including South Africa, Nigeria, Ghana, Angola, Zimbabwe, Uganda, Ethiopia, Liberia, Niger, Rwanda, and Tunisia. Despite this progress, some

prominent democracies –including Botswana and Senegal– have yet to enact such laws. Furthermore, the effectiveness of existing laws varies widely. Many nations struggle with poor implementation, conflicting regulations, and a lack of enforcement mechanisms, which limit the practical impact of these laws.

3. Persistent Barriers to Access: Media Freedom and the Impact of the COVID-19 Pandemic

Despite progress in legislation, significant barriers to accessing public information persist across Africa. Even in countries with RTI laws, enforcement remains inconsistent, and restrictive legal frameworks, including media freedom, still hinder transparency. In that regard, studies show that governments invoke cybercrime and anti-terrorism laws to monitor online activities and censor journalism under the guise of national security (e.g. Egypt, Ghana, Uganda). In contrast, others criminalize various journalistic practices (e.g. Ethiopia, Kenya, Nigeria, and Tanzania). Attacks on journalists during elections (e.g. Madagascar, Democratic Republic of Congo, Zimbabwe) or military conflicts often remain unpunished (e.g. Somalia and South Sudan).

Some African nations, such as Eritrea and Djibouti, do not permit private media ownership, thus receiving low index scores in the 2024 World Press Freedom Index, as is the case with others who sanction media organizations (e.g. Togo and Gabon). Furthermore, Eritrea and Egypt are ranked as the least free countries for the press in Africa, whereas Tunisia enjoys relatively higher media freedoms, with almost half of its population supporting media independence, according to a recent survey. Mauritania and Namibia received the highest scores, reflecting a relatively satisfactory situation.

The COVID-19 pandemic further exposed these challenges. In Senegal, Ghana, Nigeria, and other nations, journalists and activists faced harassment and arrest for publishing government statistics or reporting on the pandemic. Some governments justified restrictions on information by citing concerns over the spread of misinformation, but in practice, these measures often served to suppress transparency.

Survey data of the Afrobarometer reinforce the gap between legal provisions and actual access. Across 33 African countries, 56% of respondents reject the notion that only government officials should have access to state-held information. However, practical access remains limited. Business-related information is the most accessible, with 54% of respondents believing they could obtain such data. Still, access to crucial public sector information –such as school budgets and local government spending– is far more restricted. Over half of respondents (55–57%) doubt they could access this type of information.

Transparency levels also vary significantly by country. Lesotho, Cape Verde, and Tanzania rank among the most open nations, while Morocco, Sierra Leone, and Namibia rank among the most closed. Notably, Namibia –a country consistently rated as one of Africa's most democratic– scores poorly in perceived openness. This suggests that democratic governance alone does not necessarily correlate with greater transparency. Even among the more open nations, only small majorities feel confident that they can access public information in all situations.

4. Legal Frameworks and International Commitments

The right to access public information is enshrined in multiple international agreements. Article 19 of the Universal Declaration of Human Rights (UDHR) guarantees "the right to seek, receive, and impart information and ideas through any media." Similarly, Article 19 of the International Covenant on Civil and Political Rights and Article 9 of the African Charter on Human and Peoples' Rights affirm the fundamental nature of this right.

At the regional level, the African Union's Convention on Preventing and Combating Corruption (2003) requires state parties to enact legislative measures to guarantee access to information in the fight against corruption. The African Charter on Democracy, Elections, and Good Governance (2012) further promotes transparency, access to information, and public accountability. In addition, the African Union's Convention on Cybersecurity and Data protection strengthens protections against government surveillance. At the same time, several soft law instruments promote press freedom and protection of journalists, such as the Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) and the African Declaration on Internet Rights and Freedoms (2014).

Despite these commitments, the implementation of RTI laws remains inconsistent. The African Peer Review Mechanism, a self-monitoring initiative within the African Union, highlights transparency and accountability as critical areas for improvement. However, legal inconsistencies, political resistance, and bureaucratic inefficiencies continue to obstruct meaningful access to information.

5. The African Model Law and the Challenge of Implementation

Recognizing the need for stronger access laws, the African Commission on Human and Peoples' Rights developed the African Model Law on Access to Information in 2013, with a revised version released in 2018. While the model law is not legally binding, it has greatly influenced RTI legislation across the continent. Nevertheless, enacting an RTI law is only the first step. The real challenge lies in effective implementation. Weak enforcement, poor institutional capacity, political interference, and lingering secrecy cultures hinder progress. South Africa's Promotion of Access to Information Act (PAIA), passed in 2001, remains one of the continent's most developed transparency laws. However, even in South Africa where people have stood up against corruption and intransparency, bureaucratic delays and noncompliance present ongoing challenges.

D. The Protection of Whistleblowers in Africa: Progress, Challenges, and Emerging Trends

1. The Role of Whistleblowing in Government Accountability

Several African countries have enacted whistleblower protection laws in recent years to promote good governance, combat systemic fraud, and curb corruption. These laws seek to encourage individuals to report misconduct by offering legal protections against retaliation. Among the countries leading these efforts are Ghana, South Africa, Kenya, Liberia, and Nigeria.

Whistleblower protection laws operate under the principle that, in certain situations, concealing wrongdoing is more harmful than exposing it. As a subset of access-to-information regulations, these laws complement broader transparency measures by ensuring that individuals who report corruption or unethical behavior do not suffer undue consequences. Effective whistleblower protections are, therefore, critical to fostering a culture of accountability, as they empower citizens to report misconduct without fear of reprisal.

However, in many African countries, the risks associated with whistleblowing remain high. Even where protective laws exist, enforcement is often weak, and whistleblowers continue to face significant threats. Retaliation can take various forms, including dismissal, suspension, harassment, intimidation, punitive transfers, and even physical harm. These risks deter potential whistleblowers and undermine broader anti-corruption efforts.

2. Limited Public Acceptance and Institutional Challenges

Despite legal advancements, the concept of whistleblowing is still in its early stages in many African countries. Public skepticism remains a significant barrier, with many citizens viewing whistleblowers not as guardians of accountability but as informants or traitors. This perception is rooted in historical experiences, particularly in countries like Ghana, where past authoritarian regimes fostered a culture of secrecy and distrust in government initiatives.

Furthermore, many African nations lack comprehensive whistleblower protection frameworks. While countries such as Ghana and South Africa have enacted specific legislation, others have yet to establish clear legal mechanisms to safeguard whistleblowers. Even where laws exist, their effectiveness is often undermined by weak enforcement, lack of institutional independence, and bureaucratic resistance to transparency.

At the continental level, whistleblower protection has gained increasing recognition. The African Union and various sub-regional organizations have emphasized the importance of citizen participation in governance and the need for robust anti-corruption measures. However, translating these commitments into concrete action remains a challenge.

3. The Internationalization of Whistleblowing and African Realities

The global anti-corruption movement has played a crucial role in shaping whistleblower policies worldwide. In recent years, the concept of whistleblowing has gained traction as an essential tool in combating corruption, with many international organizations advocating for stronger protections. This has contributed to the growing adoption of whistleblower laws in Africa.

