

AFRICA ELECTORAL JUSTICE NETWORK (AEJN) THIRD ANNUAL MEETING

**Turning the Hope of the African Charter on Democracy,
Elections and Governance to Action
The Role of the Judiciary in Upholding the Rule of Law and
Ensuring Free, Fair, and Credible Elections in Africa**

31 JANUARY – 3 FEBRUARY 2024

**ELEPHANT HILLS RESORT, VICTORIA FALLS,
ZIMBABWE**



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Electoral adjudicators and experts attending the 3rd Summit of the AEJN at Victoria falls in Zimbabwe 31-2 February 2024

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EXECUTIVE SUMMARY

BACK GROUND

The Africa Electoral Justice Network (the AEJN) was inspired, amongst other considerations, by the concerns raised about the quality of elections, including legitimate criticisms that some elections have been flawed and have produced highly contested outcomes or have been characterised by political violence before, during and afterward. The recognition that disputed elections weaken public trust in the democratic process gives impetus to establishing foundations on which inclusive democracies can be built and sustained. Accordingly, and notwithstanding that post-colonial Africa has undergone an evident democratic transformation, it remains imperative for Africa to engage in robust and progressive dialogue on electoral justice-related matters informed by its enduring will to strengthen democratic institutions.

The adoption by the African Union (AU) of the African Charter on Democracy, Elections, and Governance (“the Democracy Charter”) in 2007 has undoubtedly heightened the hopes of key election stakeholders and democracy activists, who believe that it is an unwavering and binding instrument through which good governance, democracy, and the rule of law can be strengthened and entrenched on the continent. This expectation is underscored by the fact that the Democracy Charter has heightened commitment towards cementing the fundamental pillars of democracy in Africa, complemented by robust electoral justice systems. As such, the AEJN, through dialogue facilitated by this Symposium, had an opportunity to consider the fundamental pillars of democracy and good governance enshrined in international and regional treaties and conventions and national legal frameworks, complemented and protected by effective electoral justice systems.

African judiciaries have a fundamental role in democratic processes as final arbiters of election disputes. The need to strengthen electoral justice systems and enhance the quality of democratic elections demands the deepening of democratic processes, the enhancement of good governance, the observance of the rule of law and the respect for human rights. The affirmation by the AU that democratic elections are the basis of the authority of any representative government and that regular elections constitute a key element of the democratisation process undergird the need for regional, interdisciplinary, and multidisciplinary collaboration and dialogue on electoral justice processes.

The inaugural Africa Regional Electoral Justice Network conference was held in Johannesburg, South Africa, in April 2019. A follow-up in-person Symposium was held from 19 to 20 July 2022 in Malawi under the theme, “Judges on the Frontline of African Democracy – Enhancing the Electoral Dispute Adjudication Process.” In between the in-person annual events, the AEJN holds online discussions through the conduct of webinars which provide an opportunity for members of AEJN to share trends on challenges and comparative good, and innovative practices on addressing factors that affect the quality and credibility of elections in Africa such as information pollution and disorder in elections, the use of alternative dispute resolution in pre-election dispute, evidentiary rules or election technology-related litigation, women and youth participation and inclusion in elections and AI and impact on elections.

SYMPOSIUM OBJECTIVES

In the summer 2023, AEJN Chair, Retired Justice Boissie Mbha engaged in discussion with the Zimbabwe Judiciary requesting that they consider co-hosting the AEJN annual meeting in early 2024.

The primary objective of the third annual meeting was to cultivate an inclusive and secure environment where judges adjudicating challenging cases within potentially adversarial conditions can actively engage, collaborate, and share valuable information about ongoing challenges and threats to electoral

integrity, expertise, experiences, and resources to contribute to electoral justice and contribute to improving the integrity of elections in Africa.

The third annual meeting was attended by 130 people comprising judges, magistrates, Election Management Bodies representatives, civil society leaders, academics and elections experts, representatives of the African Union and the United Nations from the following countries, Botswana, the Democratic Republic of Congo (DRC), Eswatini, Lesotho, Kenya, Mozambique, Nigeria, South Africa, Seychelles, the United Kingdom, United States, Zambia and Zimbabwe. The participants also included 3 Chief Justices, Chief Justice Luke Malaba (Zimbabwe), Chief Justice Bheki Maphalala (Eswatini), and Chief Justice Dr. Mumba Malila (Zambia) and 1 retired Chief Justice, Emeritus Justice Maraga (Kenya), judges of superior courts (High Court, Supreme Court and Constitutional Court) of participating jurisdictions. The African Union was represented by Ambassador Salah Hammad of the Africa Governance Architecture. The United Nations independent expert and Special Rapporteur on the Independence of Judges and Lawyers Prof. Margaret Satterthwaite also participated as did the Chairperson of the African Commission on Human and Peoples Rights, Special Rapporteur on human rights defenders and focal person on judicial independence, Prof Remy Ngumbu Loy. Representatives of Election Management Bodies from Malawi and Zimbabwe were also present as were representatives from civil society organisations from the African region. Members of the diplomatic community and development partners attended the symposium as observers.

