



GA5: Legal Committee

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Issue: Increasing the independence of judiciary in African countries

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Committee: Legal Committee (GA5)

Issue: Increasing the independence of judiciary in African countries

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I. Introduction

The independence of the judicial organs is one of the most vital topics in ensuring the rule of law, promoting human rights, and maintaining democratic governance in African countries. The challenges that are faced while trying to implement the goal of having independent judicial systems can be listed as but not limited to: Corruption in the court, lack of judicial knowledge in the citizens -can be considered as not knowing their judicial rights and not having a level of judicial literacy-, lack of resources etc... These challenges damage the public trust and prevent courts from being efficient and trustworthy judicial organs (Omeni). If the goal is to maintain an independent atmosphere in African countries, first and foremost, these challenges should be addressed. However, besides these aforementioned challenges, there are ways to find a solution for this agenda.

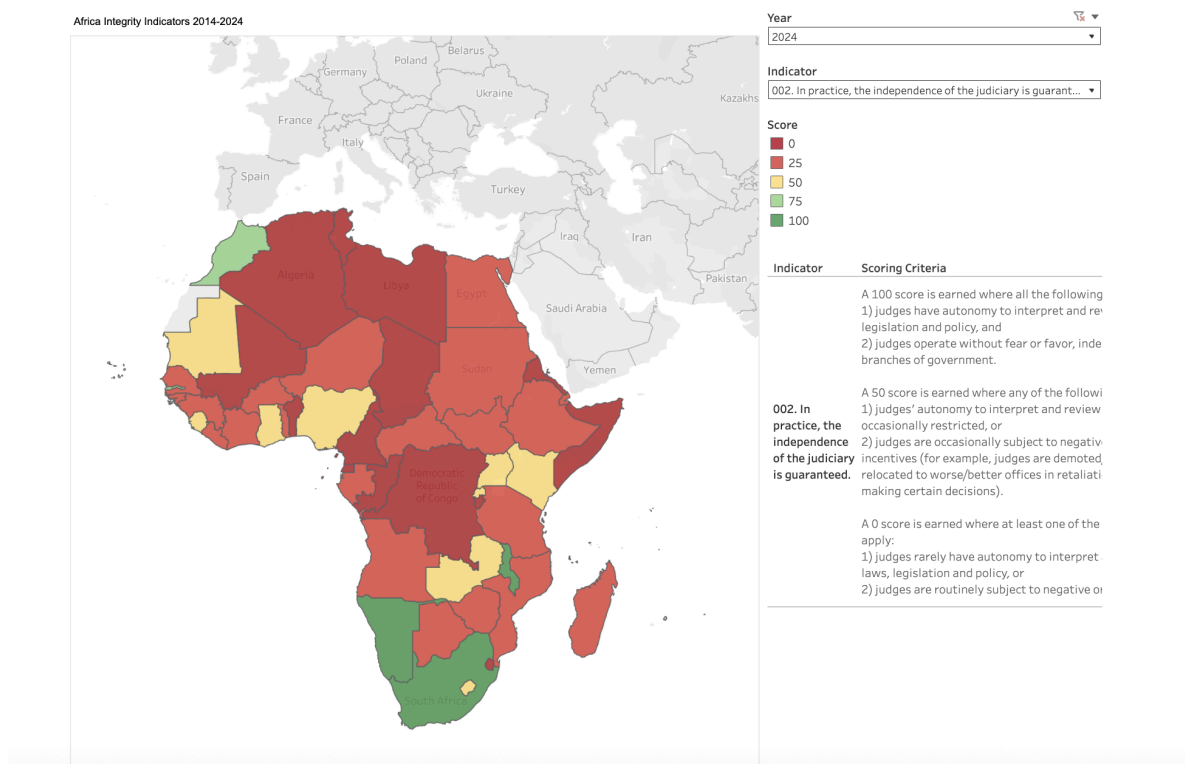


Image 1: The Challenges of Data Collection in Unstable Countries: Perspectives from the Africa Integrity Indicators

Regional cooperation is a must between the African states as this year's theme suggests: "Navigating Uncertainty Through Mutual Trust". Mutual trust and cooperation in the region will be beneficial



for every state in the region. This is because most of the African countries mostly suffer from similar judicial restrictions and challenges. These mentioned challenges can be eradicated only through cooperation. A holistic approach towards the region would strengthen the region's stability and judiciary systems. Additionally, some core principles, such as the separation of powers, are vital for this issue. Furthermore, making the process more transparent and democratic would benefit the independence of the judiciary bodies in Africa (International Commission of Jurists). Lastly, delegates should keep in mind that the courts in the region are vulnerable to manipulation due to political instability and socio-economic hardships.