However, concerns have been raised about the direct importation of Western-style whistleblower laws into African contexts. Some argue that corruption in Africa is socially constructed in ways that differ from Western perspectives, and that whistleblower protections designed in liberal democracies may not fully address local realities. A one-size-fits-all approach to whistleblower legislation may, therefore, fail if it does not account for Africa's unique political, social, and institutional dynamics.

The challenge lies in developing whistleblower protection frameworks that are not only aligned with international best practices but also tailored to the specific needs and challenges of African societies. Without localized approaches that account for cultural and institutional nuances, whistleblower laws may struggle to gain public trust and achieve their intended impact.

4. Country-Specific Case Studies

4.1 South Africa: A Mixed Record of Success and Challenges

South Africa has one of the most well-established whistleblower protection frameworks on the continent. The Protected Disclosures Act (No. 26 of 2000) was enacted to safeguard employees who expose wrongdoing in the workplace. Additionally, organizations like Corruption Watch, a non-profit group founded in 2012, provide avenues for citizens to report corrupt activities.

Over the past decade, Corruption Watch has received over 36,000 whistleblowing reports, with a peak of 3,248 cases in 2021. Reports have primarily focused on maladministration (18%), procurement fraud (16%), abuse of authority (16%), and general fraud (14%). Corruption hotspots include policing (10% of reports), schools (5.8%), housing (3.1%), and healthcare (2.7%).

Despite these mechanisms, whistleblowers in South Africa continue to face serious risks. High-profile cases have demonstrated that legal protections are often insufficient, leaving whistleblowers vulnerable to retaliation. The assassination of Babita Deokaran, a whistleblower who exposed corruption in South Africa's health department, is a stark reminder of these dangers. Although South Africa has taken significant steps to protect whistleblowers, challenges in enforcement and institutional accountability remain major obstacles.

4.2 Kenya: A Culture of Political and Activist Whistleblowing

In Kenya, whistleblowing has traditionally been driven by political opposition parties and civil society activists. Over the years, opposition leaders have played a key role in exposing government corruption and demanding accountability. Activists have also been instrumental in reporting irregularities in public institutions, often taking their cases to court.
However, the risks associated with whistleblowing in Kenya remain high. Whistleblowers, particularly those exposing high-level corruption, have faced severe consequences, including threats, intimidation, and in some cases, assassination. The lack of comprehensive whistleblower protection laws further discourages individuals from coming forward.

4.3 Nigeria: The Impact of Whistleblower Incentives

Nigeria's whistleblower policy, introduced in December 2016, has played a significant role in uncovering corruption in both the public and private sectors. Within the first six months of implementation, the government recovered billions of naira in stolen funds based on whistleblower tips.

A key feature of Nigeria's whistleblower program is the provision of financial incentives. The Ghanaian Whistleblower Act (2006) was the first in Africa to introduce monetary rewards for whistleblowers, and Nigeria has since adopted a similar approach. However, while financial rewards have encouraged more whistleblowing, retaliation remains a major concern. Many whistleblowers in Nigeria have faced severe backlash, including harassment and threats. Additionally, weak enforcement mechanisms have undermined the credibility of the system.

E. Key Challenges

Despite progress in whistleblower protection and broader anti-corruption efforts across Africa, significant challenges persist. These challenges undermine government accountability and transparency, erode trust in institutions, and discourage individuals from reporting misconduct. Addressing these obstacles is crucial to ensuring the effectiveness of anti-corruption measures and safeguarding the rights of whistleblowers, journalists, and affected communities.

Lack of Political Will and Financial Resources. Fighting corruption and intransparency requires political commitment at both national and regional levels, the absence of which remains the most significant impediment to anti-corruption measures. Notably, Botswana and Rwanda have demonstrated that consistent political leadership, coupled with well-resourced anti-corruption agencies, can yield substantial progress in curbing corruption and improving public trust. Governments must move beyond rhetoric and actively implement measures, including:

- Ratifying and enforcing the AUCPCC and the other aforementioned universal and regional instruments.
- Prosecuting corrupt officials regardless of political status.
- Strengthening procurement standards and ensuring transparent hiring practices.

- Supporting civil society organizations and independent media in their oversight roles.
- Enhancing international cooperation to track and recover stolen assets.

Weak Enforcement of Whistleblower Protection Laws. While many African countries have enacted whistleblower protection laws, their enforcement remains inconsistent and ineffective. Weak institutional frameworks, political interference, and a lack of independent oversight bodies hinder the implementation of these laws. As a result, whistleblowers continue to face retaliation, including job loss, harassment, intimidation, and even violence. Governments must implement robust security measures, anonymous reporting channels, and legal support systems to protect whistleblowers. South Africa's Protected Disclosures Act and the functioning of the Public Protector's Office offer a relatively robust model, demonstrating how institutional backing and legal clarity can offer meaningful protection.

Limited Public Trust in Anti-Corruption Mechanisms. Many Africans lack confidence in their governments' commitment to fighting corruption. Surveys indicate that a majority of citizens believe reporting corruption will not lead to action, further discouraging participation in anti-corruption efforts. Governments must demonstrate their commitment through transparent investigations, strict enforcement of anti-corruption laws, and independent oversight mechanisms. Ghana's Office of the Special Prosecutor, while still facing capacity constraints, represents a recent effort to bridge this trust gap by enhancing transparency and investigative autonomy.

Weak Cross-Border Cooperation and Asset Recovery. Corrupt officials often exploit weak cross-border cooperation to launder money and hide stolen assets in offshore financial centers. Major economies and secrecy jurisdictions must strengthen regulations to prevent illicit financial flows from Africa. This includes enforcing the OECD Convention on Combating Bribery, establishing public registers of beneficial ownership, and implementing effective asset recovery mechanisms. Angola has made notable progress in this regard, recovering billions of dollars in assets since 2018, including high-profile seizures linked to politically exposed persons. These successes were facilitated by new laws enabling non-conviction-based forfeiture and strengthened international cooperation.

Cultural and Social Stigmatization of Whistleblowing. Whistleblowing is often viewed negatively in many African societies, with whistleblowers perceived as traitors rather than protectors of public interest. Historical experiences with authoritarian regimes have contributed to this distrust, discouraging individuals from coming forward with critical information. Changing this perception requires extensive public education campaigns and stronger legal protections to ensure whistleblowers are seen as essential to governance and accountability. Sustained public awareness campaigns, as piloted in Kenya through Transparency International's advocacy and education efforts, can help reframe whistleblowing as a civic duty rather than an act of disloyalty.

Discrimination and Increased Exposure to Corruption. Corruption disproportionately affects marginalized groups, who are often forced to pay bribes to access essential rights and services. Stigmatized and disadvantaged communities, including ethnic minorities, rural populations, and economically vulnerable individuals, face systemic discrimination in justice mechanisms and public service delivery. Their limited access to legal redress exacerbates corruption's impact, reinforcing cycles of exclusion and inequality. Targeted interventions, such as Madagascar's anti-corruption legal advice centers serving rural areas, highlight how community-based support mechanisms can bridge accessibility gaps and empower vulnerable populations.