The objectives of the symposium were to:

- Stimulate dialogue on common approaches to good governance, democracy, and the rule of law, contributing to electoral justice in Africa;
- Discuss the challenges to the independence and impartiality of judges and the potential impact of the [new resolution](#) of the African Commission on Human and People's Rights on the steps taken to monitor the independence

of judiciaries and the impact of judicial observations during elections in Africa;

- Encourage effective coordination and harmonisation of governance policies to promote regional and continental integration and, thus, good governance in electoral justice across the continent;
- Familiarize participants with the African Union and Sub-regional standards governing democratic elections as an intentional step to influence the development of jurisprudence relating to democracy, good governance, and promotion of human rights consistent with the AU objectives;
- Educate participants on the centrality of the African Charter on Democracy, Elections and Governance, the interplay with electoral justice principles in Africa and identify good practices on adjudication of complaints to comply with these principles;
- Continue the promotion of dialogue between judiciaries and civil society organisations to further access to justice and effective right to remedies.
- Expand the geographic scope of the AEJN by conducting outreach to other countries in Africa, notably Lusophone and Francophone countries, to encourage the sharing of good practices despite the differences in legal tradition and systems; and to
- Consolidate the benefits accrued to members of the AEJN and ensure sustainable collaboration through deliberating on and/or adopting its draft Constitutive Act.

SYMPOSIUM PROCESSES

Closed session

The symposium was preceded by *a closed session* of members of the AEJN on 31 January 2024. At the end of the closed session a significant milestone in the institutionalisation of the electoral justice network in Africa was achieved when

the AEJN's Constitution and logo were adopted. The governance and processes of the AEJN are now done in terms of the AEJN constitution as adopted at Victoria Falls, Zimbabwe on 31 January 2024.



The drafting and subsequent historic adoption of the Constitutive Statute and logo of AEJN, on 31 January 2024 in Victoria Falls, Zimbabwe... emphasises the importance and centrality of the vote and the voter in electoral democracy – per Justice Boissie Mbha 1 February 2024

After the closed session of members of the AEJN, an opening session followed by a total of 6 Sessions were held to deliver the symposium and deliberate on thematic matters important for electoral justice in Africa as well as for the effective implementation in domestic jurisdictions of the Africa Democracy Charter. Each of the sessions had a panel with a moderator, judges and electoral experts who led with presentations that created conditions for effective conversations among the participants in a safe space for judicial dialogue.

Opening session

In the opening session the partners had representatives speaking and setting the tone for the symposium. Chief Justice Luke Malaba of Zimbabwe stated that ACDEG contains principles that breathe life into the electoral systems in Africa and drives judicial intellectualism. Justice Mbha, the AEJN Chairperson celebrated the adoption by the Network of its constitution in Victoria Falls stating that the adopted Constitution of AEJN emphasises the importance and centrality of the vote and the voter in electoral democracy.

The AJJF Chairperson Justice Chinhengo argued that electoral systems are democratic methods for forming governments and technical processes for choosing representatives noting that 38 out of 55 African countries have ratified the ACDEG.

Dr G. Moshoeu (Head, South African Judicial Education Institute (SAJEI) remarked that the judiciary plays a critical role in strengthening democratic governance in Africa. The rule of law is the most fundamental feature of all constitutions, hence the need to exchange views, through robust dialogues, on the interplay of constitutionalism, good governance, and electoral justice.

Dr. K. Matlosa spelt out the importance of the shift from the OAU doctrine of non-interference to the AU doctrine of non-indifference, as a shift that gave legal teeth to the AU - and provided the basis for the ACDEG to be developed and adopted. He hoped that implementing ACDEG would eventually address the fallacy of electoralism, noting that although elections are essential to democracy, they are not synonymous with democracy.

Chief Justice Maphalala, the Chairperson of the SEACJF argued that political interference in the judiciary's independence is a cancer that should be eradicated in Africa.

Session one

Session one was chaired by Honorable Justice Dr. M. Malila - Chief Justice of Zambia. It focused on the theme of constitutionalism, good governance and electoral justice with Chief Justice Luke Malaba of Zimbabwe as the key-note speaker. The session dissected and discussed the concepts of constitutionalism

and good governance as cornerstones for electoral justice. It covered what adherence to constitutional governance entails, as well as the nexus between electoral justice and good governance. It underscored that minimum standards of constitutionalism must, in effect, improve good governance.