II. Key Vocabulary

Separation of powers: This term, which is also referred to as “trias politica”, means the political power is not only under the management of one superior party or group but rather divided into three areas, which are ideally independent from each other. These independent bodies that consist of the political power are: legislative, executive, and judicial bodies. The goal is to maintain stability and balance for the country while implementing this idea. (NCSL)

Judicial Independence: Judicial independence means the right of judges and courts or any other judicial bodies to freely decide upon a person or an organization, etc., without any limitation or oppression by other actors or organizations. The system of having independent judiciary bodies that are not used as way to control people in favor of the ruling party or group. (Law David S.)

Impunity: “freedom from punishment or from the unpleasant results of something that has been done” (*Impunity Cambridge Dictionary*). As can be seen in the dictionary definition, this keyword is highly related to the issue because it is common in most of the countries that have a weak and dependent judiciary system to use impunity as a tool to control the people who are in prisons. Impunity can also be used to increase totalitarianism in a region.

Judicial Reform: Changes or improvements in legal or institutional bodies with the aim of strengthening the judicial system and making the courts a more trustworthy body of judgment. This agenda item can be solved with efficient judiciary reforms that the Member States can perform on their own judiciary organs, without breaching other states' right of national sovereignty.

Constitutionalism: Constitutionalism can be summarized as the idea that suggests that governments should be bound to a constitution (*Constitutionalism; Longman Dictionary*). This idea is vital for this issue due to the fact that constitutionalism suggests that the political power should not be at a single organization or party, but rather the constitution should be the superior power, and the government and the people leading the



country should act according to the constitution, which can be considered as an act that increases judicial independence.

Rule of Law: “For the United Nations (UN) system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.” (United Nations). As can be seen from the quotation from the UN, the rule of law is the idea that every citizen living in the territory of a country is bound by laws. The mentioned laws should be parallel to the goals of human rights.

Transitional Justice: “Transitional justice covers the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past conflict, repression, violations and abuses, in order to ensure accountability, serve justice and achieve reconciliation” (OHCHR). Basically, as can be understood from the quote, in post-conflict situations that are about huge breaches of human rights, such as genocide, etc., transitional courts are needed. And for these bodies to work successfully, a strong, independent judicial infrastructure is a must.

Authoritarianism: An idea that is similar to a totalitarian ideology that often oppresses the freedom of thought and concentrates power in a single organ. In regimes with authoritarianism, most of the time, the judiciary bodies are dependent on the mentioned superior power that rules the country.

Judicial Capture: A situation that happens when political superiors or high-level people control the judiciary organs for their own benefit. This situation causes huge damage to the independence of the judicial body and breaches the impartiality (Anderson).

III. Involved Countries and Organizations

Nigeria

It was recorded that the judiciary systems were weak in Nigeria, and achieving constitutional democracy as a regime was not realistic by 2022 (Hoffmann). Even though the current judicial system of Nigeria is not a very developed judiciary system, its stance on this issue is promising, and they have potential measures to solve this issue. The speeches of President Buhari can be given as an example:

“These primaries were peaceful and orderly. Those who won were magnanimous in their victories. Those who lost were gracious in defeat. And those aggrieved opted to seek judicial justice as opposed to jungle justice.” (*President Buhari’s Democracy Day Speech – the Statehouse, Abuja*)



“The Executive, Legislature and Judiciary were and still remain united and committed to ensure these reforms are fully implemented in the 2023 general elections. Fellow Nigerians, your right to choose your government will be preserved and protected.” (*President Buhari’s Democracy Day Speech – the Statehouse, Abuja*)

Kenya

When talking about the judicial situation in Africa, Kenya is a country that should not be forgotten. During 2017, Kenya’s Supreme Court annulled the presidential election results, which was a huge step towards having an independent judiciary system. “The Election Laws Amendment Bill was passed on Oct. 11, 2017, despite strong opposition from civil society and opposition political parties.” (The Carter Center) Additionally, as can be seen from this source, even though there were disagreements between the presidential elections, the court was not affected and protected its impartiality on this issue. Currently, when Kenya’s judicial independence is considered, there is still room for improvement. However, there is a solid progression when the case is improving their judicial systems. To prove this claim: “However, this week, following a consultative meeting involving the heads of all the country’s courts, Kenya’s top judges issued a wide-ranging statement, dealing with judicial independence, as well as claims of corruption in the judiciary, and ways in which the courts could improve to offer a better service to the public.” (Rickard).