Limited Media Freedom and Civic Space. The shrinking of civic space and constraints on media freedom impede efforts to expose corruption and hold governments accountable. Legal and extralegal pressures on journalists and civil society actors are growing in several

states. Governments must uphold press freedom and allow civil society organizations to operate without intimidation, as well as promote citizen participation in anti-corruption efforts by increasing civic education, encouraging grassroots activism, and creating platforms for public engagement in governance. Tunisia, before the recent democratic backsliding, was cited for its relatively pluralistic media environment in earlier reform years, illustrating how a vibrant press can amplify transparency and public participation when institutional conditions allow.

5. Legal Certainty

A. The foundations: Legal certainty. An introduction to the concept

Legal certainty is a complex component of the rule of law which encompasses several elements: (1) accessibility of legislation and court decisions; (2) non-retroactivity; (3) generality and promulgation of laws; (4) hierarchical structure of rules. It is mostly based on predictability, that is, on the possibility of foreseeing human actions and their consequences (the situation resulting from those actions). This may refer to natural actions (such as driving on the right or the left) or institutional actions (legal acts), performed either by individuals (e.g. a dismissal) or by legal bodies (imposing a fine, awarding compensation, granting or denying a permit, etc.).

This makes accessibility the first fundamental component of legal certainty. Indeed, a secret rule, or one to which access is restricted, will destroy predictability. Alongside this formal conception of accessibility, there exists a substantive dimension that refers to citizens' ability to know and understand the applicable law effectively. Such a substantive dimension is connected with transparency and relates to factors such as the clarity of wording, the level of technical complexity of the norm, legal references, the dispersion of regulatory competence, the proliferation of so-called *omnibus* statutes, etc. These factors can all make it difficult for non-specialists to be acquainted with the applicable rule or understand it in detail.

Connected to this, there is also the requirement of non-retroactivity. Indeed, besides the arbitrary use of law, the prediction of law is always made at a specific time and refers to future events. It is this dimension of predictability that justifies certain legal requirements such as that of a specific type of non-retroactivity or of regulatory stability. In this regard, stability acquires two, relatively independent meanings. The first, more formal, meaning is the absence of changes: legal norms must have a minimum duration in time to allow subjects to plan their medium- and long-term behavior. From this perspective, frequent legal changes lead to a lack of predictability. In the second, less formal, meaning, stability is understood as continuity (coherence), rather than a simple absence of changes. This second conception requires the assessment of the content of any changes made to determine whether or not they imply instability and, therefore, whether or not they affect legal certainty. At times, certain normative changes (i.e. a certain lack of stability as under the first meaning) may not affect predictability, but actually increase it: for instance, changing a rule worded ambiguously or a reform that consists in eliminating a rule that was incoherent with other rules or principles.

Besides these elements, legal certainty as a component of the rule of law encompasses also the requirement of clarity of the grounds, purposes, and content of regulations, especially those that are addressed directly to man. In this regard, language plays a fundamental role considering that the precepts of national law (constitution, laws, bylaws, etc.) are related to the commonality of professional (legal) terminology and background knowledge of legally significant words and expressions.

Introducing the concept of the rule of law as a fundamental contribution to the construction of modern constitutional law,[93] A.V. Dicey underscored the importance of the certain and

[93] *Lectures Introductory to the Study of the Law of the Constitution*, London, 1885.

prospective nature of the law, thus recognizing a pivotal role to legal certainty in the definition of the rule of law. He also clarified that courts and legislators should grant legal certainty. Courts grant legal certainty by defining and enforcing the rights of the citizens; legislators grant legal certainty by prescribing clearly and in advance which actions will be sanctioned. Furthermore, Dicey connected the principle of legal certainty to the question of fundamental rights and incorporated it as an element of constitutional law, creating an ideal consonance between the rule of law and constitutional law.

B. Features of Legal Certainty in Africa

In African States, legal certainty remains a significant challenge. Understanding the state of legal certainty across the continent requires examining the interplay between colonial legal systems, indigenous legal traditions, modern legal reforms, and Africa's revolutions. Most African States have legal systems influenced by either the British (common law) or French, Spanish, Dutch, Portuguese, Italian, or German (civil law) legal traditions, due to colonial rule. Countries like Nigeria, Kenya, and Uganda have a legal system based on common law, which emphasizes the importance of judicial precedents (*stare decisis*); while countries such as Senegal, Ivory Coast, and Chad, have a civil law system, which relies heavily on written codes and statutes.

Also, there are countries such as South Africa, which are neither purely civil law nor purely common law, combining civil law (ex. substantive law), common law (procedure and public law), customary and religious law. Many countries, besides their statutory law, incorporated aspects of customary law, which is based on traditional norms, customs, and practices indigenous to the local populations,[94] and religious law, which covers Islamic Law (e.g. Nigeria, Sudan, Somalia); Christian Canon Law (e.g. Ethiopia, Zambia, Uganda, South Africa) and Jewish Law "Halakha" (e.g. South Africa, Morocco). These legal systems are often referred to as "mixed legal systems".

This legal pluralism in Africa is a powerful tool for diversity and respecting values. First of all, from a constitutional point of view, it is an instrument for non-concentration of power. There is no single institution which has a monopoly over legal decision - making. Therefore, power is distributed among multiple legal systems, reducing the risk of abuse by a central authority. Secondly, recognizing these legal systems gives autonomy to local populations, protecting them from domination by a centralizes state. Thirdly, these different legal systems, coming from different sources of authority, can act as checks on each other. Finally, it preserves different identities, beliefs, and traditions in Africa, rather than enforcing a single national culture.

On the other hand, while legal pluralism decentralizes power, it may also lead to legal uncertainty, human rights issues (especially if customary and/or religious laws discriminate), and power struggles between legal systems:

Conflict of Laws

The tension between the statutory law and customary law (and/or religious law) can sometimes lead to contradictory rulings, particularly in family law and land disputes, where different legal traditions may not align. Here it is possible to perceive the influence that the colonial past had on the consolidation of the rule of law in general and legal certainty in

94 Gerrit Ferreira & M. P. Ferreira-Snyman, 'The Harmonisation of Laws within the African Union and the Viability of Legal Pluralism as an Alternative' *Journal of Contemporary Roman-Dutch Law*, Vol. 73, 2010, pp. 608-628 https://ssrn.com/abstract=1905454.

particular. By examining the case of Nigeria, for instance, the difficulties of dealing with the legacy of English common law clearly emerge, being still unclear whether Nigeria is anchored to a default application of the English common law because of the content of the Nigerian Interpretation Act and of the practice of Nigerian courts to apply "the Common Law which is currently in force at a particular time in England" (Adigun) according to their subjective determination of what the current position of English common law is. The controversial outcomes for legal certainty of this approach became evident in *Benson v. Ashiru* ([1967] NSCC (SC) 198). Indeed, because the English law may change but the interpretation provided by Nigerian high courts binds lowers courts in name of the *stare decisis* principle, it may happen that lower courts shall act not on the basis of the current English common law but on what it was deemed to be by the Nigerian higher court, leaving the only option of a distinguishing to respect the requirements of the Interpretation Act. Furthermore, there are issues connected to legal pluralism that arose after independence. For instance, in Nigeria (common law), corruption within the judiciary undermines the consistency and predictability of legal decisions.[95] Moreover, customary law continues to play a significant role, particularly in rural areas, leading to conflicts with the formal legal system.[96] Despite these challenges, Nigeria has made efforts to improve legal certainty, including legal reforms and the establishment of specialized courts for commercial and family law matters. However, the overall impact on legal certainty remains insufficient.