Justice Lenaola emphasized that judicial authority derives from the people and is vested in the courts. He lamented that the problem in Africa is that judiciaries are sometimes timid and hide behind the technicalities of the law. In underscoring the importance of independent and impartial electoral adjudication processes, he shared with participants that lack of confidence in structures of electoral justice including the EMBs and the courts resulted in severe post-election violence in 2007 in Kenya that saw over 1000 deaths and internal displacement of over 350 000 people. Election dispute resolution and the jurisprudence emerging in EDR must centre the rights of the voter so that people who occupy public office reflect the will of the people expressed in free, fair and credible elections and not the preference of the judiciary

Session two

Session two was Chaired by Lady Justice M Kawimbe of the Constitutional Court of Zambia. It focused on the theme of protecting the independence and impartiality of election judges. The session observed that elections are generally a threat multiplier to judicial independence. Judiciaries and judges face a spike in attacks against their integrity during elections. This phenomenon is likely to increase with more election disputes filed before the courts.

The session explored how election judges need to be prepared to identify these threats and respond promptly to avoid tarnishing the institutions and their integrity and impartiality during the election process. It allowed the session participants to discuss the trends in external and internal threats to their independence and impartiality, focusing on the measures that can help them ensure protection, notably through monitoring and judicial observation of elections.

The Chairperson of the African Commission on Human and Peoples Rights and also the Special Rapporteur on human rights defenders and focal point on

judicial independence Prof Remy Ngumbu Loy stated that elections are a source of perennial conflict in African countries. Elections also multiply threats to judicial independence. The African Commission has noted that many electoral processes in Africa are contested and usually end in court before a judge or magistrate making the judiciary a key institution in electoral democracy in Africa. He concluded by stating that the AU has created a Focal Point, that looks at the factors that affect judicial independence in all cases including electoral disputes and evaluates the national practices that affect it. The ACHPR wants to partner the AEJN and African judges to strengthen the mandate of the ACHPR Focal point on Judicial Independence. Ms. M. Satterthwaite joined the symposium online and stressed the crucial role of judges in electoral justice and the role of the UN and her role as a special rapporteur to support judges and lawyers and denounce abuses. She identified for the audience direct and subtle threats to judicial independence emphasizing that an independent judiciary is a precondition for guaranteeing democratic practices. She offered her office as a vehicle through which judges must be involved in contributing to the strengthening of judicial independence.

Session three

Session three was chaired by Sikhanyisile Sebata of the African Initiative of Women Human Rights Defenders. The session focused on protecting human rights in the context of electoral justice. It explored the crucial role of civil society organisations in monitoring electoral processes, enhancing voters' understanding of the electoral process, and documenting and denouncing abuses during the entire election cycle. It also considered how electoral adjudication, whether occurring during the prime electoral periods or otherwise, impacts the advancement or, in unexpected cases, repression of human rights.

Dr. Tinenei Banda an independent expert argued that the role of the courts in EDR is to entrench constitutionalism and the rule of law and that may be difficult if courts are faced with sheer volumes of petitions, where the election

is won through the court as opposed to the ballot. On the negative impacts of misinformation and disinformation,

Mr B Idowu of Kimpact Development Initiative (KDI) advised on the need for judiciaries to establish communication desks and social media handles within the judiciary to share critical information about cases. Disinformation and misinformation thrives when such critical information about cases going through EDR is not easily available in the public domain making members of the public to resort to information circulating on social media creating a fertile ground for misinformation and disinformation.

Tendai Mwanisa, an independent electoral expert, explained to the participants that Alternative Election Dispute Resolution (AEDR) methods include mediation, negotiation, arbitration, and fact-finding. While there is concern about their non-enforceability, the potential and advantages that AEDR present in dealing with electoral disputes cannot be ignored. AEDR is cost-effective, time-efficient and preserves good relationships between and among disputing parties.

Session four

Session four was chaired by Lady Justice Rita Makarau of the Constitutional Court of Zimbabwe. The session focused on the symbiotic relationship between the universal adherence to the principles of democracy and electoral justice on the African continent, the presumption being that adherence to the principles of democracy ensures the right conditions for electoral justice. The session explored the basic principles of democracy and transparency that ought to be universally accepted and practiced on the African continent.

The session discussed the importance of transparency measures in electoral justice, such as televised hearings in election disputes and engagement with CSOs and bar associations to increase understanding of the role of the judge; and drafting clear and simple judgments in electoral disputes. Dr Matlosa argued that transparency is central to the notion of procedural certainty and outcome uncertainty associated with democratic electoral governance.

Procedural certainty denotes that all legal, regulatory and procedural aspects of elections must be transparently known by all stakeholders before, during and after elections. Substantive uncertainty is a notion that denotes that outcome of elections in the form of results must be known only after elections following announcement by the Election Management Body.