South Africa

According to the official documents of the South African government, “The Constitution of the Republic of South Africa, 1996 provides the independence of the judiciary, protects judicial independence by prohibiting any interference with the functioning of the courts.” (*Legislative and Other Mandate*). South Africa did perform and still is performing promising behavior that promotes judicial independence and protection of human rights in the country. Judicial independence can be commonly seen in many legislative and judicial official documents. Another example is the recent promises that were made by President Ramaphosa: “To ensure that the judiciary execute their duties independently, effectively, and with dignity - government must and will provide a range of institutional, infrastructure, financial, administrative, and legal support,” (Sisterson).

Swaziland

As can be seen from the impartial report of the International Commission of Jurists, Swaziland can be considered as a country that suffers from this issue: “Overall, it is the assessment of the FFM-SZ that the recent events are but the latest symptoms of a systemic rule of law crisis characterized by a lack of respect for judicial independence and violations of human rights.” (International Commission Of Jurists “Justice Locked Out”). In Swaziland, a dual court system is adopted which means there are two separate major



courts named as: “traditional courts and common law courts”. In order to get a better understanding, it would be better to explain this court system. Swaziland operates via two parallel court systems. These systems coexist and in some cases even overlap. The common law system is a model of Roman-Dutch law, containing elements from English common law, this relation is because of the cultural inheritance of British Common Wealth. The Supreme Court, High Court and Magistrates’ Courts handle civil and constitutional matters and comply to formal legal procedures by well-trained professional judges. However, the second court which is the traditional courts, that comply with Swazi law and custom. These courts mostly deal with community problems that might be about family disputes, land use and inheritance cases. Rather than professional judges these courts are led by chiefs or respected local leaders known as indunas. Indunas’ main aim is to protect the social structure of the community. Therefore, strict adherence to the law is not necessary. Both of these courts gain their power from the king. Even though Eswatini or Swaziland is considered as a democracy, the king’s influence is undeniable. (International Commission of Jurists, “Swaziland: Court Structure | ICJ”)

Zimbabwe

In Zimbabwe, courts are often criticized and accused of being tools of endorsement used by elites or strong party leaders. It was also recorded that the standards for judicial independence were not as robust as they should be. To prove this claim, this quotation can be given as an example: “There are widespread misgivings over the independence of magistrates and judges as well as prosecutors. In addition to perceptions of direct interference with the judiciary, there is perceived fear by the judges, magistrates, and prosecutors to be seen to be acting at variance with the interests of the executive, especially in matters with a political bearing.” (International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors ICJ Practitioners Guide No. 1 (2007)*...) According to this impartial international organization, Zimbabwe’s judicial system is not very advanced, and judicial organs have the possibility to be used as a manipulation tool in some situations.



Judicial Independence for Kenya, and 2 others(2021)

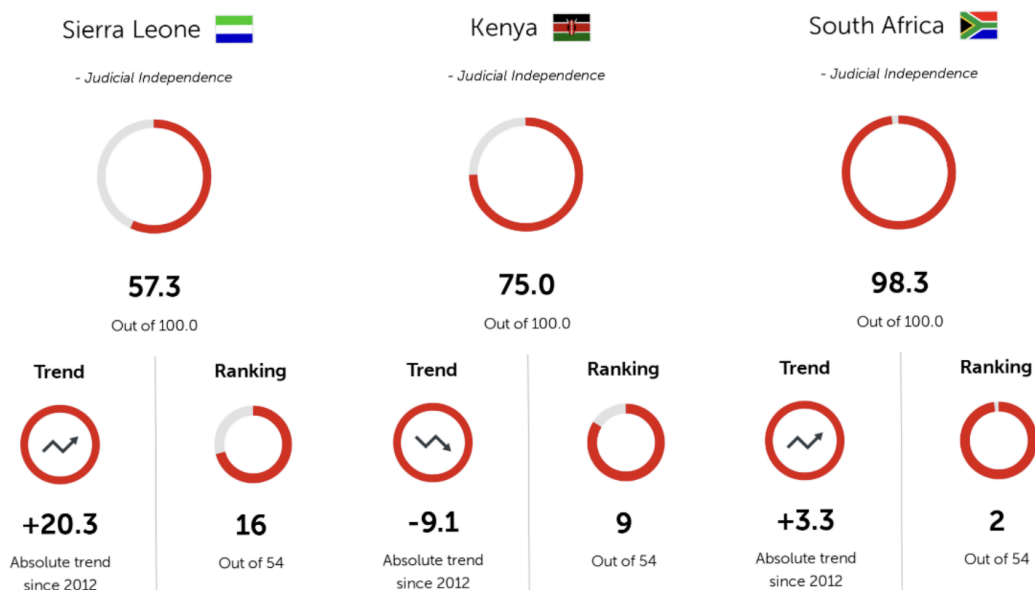


Image 2: African cultural heritage.