Supremacy of the Constitution

South Africa is one of the few African countries with a legal system that is explicitly designed to accommodate civil and common law traditions, alongside indigenous customary law.[97] South Africa's Constitution provides a clear legal framework, which has enhanced legal certainty in many respects. For instance, the establishment of the Constitutional Court has helped ensure that laws and judicial decisions align with constitutional principles, contributing to consistency in legal rulings. Despite the constitutional recognition of customary law, challenges remain in the application of these laws. Customary law is often seen as being in conflict with the principles of equality and non-discrimination enshrined in the Constitution. The country has made significant strides in ensuring legal certainty through its democratic processes; however, the coexistence of multiple legal systems presents ongoing challenges.

Despite the adherence to the common law system and the relevance that the doctrine of precedent has therein, in South Africa, Courts pay attention to avoid the need to respect the doctrine to ensure legal certainty turns into an unreasonable rigidity of the system. Justice Innes in *Habib Motan v Transvaal Government* (1904 TS 404 at 413) for instance stated that *"It is a lesser evil for a court to override its own legal opinion, clearly shown to be wrong, than indefinitely to perpetuate its error.*" With regard to South Africa, scholars however underscored that the respect for the rights of citizens who have arranged their affairs on the basis of a settled principle of law remains powerful and generally Courts have been more willing to overturn established principles where the effect on the regulation of private relationships is less profound. [98]

[95] L. K. Hoffman, 'Tackling judicial bribery and procurement fraud in Nigeria', 8 October 2024 https://www.chathamhouse.org/2024/10/tackling-judicial-bribery-and-procurement-fraud-nigeria/02-what-nigerians-think-about.

[96] Abdulmumini A Oba, 'Harmonisation of Shari'ah, Common law and Customary Law in Nigeria: Problems and Prospects', *Journal of Malaysian and Comparative Law*, Vol.35, 2019 pp. 119–146.

[97] J. Church, 'The Place of Indigenous Law in a Mixed Legal System and a Society in Transformation: A South African Experience', *Australia & New Zealand Law & History E-Journal*, 2005, pp. 94-106.

[98] K. O'Regan, 'Change v certainty: precedent under the Constitution', *Advocate,* 2001, p.32.

When the Supremacy Clause of the Constitution required existing laws falling within the scope of the Bill of Rights to conform to constitutional values, it necessitated the reconsideration of established legal rules from this perspective—without undermining the principles of legal uniformity and legal certainty. This, in turn, required judges to carefully assess when it was appropriate to issue declarations of unconstitutionality. In this context, Article 172(1) of the 1996 Constitution, concerning judicial review of legislation, sparked a wide debate on whether the use of overruling should be applied prospectively, retrospectively, or both, in order to safeguard legal certainty.[99]

Finally, the South African case is noteworthy because of the connection its Constitutional Court established between economic development and legal certainty of contracts' execution.[100] A case which has underscored the overall importance of ensuring legal certainty in fields related to the fight against poverty in a world region where poverty eradication represents an important goal[101] and requires the cooperation of African States also in the framework of the African Union ("AU or Union")[102] and of the Organization for the Harmonization of Business Law in Africa – OHADA.[103] The dispute involved the enforcement of a franchise renewal clause tied to a Black Economic Empowerment initiative. The Constitutional Court upheld the enforcement, ruling that constitutional values alone do not justify overriding contract terms unless enforcement is clearly contrary to public policy — meaning unjust, unreasonable, or unfair to an extreme degree. The Court emphasized that while constitutional values can inform the law, they must do so gradually and predictably to maintain legal certainty. Concurring opinions supported using values like fairness, justice, and ubuntu in interpreting contracts, as long as they don't undermine pacta sunt servanda (agreements must be kept). As far as customary law is concerned, also Ghana shall be mentioned. Indeed, Ghana's legal system, though based on common law, still relies heavily on customary law, particularly in rural areas.[104] Controversial practices like *Trokosi*, which involves traditional servitude, remains a controversial and legally complex issue, persisting despite being legally banned, reflecting challenges in consistent legal enforcement.[105]

It is also worthy to underscore that very often legal certainty is not explicitly mentioned in the Constitutions of African countries, although it is considered a fundamental element of the rule of law.

The first country having introduced a constitutional provision explicitly mentioning legal certainty has been Algeria. Indeed, the 2020 amendment to the Algerian Constitution has introduced a reference to legal certainty in article 34(4), stating that "*In order to achieve legal certainty, the State shall, when enacting legislation related to rights and freedoms, ensure its accessibility, clarity, and stability".* Scholars have underscored that such a provision

[99] See, e.g., *Du Plessis and Others v De Klerk and Another*, 1996 (3) SA 850 (CC).
[100] See Beadica 231 *CC and Others v Trustees for the time being of the Oregon Trust and Others*, 2020 (5) SA 247 (CC).
[101] See Sustainable Development Goals 2030 n. 1.
[102] C. A. R. Yong, 'Legal Certainty and Foreign Investment in Africa: Let's Call the African Union', 2010, p. 1-48, file:///C:/Users/pclen/Downloads/Dialnet-LegalCertaintyAndForeignInvestmentInAfricaLetsCall-3626747.pdf .
[103] R. Beauchard & M. J. V. Kodo, 'Can OHADA increase legal certainty in Africa', *Justice and development working paper series*, no. 17, 2011, pp. 5-32.
[104] K. Quashigah, 'The Historical Development of The Legal System Of Ghana: An Example of the Coexistence of Two Systems of Law', *Fundamina: A Journal of Legal History*,Vol.14(2), 2008, pp. 95–114.
[105] Ibid.111.

mirrors the interpretation of legal certainty as provided by the European Court of Human Rights[106] and represented a groundbreaking constitutional innovation in the region.[107]

Algeria could profit from constitutional interpretation to make the content of this principle more explicit. Indeed, already in 2011, the Constitutional Council underscored that the stability of the law encompassed by legal certainty should not be conceived as hampering the evolution of rights when it declared that the parliamentary sovereignty to define quotas for ensuring women's participation in elected assembly was not infringed by a Council's decision about whether these quotas were effective.[108] Then, in a 2022 decision, the Constitutional Council clarified that Article 34(4) imposes the State's obligation to ensure access to legislation through publication in the Official Journal,[109] evidently relying on the abovementioned formal dimension of accessibility. However, despite Algeria's constitutional amendment regarding legal certainty, there is a gap between the constitutional text and the executive measures mandated for the State. The general wording of Article 34(4), creates uncertainties for public bodies regarding the conceptual and practical interpretation of accessibility, clarity, and stability requirements.[110]

Beyond the state level, legal certainty is recognized as a fundamental principle for the AU. Indeed, Article 4 of the Constitutive Act of the AU, which states the principles of the Union, establishes: *"The Union shall function in accordance with the following principles: (m) respect for democratic principles, human rights, the rule of law and good governance (...)."* This is a significant Article justifying the provision of legal certainty through the AU. The AU law is crucial for legal certainty, however, there is a lack in the system to allow verifying the incorporation of treaties in national laws. As a consequence, the most effective and efficient means for providing legal certainty under the structure of AU law would be through Regulations and Decisions adopted by the Assembly considering that they have a binding character for member countries of the AU and it is not necessary to wait for their internationalization in each of the member countries of the Union to initiate their legal force. Nonetheless, the different AU law instruments do not expressly recognize these principles. Therefore, it is necessary that the Court of Justice of the AU, through its judgments, determines their implementation in the structure of the AU.

Indeed, Article 7(2) of the African Charter on Human and People's Rights entrenches the principle of non-retroactivity of the law (Article 7(2)) and legal certainty implicitly represents the ground for the Practice Directive adopted by the African Commission on Human and People's Rights on 19 July 2021. Conversely, it seems that the East Africa Court of Justice is pushed to use the principle of legal certainty to expand its jurisdiction to cases concerning human rights and to enforce the African Charter through judicial activism, providing an extensive interpretation of the values and principles entrenched in the East Africa Community Treaty. An approach the Court followed on some occasions.[111]

[106] See *The Sunday Times v. The United Kingdom* (No. 1) [1979] ECtHR 6538/74, 26 April 1979, § 49, and *Karapetyan and Others v. Armenia* [2016] ECtHR 59001/08, 17 November 2016, § 39.
[107] B. M. Ait Aoudia, 'Legal Certainty of Rights and Freedoms in Algeria: Beyond the Constitutionalization', *Statute Law Review*, Vol. 45(2), 2024, p. 2.
[108] See Opinion No. 05 / O.C.C/11, 22 December 2011.
[109] Decision No. 02/ D.C.C/11, 10 May 2022.
[110] Ait Aoudia, n. 107, p. 2.
[111] See James Katabazi and 21 others vs Secretary General of the East African Community and Attorney General of the Republic of Uganda (2007) EACJ and Attorney General of the Republic of Kenya v. Martha Wangari Karua & Others, (Reference No. 20 of 2019) EACJ).

As far as the AU is concerned, it is worth mentioning also the African Charter on Democracy, Elections and Governance, entered into force in 2012. This Charter constitutes an important tool for ensuring legal certainty to foreign investors in Africa. Its importance lies in the promotion of the respect and recognition of the rule of law by member countries of AU, which contributes to the existence of legal certainty in the African continent.[112] In a similar vein, it is possible to mention the New Partnership for Africa's Development ("NEPAD"), which works under the structure of the Union to ensure legal certainty to foreign investors.[113]

The principle of legal certainty is relevant also for the interpretation of the agreements having interested African States and non-state actors to end conflicts, such as the Lusaka Ceasefire Agreement signed on 10 July 1999 by the heads of state of the Democratic Republic of Congo ("DRC"), Uganda, Angola, Namibia, Rwanda, and Zimbabwe and later signed by the rebel groups Movement for the Liberation of Congo ("MLC") and the Congolese Rally for Democracy ("RCD") to end to the hostilities within the territory of the DRC, and the Lomè Agreement signed on 7 July 1999 to end the civil war in Sierra Leone began in 1991 when the forces of the Revolutionary United Front ("RUF") entered in Sierra Leone from Liberia to overthrow the one-party rule of the All Peoples' Congress ("APC"). These agreements were respectively interpreted by the International Court of Justice in the inter-state claim DRC v. Uganda (Armed Activities on the Territory of the Congo)[114] and by the Special Court for Sierra Leone in the cases concerning the prosecution of Kallon and Kamara.[115] In the first case, the DRC applied to the ICJ claiming an armed aggression by Uganda on its territory in violation of the UN Charter and the Charter of the Organization of AU, which Uganda instead considered allowed according to the provision of the Lusaka Ceasefire Agreement consenting the presence of Ugandan forces for at least 180 days from 10 July 1999. The ICJ rejected Uganda's argument by holding that 'the provisions of the Lusaka Agreement could not be read as a consent to the presence in the territory of the DRC of Ugandan troops but only as a recognition that the pacification has to occur in an orderly fashion. In the second case, the Special Court negatively decided on the Sierra Leone pretense to bind it with the provision of art. 9 of the Lomè Agreement establishing an amnesty for certain crimes committed during the civil war by RUF troops. In both, the competent Court refused to recognize the relevance of the Agreement for international law, with the unfortunate consequence that the legal certainty and accountability of international norms (which in the end allowed to accept the DRC claims and to prosecute Kallon and Kamara) were promoted, while the binding power of peace Agreements' provisions for the signing parties was weakened as well as the latter's accountability to such provisions jeopardizing the credibility of these principles at the level of domestic legislation.[116]

C. Key Challenges

The characteristics of legal certainty enunciated in Section 1 implicitly underscore the role that this principle has in the protection of fundamental rights. Indeed, "in the same way that fundamental rights are protected by the rules of jurisdiction or separation of powers without interfering with them, legal certainty is also a principle that aims to protect the rights of individuals in the face of differences, imbalances, and risks of the law. Thus, without being

[112] Yong, n. 102 p.13.
[113] Ibid. p. 14.
[114] *Democratic Republic of the Congo v. Uganda*), Judgment, [2005] ICJ Rep. 168.
[115] *The Prosecutor v. Morris Kallon, Brima Bazzy Kamara*, Case Nos. SCSL-2004–15-PT and SCSL-2004–16-PT, 13 March 2004.
[116] A. Solomou, 'Comparing the Impact of the Interpretation of Peace Agreements by International Courts and Tribunals on Legal Accountability and Legal Certainty in Post-Conflict Societies', *Leiden Journal of International Law*, Vol. 27, 2014, pp. 495-517.

a fundamental right in the strict sense, legal certainty can be classified among the principles aimed at protecting rights".[117] Hence, in those African countries where democracy has not fully consolidated, clear challenges to legal certainty can be identified in the arbitrary use of power by incumbent Executives and elites in power, with the relevant consequences that this entails for the protection of rights and the overall respect of the rule of law.