IV. Focused Overview of the Issue

1. Challenges that prevent judicial independence

As mentioned in the introduction, the independence of the judicial organs is one of the most significant topics in ensuring the rule of law, promoting human rights, and maintaining democratic governance in African countries. The challenges that are faced while trying to implement the goal of having independent judicial systems can be listed as but not limited to: Corruption in the court, lack of judicial knowledge in the citizens -can be considered as not knowing their judicial rights and not having a level of judicial literacy-, lack of resources etc... These challenges damage the public trust and prevent courts from being efficient and trustworthy judicial organs (Omeni).

Corruption in the court is a huge challenge that shows itself as an obstacle on the path to having independent judiciary bodies. When a court is corrupt, it will no longer have its trait of being trustworthy and impartial. But then, how does a court or a whole judiciary organ suffer from corruption? One obvious reason is executive or political interference in that judiciary organ. These mentioned powers often use courts as a tool to implement their plans or enforce their political power in an unlawful way. One of these examples is Lesotho, "every one of the last four permanent appointments to head Lesotho's highest court has ended in scandal, with political interference playing a major role." (Rickard, *FOREIGN JUDGES ON LESOTHO*). As proven by this quotation, political interference is a problem, and it should be solved at all costs. Another



common reason that breaches judicial independence is definitely the breach of human rights. As in the case of Zimbabwe, the main problem is addressed as the breach of human rights: “Overall, it is the assessment of the FFM-SZ that the recent events are but the latest symptoms of a systemic rule of law crisis characterized by a lack of respect for judicial independence and violations of human rights.” (International Commission Of Jurists “Justice Locked Out”). Similarly, according to the Universal Declaration of Human Rights (UDHR, 1948) Article 10: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” (United Nations). Therefore, breaching Article 10 directly may result in causing the judiciary bodies to be dependent on a superior party or group. Lastly, budgeting is another vital point to ensure judicial independence. It was seen that countries that were unsuccessful with managing the court budget often resulted in the judiciary's dependence on seeking aid. As mentioned in the VII. section of this report, Uganda had a similar situation with budget management, and due to this reason, the court system was damaged.

2. Improvements and how to overcome these challenges

In contrast with the aforementioned challenges, there are ways to ease these challenges, and there are examples in history that show enhancement in these particular aspects. For example, the situation in Kenya, where the supreme court's annulment of the election is both a proof and a milestone in Africa's judicial independence path. During 2017, First time in Africa, a presidential election was annulled by Kenya's supreme court, which exemplifies a milestone by increasing the judicial independence in the region (The Carter Center). Besides this example, a possible way to overcome these challenges directly goes through the constitution of the governments. The Constitution can be considered as the complete set of rules both a country is bound to obey with the citizens living in the country. With robust regulations and a set of frameworks, political stability will have a tendency to become consistent. In this way, the courts being used as “tools” will be minimized.

Another important principle while increasing the independence of the judiciary systems is the separation of powers principle. In this principle, the legislative, judiciary, and executive organs are totally separated without having the right to interfere with each other's work areas. As the aforementioned section states that political interference is a huge issue; if this interference is avoided, this will return to the judicial system as increased independence in the courts and other judicial organs. The mentioned methods are ways to increase the independence of the judiciary bodies, and as long as people overcome the challenges mentioned in the first section, the independence will be implemented.



V. Important Events & Chronology

Date (Day/Month/Year)	Event
27/06/1981	<i>The adoption of the African Charter on Human and Peoples' Rights:</i> This charter can be considered as the first binding human rights document that was adopted in the region. (Plath)
1998	The Rome Statute establishes the International Criminal Court (ICC): A remarkable number of African states participated in the meetings, such as: "Burkina Faso, Cameroon,* Côte d'Ivoire, Djibouti, DRC, Egypt,* Ghana, Guinea, Kenya, Lesotho, Malawi, Nigeria, Senegal, Sierra Leone, South Africa, Sudan,* Tanzania, Uganda, Zimbabwe**" (Gissel).
25/01/2004	African Court on Human and Peoples' Rights : "The Court was established pursuant to Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), which was adopted by Member States of the then Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998. The Protocol entered into force on 25 January 2004."(African court on human and peoples' rights)
2010	New Kenyan Constitution: This constitution has established a Judicial Service Commission and other vital safeguards for judicial independence. (The Official Law Reports of The Republic of Kenya)
2017	Kenya, Annulment of Election: First time in Africa, a presidential election was annulled by Kenya's supreme court, which exemplifies a milestone in judicial independence in the region (The Carter Center)
2023	<i>The African Charter on Human and Peoples' Rights rules against Tanzania:</i>