Political interference. Indeed, a critical challenge to legal certainty in Africa is political interference in the judiciary**.** In many African countries, the judicial system is not fully independent from the Executive or the Legislature. This lack of judicial independence undermines the impartiality and fairness of the legal system. In several African countries, the judiciary is often seen as a tool for political control. For instance, in Zimbabwe, the government has been accused of manipulating the judiciary to maintain its grip on power.[118] Political interference can lead to the selective enforcement of laws, where certain individuals or groups are given preferential treatment, while others are targeted unfairly. Therefore, legal outcomes are often unpredictable and arbitrary, which erodes legal certainty.

Corruption. Furthermore, corruption within legal institutions and among legal professionals is another major challenge to legal certainty in Africa. When judges, lawyers, and government officials engage in corrupt practices, it undermines the integrity of the entire legal system. In countries like Nigeria, Kenya, and Cameroon, allegations of judicial corruption are widespread, leading to significant challenges in obtaining fair trials and reliable legal outcomes. An instantiation is the case involving Tony Gachoka, the editor and publisher of the Post on Sunday. He was convicted for contempt of Court on 20 August 1999 after he published articles alleging corruption in Kenya's judiciary. The case was heard by the full bench of the Court of Appeal exercising its discretion to invoke its original trial court jurisdiction and sentenced Mr. Gachoka to six months imprisonment and a fine of 1,000,000 Kenyan shillings. A violation of his judicial rights deriving from judges' malpractice occurred when Mr. Gachoka was not permitted to give oral evidence or call witnesses in his defense during the trial and when he was deprived of the ability to appeal the decision.[119] Although many African countries have passed laws aimed at combating corruption, the lack of effective enforcement mechanisms means that corrupt practices remain widespread.

Financial constraints. In addition, the physical and institutional infrastructure needed to support a functioning legal system is often underdeveloped in many African countries. Courts are frequently underfunded, understaffed, and lack the resources necessary to carry out their duties effectively. This results in delays in legal proceedings, backlogs of cases, and, ultimately, the denial of justice. For example, in countries like Kenya, Nigeria, and Tanzania, courts struggle to process the large number of cases brought before them, leading to delays that can last years, thus increasing the level of uncertainty of the system.

Conflict of Laws. As mentioned in Section 2, another challenge to legal certainty in Africa is the coexistence of state law and customary (and or religious) law. These two systems can coexist but may create confusion and inconsistency in the application of justice. In many African countries, especially in rural areas, customary law is the primary means of resolving disputes. However, when customary law contradicts state law, legal certainty is undermined. For example, in some countries, women may be denied inheritance rights under customary law, even though state law may guarantee them equal rights. This legal pluralism challenges

[117] B. Mathieu, 'Constitution et sécurité juridique – France, Annuaire international de justice constitutionnelle', *Annuaire international de justice constitutionnelle,* 2000, p.192.
[118] Chifamb Hopewell Chin'ono v the State, High Court of Zimbabwe, 4 February 2021 & 11 February 2021 and Jacob Ngarivhume v. the State, High Court of Zimbabwe, 3 February 2021 & 12 February 2021.
[119] Tony Gachoka v Attorney General [2013] KEHC 6920 (KLR).

legal certainty, as individuals may be unsure which legal system to turn to for a resolution. Some African countries have attempted to integrate customary law into their formal legal frameworks. However, customary law is deeply rooted in cultural traditions, and any attempt to modify or harmonize it with formal legal systems often meets resistance from traditional leaders and local communities. Moreover, in systems where statutory, religious and customary laws coexist, legal certainty can be elusive, particularly for women. What is "certain" in one system (according to statutory law) may be contested or ignored in another (according to customary law). Customary law often reflects patriarchal norms – i.e. inheritance, marriage – favoring male authority. Women often navigate legal pluralism creatively, using the system that offers the best protection. Still, as scholars like Muna Ndulo have highlighted, there is the need for customary law to align with human rights norms and promote gender equality,[120], also considering that the intersection between legal pluralism and gender justice importantly impinges on women's access to resources, especially on the right to food.[121]

In contexts characterized by legal pluralism, where Islamic normativity acquires constitutional relevance through supremacy or repugnancy clauses[122], such as in Algeria, Tunisia and Egypt, there is certainly a high level of legal certainty given the fact that the law is considered immutable because divinely inspired and its interpretation (*fiqh*), fixed in the Codes since the colonial times, entailed a crystallization of Sharia-based norms. This seems however to clash with the current interpretation of legal certainty as a part of the rule of law as long as flexibility and reviewability of norms must be ensured to guarantee the respect of fundamental rights and freedoms as enlightened by principles such as the principle of equality, which is quite foreign to Islamic normativity. In addition, the impact of Islamic normativity can be assessed in federal contexts, such as Nigeria, where sharia law is applied only in some states. Considering the abovementioned role of English law, this means that in Northern States certain matters are regulated under sharia law, while the same matters are generally ruled by English law in Southern States. However, the latter may also look at sharia even though the relevant laws do not contain such an express reference to sharia provisions. A final level of complexity, and potential uncertainty, derives from the fact that besides the influence of sharia law, the High Courts of some states, such as Lagos and Abia, may be guided by decisions and other pronouncements made by any superior court with regard to like provisions on matters in any common law country.

Unclear Legislation. There is also the risk of jeopardizing legal certainty by exploiting too vague formulas encompassed in the legislation. This is, for instance, the case of those provisions introducing limits to fundamental rights to "preserve public order", "protect national constants", or "protect national identity", which may lead to unexpected constraints of individual freedoms. The doctrine[123] mentions as an instantiation the case of some Algerian provisions using these formulas for curtailing freedom of protest and assembly (see Article 9, Law No. 28-89), freedom of worship (Article 2, Presidential Order No. 06-03), freedom of the press (Article 3, Organic Law 23-14), freedom to establish political parties (Article 8, Organic Law No. 12-04), and the right to engage in trade union activities (Article 5 of Law 23-02).

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[120] M. Ndulo, 'African Customary Law, Customs, and Women's Rights, *Indiana Journal of Global Legal Studies,* Vol.18, 2011, 87 - 120. https://www.repository.law.indiana.edu/ijgls/vol18/iss1/5.

[121] G. Dz. Torvikey & P. A. Atupare, 'Legal Pluralism, Gender Justice, and Right to Food in Agrarian Ghana' In: *Agricultural Commercialization, Gender Equality and the Right to Food,* 2022, pp.188-203.

[122] V. R. Scotti, 'Islamic Constitutionalism', *Max Planck Encyclopedia of Comparative Constitutional Law*, 2023. https://oxcon.ouplaw.com/display/10.1093/law-mpeccol/law-mpeccol-e589?prd=MPECCOL.

[123] Ait Aoudia, n. 107, p.10.