	This decision's significance is because of the fact that it shows that the African Court is prepared to hold even its host nation responsible for abuses of human rights. <i>(African Court)</i>
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VI. Past Resolutions and Treaties

1. Basic Principles on the Independence of the Judiciary endorsed by General Assembly resolutions 40/32 of 29 Nov. 1985 and 40/146 of 13 Dec. 1985.
 - The main aim of these resolutions was to set international standards for judicial independence standards with guiding national and international legal systems. By promoting fair trials between member states.
2. National institutions for the promotion and the protection of human rights (A/HRC/RES/20/14)
 - This resolution's main goal was to deal with human rights. The relation with judicial independence was indirect; however, by promoting human rights, the goal was to achieve judicial independence.
3. Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels: draft resolution / submitted by the President of the General Assembly(A/RES/67/1)
 - Similarly, the goal was to enforce judicial independence by minimizing political interference to courts and any legal bodies.
4. Universal Declaration of Human Rights (UDHR, 1948)
 - Article 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (United Nations).

VII. Failed Solution Attempts

In this section, it would be better to elaborate on the reasons that could fail a solution attempt. These mentioned reasons can be listed as, but not limited to: political interference, obstacles to judicial reforms, and failed judicial budget management.

Examples for the aforementioned reasons are: "Uganda's constitutional court has found that the independence of the country's judiciary is in jeopardy because of the way the budget of this arm of government is handled. In one of its most significant decisions under the present constitution, the court said the system made the judiciary very much the junior branch in the three arms of government, and often



reduced the Chief Justice 'to pleading for funds from the executive'." (Rickard *Judicial Independence Infringed When*). As the quotation states, Uganda failed to manage the judicial funds in the right way, which weakened their judicial system.

Another most common example that causes solutions to fail is the risk of political interference, as happened in Lesotho. "every one of the last four permanent appointments to head Lesotho's highest court has ended in scandal, with political interference playing a major role." (Rickard, *FOREIGN JUDGES ON LESOTHO*) Political interference is a huge problem when the case involves independent judiciary organs and courts should not deviate from being tools to be used by political powers.

VIII. Possible Solutions

While preparing the documents, first and foremost, delegates should be cautious about not interfering with other nations' internal affairs, and any act that might breach the national sovereignty of other states should be avoided. Legal actions or reforms can be suggested to Member States; however, no binding urges can be made unless the subject state accepts the idea of its own will.

With that being noted, some solutions can be listed as, but not limited to: promotion of human rights, judicial reforms, increased political stability, enhancement of the legal literacy rate, and regional cooperation. In most of the countries that suffer from this issue, one common trait is the lack of human rights protection. Human rights should be strengthened with constitutions that will be prepared by states. Another way to promote human rights is through educating the people about their rights. As human rights are promoted, there is a high chance of increased stability in the region, which will probably result in more impartial legal bodies.

Another possible solution is judicial reforms. Revising the constitutions, ensuring an independent court atmosphere, and getting used to the principle of separation of powers are ways to enhance independence in legal organs. These reforms can also be in the form of robust legal frameworks. These actions are likely to result in increased political stability. Therefore, in this way, the courts will deviate from being used as tools to enforce authority and will deviate from being tools to control people politically.

Literacy rates are another potential solution for this issue. People should be able to know their rights and should be able to defend them when needed by seeking fair judicial applications rather than using means of violence. Last but not least, regional cooperation is key for the solution of this issue due to the fact that many regional countries face similar challenges, and these challenges can be overcome only by cooperation and multilateral agreements, as the conference theme suggests: "Navigating Uncertainty Through Mutual Trust".



IX. Useful Links

Below, the delegates can find useful links to further search and grasp knowledge about the issue. If there are any additional questions, asking for help is welcome.

[African Court on Human and Peoples' Rights](#)

[African Commission on Human and Peoples' Rights](#)

[ohchr](#)

[The Carter Center](#)

[Africa | Country Page | World | Human Rights Watch](#)

[ICJ](#)

[Transparency International](#)

[African Governance Report](#)

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