Rule of the Army. In Africa, certain countries like Mali, Chad Guinea, Niger, Burkina Faso are ruled by military rule. The rule of the army poses a significant challenge to legal certainty in Africa by undermining constitutional governance, the independence of the judiciary, and the consistent application of the law. Military interventions – whether through coups or informal control over civilian institutions often suspend legal frameworks, disrupt democratic processes, and impose arbitrary rule that erodes trust in legal institutions. In such contexts, laws can be changed or disregarded at the will of military leaders, creating an unpredictable legal environment that discourages investment, weakens human rights protections, and impairs efforts toward development and poverty reduction. This instability hampers the rule of law and makes it difficult to build the reliable, transparent legal systems that are essential for long-term social and economic progress.

Concentration of Power. The concentration of power in the hands of a few individuals or institutions poses a major challenge to legal certainty in Africa by weakening the separation of powers and undermining the rule of law. When executive authority dominates the judiciary and legislature, laws are often applied selectively, manipulated for political gain, or changed arbitrarily to serve those in power. This erodes public trust in legal systems and discourages both domestic and foreign investment due to the unpredictability of legal outcomes. In many cases, constitutions are amended to extend presidential terms or silence opposition, reinforcing authoritarianism and marginalizing independent institutions. For example, in Cameroon, President Paul Biya has held power since 1982. In 2008, term limits were removed by constitutional amendment, enabling him to seek multiple additional terms.[124] In Chad, in 2005, a constitutional amendment removed term limits, allowing President Idriss Déby, who had been in power since 1990, to win several more terms. Although a two-term limit was reintroduced in 2018, it was later determined not to apply retroactively, enabling Déby to run again.[125] Without checks and balances, the law ceases to function as a stable, impartial framework and instead becomes a tool for entrenching power—undermining legal certainty and democratic development across the continent.

Ruling By Decrees. Ruling by decrees presents a serious challenge to legal certainty in Africa, as it bypasses legislative processes and concentrates lawmaking power in the executive, often without checks or transparency. In many countries facing political instability, conflict, or health emergencies, presidents or military leaders have used decrees to impose laws unilaterally — suspending constitutions, curbing civil liberties, or reshaping key legal frameworks without democratic input. For instance, in 2009, in Niger, President Mamadou Tandja invoked emergency powers, dissolved the government, ruled by decree, and dissolved the Constitutional Court, thereby suspending key constitutional articles and checks on executive authority. In 2013, in the Central African Republic, coup leader Michel Djotodia suspended the constitution, dissolved parliament and government, and declared he would rule by decree during the transitional period leading up to elections.[126] This undermines the predictability and stability of the legal system, as laws can be changed or enforced arbitrarily, eroding public trust and weakening institutions meant to uphold the rule of law. Overreliance on executive decrees also sidelines parliaments and courts,

[124] 'Presidents who amended constitution to stay in power', September 16, 2017, Monitor, https://www.monitor.co.ug/uganda/magazines/people-power/presidents-who-amended-constitution-to-stay-in-power-1718522.

[125] J. Siegle & C. Cook, 'Circumvention of Term Limits Weakens Governance in Africa', September 14, 2020, Africa Center For Strategic Studies, https://africacenter.org/spotlight/circumvention-of-term-limits-weakens-governance-in-africa/.

[126] 'CAR rebel chief 'suspends constitution'', March 26, 2013, Al Jazeera, https://www.aljazeera.com/news/2013/3/26/car-rebel-chief-suspends-constitution?.

contributing to an authoritarian style of governance that diminishes legal accountability and fosters impunity.

Lack of Internalization of International Law. Also, as mentioned in Section 2, there is a lack of internalization of international treaties. This negatively impacts the effectiveness of these legal sources for the provision of legal certainty because as long as these treaties have not been internalized, they are not enforceable.[127]. Another challenge in this area is that, for practical reasons, the language of harmonization of laws is often not the official language of some states participating in the harmonization process. The interpretation and implementation of the harmonized rule, therefore, in many instances is done in a language other than the one in which the said rule or policy is formulated, potentially impinging on uniform interpretation of the policy or norm, and consequently on legal certainty.[128]

Access to justice. Access to justice is another critical challenge to legal certainty in Africa. Many individuals, particularly in rural and marginalized areas, have limited access to the formal justice system. This is due to a combination of factors, including geographic isolation, poverty, illiteracy, and lack of legal awareness. In many African countries, legal services are concentrated in urban areas, leaving rural populations with little or no access to legal representation. Additionally, the high costs associated with legal proceedings, such as court fees and lawyer fees, prevent many individuals from accessing the justice system.

D. Impact of Weak Legal Certainty on Economic and Social Development

Legal certainty is foundational for the stability and prosperity of any society. In the context of African states, weak legal certainty poses significant barriers to economic and social development. A legal system characterized by inconsistent rulings, unpredictable legal outcomes, lack of transparency, and inadequate protection of rights can hinder progress in multiple areas. These impacts can manifest in a variety of ways, from discouraging investment to exacerbating inequality and social unrest.

One of the most direct consequences of weak legal certainty is its adverse effect on economic development. If there is uncertainty, domestic and international investors are often reluctant to commit to long-term investments. The relationship between legal certainty and economic growth is well-established, as businesses thrive in environments where property rights are protected, contracts are enforceable, and legal processes are predictable. For instance, multinational companies may hesitate to establish operations in countries where they risk expropriation or unfair treatment in courts. Countries like Nigeria and Zimbabwe, where corruption and lack of legal transparency have been long-standing issues, have faced difficulties in attracting local and foreign investment. For instance, a study on Nigeria evaluates the impact of systemic corruption and political risk on Nigeria's FDI inflows and the study's findings reveal that higher levels of corruption and political instability negatively affect FDI inflows, deterring potential investors and undermining economic growth.[129]

A weak legal certainty also has an impact on social development. Legal uncertainty often exacerbates inequality, undermines the protection of human rights, and prevents the delivery of justice, which in turn hampers social progress and stability. In many African countries, legal systems are often inaccessible to those without financial sources. In

[127] Yong, n. 102, p.8.
[128] Beauchard & Kodo, n.103 pp. 616-617.
[129] G. Osuma, A. Ayinde, Nt. P. Nzimande & B. Ehikioya, 'Evaluating the impact of systemic corruption and political risk on foreign direct investment inflows in Nigeria: an analysis of key determinants', *Discover Sustainability,* Vol. 5, 2024, pp. 432 – 449.

countries like Somalia, South Sudan, and DRC, corruption and weak legal systems have significantly undermined social trust, contributing to cycles of violence, instability, and poverty.

Weak legal certainty affects governance and political stability in Africa. In countries with weak legal systems, the absence of a clear rule of law undermines the legitimacy of governments and creates opportunities for power struggles, authoritarianism, and civil unrest. In countries like Zimbabwe, where the rule of law has been undermined by political interference and a lack of legal certainty, the result has been economic collapse, social discontent, and violent protests.

E. Initiatives to Strengthen Legal Certainty in Africa

Across Africa, there has been a growing recognition of the need to strengthen legal certainty to promote economic development, human rights, and political stability. In recent years, national and regional efforts have been put in place to address the challenges of legal inconsistency, inefficiency, and inequality that have long hindered the effectiveness of African legal systems. Many African countries have embarked on reforms to modernize their legal systems. These reforms typically focus on codifying laws, enhancing judicial independence, strengthening institutions, and aligning domestic legal frameworks with international norms.

One of the most significant national-level initiatives to improve legal certainty in African countries has been the process of constitutional reform. Besides the abovementioned case of the Algerian reform to explicitly introduce a reference to legal certainty, countries like South Africa, Kenya, and Rwanda have undertaken comprehensive constitutional reforms to reflect democratic values, human rights protections, and the rule of law. In South Africa, the post-apartheid 1996 Constitution aimed to correct historical injustices and enshrined key rights and freedoms, enhancing the legal certainty that citizens could rely on to assert their rights. Similarly, Kenya's 2010 Constitution introduced significant changes to its legal framework, including the establishment of an independent judiciary, devolution of power, and enhanced protections for civil rights.

Some African States have worked to standardize and codify their legal systems to reduce ambiguity and promote consistency. In Ghana, for example, the government has enacted laws to harmonize statutory law with customary law, reducing the inconsistencies that often arise from the interaction between the two systems. This codification effort has enhanced legal certainty, especially in the context of land ownership and family law. In Nigeria, the government has also worked toward legal reforms, including the establishment of specialized courts to handle commercial disputes and the introduction of reforms aimed at improving judicial efficiency.

Several African countries have reformed their judicial systems to improve transparency, reduce corruption, and ensure fairness. For example, in Rwanda, the government has worked to increase judicial accountability by implementing reforms to streamline the court system, provide better training for judges, and encourage the use of alternative dispute-resolution methods.

A significant aspect of promoting legal certainty is improving access to justice, especially for marginalized communities. Countries like South Africa, Kenya, and Uganda have

established legal aid systems to provide free or low-cost legal services to individuals who cannot afford to hire lawyers.

Finally, in recent years, the application of modern technologies, such as digital legal platforms and e-governance, has been instrumental in addressing some of the legal challenges that undermine certainty and predictability in the legal systems of African countries. In Kenya, the Judiciary Automated Systems ("JAS") has digitized the court case management process, allowing citizens to file cases online, access court records, and even pay for legal services electronically. This has significantly reduced delays and corruption by enhancing transparency in the court system. In Nigeria, Rwanda, and South Africa, electronic filing systems have been implemented to streamline the submission of court documents, making it easier for lawyers and clients to track case progress and ensure all necessary documentation is available. This reduces the chances of lost paperwork, missed deadlines, and disputes over procedural errors; issues that can compromise legal certainty. In many African countries, databases that compile rulings and decisions from various courts have been established, making legal precedents more accessible. For example, the South African Legal Information Institute ("SAFLII") provides free access to a database of judgments from courts across South Africa, increasing the transparency and predictability of legal outcomes. By making these decisions publicly available, the SAFLII ensures a greater level of legal certainty.

Furthermore, with the advent of e-governance, many African countries host digital platforms where citizens can access current legislation, legal guidelines, and updates on laws and regulations. Websites such as Ghana's Legal Information Institute and the Kenya Law Reports allow the public to freely access the country's statutes, regulations, and case law. By providing easy and free access to legal documents, these systems help ensure that citizens can make informed decisions, reducing the likelihood of legal uncertainty arising from ignorance of the law. For instance, Rwanda has developed an e-land registry system that allows citizens to register and access property titles online, reducing disputes over land ownership. These systems ensure that property records are accurate, readily accessible, and resistant to manipulation, thereby increasing legal certainty in land rights.

Despite the promising potential of technology to improve legal certainty, the absence of clear regulations can lead to inconsistencies in how technologies are applied, reducing their effectiveness in improving legal certainty. While much progress has been made in creating more predictable and accessible legal environments, significant challenges remain, particularly in addressing corruption, improving judicial independence, and ensuring that legal systems are inclusive and accessible to all.

At the supranational level, the AU has played a vital role in creating frameworks that promote legal certainty, through the African Court on Human and Peoples' Rights ("AfCHPR"), which was established to enforce human rights and the rule of law across member states by ensuring the respect of the 1981 African Charter. The latter sets out civil, political, economic, and cultural rights, and African countries that are parties to it are expected to align their domestic laws with its provisions. The enforcement of the Charter by the African Court on Human and Peoples' Rights has been instrumental in promoting legal certainty in areas such as the protection of personal freedoms and the rule of law.

Similarly, the African Continental Free Trade Area ("AfCFTA"), launched in 2018, is a trade agreement that aims to create a single market for goods and services across the continent and harmonize trade laws and regulations across African countries, providing a more predictable and secure legal framework for businesses operating in multiple countries. This

initiative can reduce legal uncertainties in cross-border trade and investment by creating a unified regulatory framework.

The East African Community ("EAC"), a regional intergovernmental organization comprising Kenya, Congo, Uganda, Tanzania, Rwanda, Burundi, and South Sudan, has also worked towards harmonizing laws and regulations across its member states, especially thanks to the East African Court of Justice ("EACJ"), which resolves disputes between member states and ensures the implementation of EAC laws. This regional Court helps enhance legal certainty in cross-border issues, such as trade, business, and human rights. The Organization for the Harmonization of Business Law in Africa ("OHADA") has also the aim of unifying business laws, especially in the fields of property rights and contract enforcement.[130] However, financial commitments remain weak, threatening the ability of the Community's institutions to function effectively.

The promotion of legal certainty through legal and judicial reforms aimed at integrating the region's economies and enhancing human rights protections is finally the main aim of the Economic Community of West African States ("ECOWAS") and the ECOWAS Community Court of Justice, established to hear cases related to human rights violations and the enforcement of regional treaties. However, the ECOWAS has formally lost Mali,Burkina Faso, and Niger, who have withdrawn and constituted themselves into the Alliance of Sahel States (SAE). Furthermore, in the Economic Community of Central African States (ECCAS), Rwanda has announced its withdrawal, further exposing the instability within the bloc.

International organizations are also supporting legal reforms in Africa by providing technical assistance, funding, and expertise.

The United Nations Development Program ("UNDP") works with African governments to implement programs that strengthen legal institutions, promote good governance, and increase access to justice. The UNDP's support for initiatives such as legal aid programs, capacity-building for the judiciary, and the establishment of courts and tribunals has been instrumental in advancing legal certainty in many African states.

The World Bank has supported several legal and judicial reform projects in Africa, particularly in countries such as Ghana, Kenya, and Nigeria, focused on improving the efficiency of legal systems, reducing corruption, enhancing property rights, and increasing the predictability of legal processes. By providing financial support and technical expertise, the WB has helped African countries strengthen their legal institutions.

NGOs have also played an important role in promoting legal certainty by advocating for legal reforms, providing legal education and aid, and ensuring that vulnerable populations have access to justice. Organizations such as the International Federation for Human Rights ("FIDH") and local groups like the Kenya Human Rights Commission have been instrumental in challenging injustices and promoting legal reforms that contribute to greater certainty and fairness in legal processes.

[130] Beauchard & Kodo, n. 103, p. 6.