Dr Matlosa also emphasized the need for entrenching intra-party democracy since political parties are the key players in elections and yet are usually the poorest performers in terms of intra party elections resulting in the intra party chaos spilling into national inter party elections. Justice Musinga of the Supreme Court of Kenya shared the example of Kenya that established the Kenyan Judiciary Working Committee on election preparations to address issues regarding transparency in the electoral process. This Committee managed to address public trust that had deteriorated over the years about the judiciary's ability to do EDR independently, impartially and fairly. The loss of confidence in the judiciary is seen as one of the main drivers of post-election violence that rocked Kenya after the 2007 elections. Since the inception of the Committee, visible improvements in the adjudication of electoral disputes have been witnessed in Kenya.

The African Union (AU)- Common Market for Eastern and Southern Africa (COMESA) [Electoral Observation Report](#) and the European Union Observation Report in 2022 evidenced the successful work of the Committee in implementing electoral reforms. Lady Justice Kawimbe of the Constitutional Court of Zambia advised the participants that judgments must be written in simple and clear language. Misunderstanding of judgments fuels misinformation, given social media's growing influence, which plays a significant role in swaying public perceptions.

Hon. Justice Kawimbe recommended that judgments must follow this structure: identification of issues in dispute; statement of the law; application of the law to the facts and settlement of issues; the decision; and the final orders. Felix Owur the Executive Director of ELGIA gave analysis of the key issues emerging in the resolution of presidential election disputes in Africa

identifying the dominant problem comparatively as the phenomenon called the inconclusive electoral cycle. Shortcomings and challenges in one cycle are not conclusively addressed and imported to the next election cycle resulting in countries being in a permanent election mode.

Donald Deya of the Pan African Lawyers Union (PALU) recommended that judiciaries across Africa should strive to use uniform standards in adjudicating electoral disputes to make it harder to influence or intimidate judicial officers if similar standards are upheld throughout the continent. He emphasized the need for African supranational judicial organs to take a lead in developing and spreading such standards and jurisprudence.

Session five

The session which was chaired by Justice Paddington Garwe of the Constitutional Court of Zimbabwe zeroed in on the African Charter on Democracy, Elections and Good Governance (ACDEG), regarded as a transformative legal tool for entrenching the universal values and principles of democracy, good governance, respect for human rights and promotion of participation of women in political life. The ACDEG has implications for electoral justice as it establishes suitable conditions for women in Africa to attain electoral justice.

This session presented the AU framework in terms of the protection of women and addressed how lack of representation has serious consequences in electoral disputes, during which women's voices may be overlooked. Ambassador Salah Hammad of the Africa Governance Architecture noted that although youths and women make up the largest percentage of the African population, their political power has not reflected the existing demographics.

All African States need to ratify and domesticate and implement the African Charter on Democracy Elections and Governance in order to create conditions that allow for women and other marginalised populations to thrive in electoral democracy. Panelists Advocate Pansy Tlakula and Mary Pais Dasilva, co-Director of the Africa Initiative of Women Human Rights Defenders recommended that Civil Society working with the AEJN need to design and

implement programming that addresses stereotyping and cultural practices negatively impacting women rights in effective political participation and inclusion. The panelists also zeroed in on threats that women face during elections, notably hate speech and discrimination in intra-party selection processes.

Session six

The session which was chaired by Chief Justice Bheki Maphalala, the Chief Justice of Eswatini and current Chair of the Southern and East Africa Chief Justices Forum (SEACJF) explored how election judges address political finance, abuse of state resources or vote-buying-related cases in their jurisdictions to protect the integrity of the election and comply with objectives and provisions of the African Charter and Conventions relating to the prevention and combating of corruption.

Vote buying, campaign finance violations, and the misuse of state resources can be major corruptive forces in the electoral process. Retired Chief Justice Emeritus Maraga lamented that the misuse of state resources introduces or exacerbates power inequalities and gives unfair electoral advantage to incumbents. These abuses can compromise the integrity of an election and reduce public trust in the legitimacy of the process and its outcomes. Affluent members of society and other wealthy and powerful non-state actors tend to exercise undue influence over the electorate using resources and the regulations to curb this phenomenon are hard to enforce.

There are also evidential burdens that make it difficult for the judiciary to be an entity that entrenches integrity in the financing of political causes as bribery is an allegation that petitioners have found difficult to prove because it must be proven beyond reasonable doubt.

Closing session

In the closing session Hon. Deputy Chief Justice Gwaunza of Zimbabwe noted that the discussions demonstrated that collaboration between African judiciaries should transcend the realm of electoral adjudication and extend

into other critical areas with the need to translate these discussions into actionable steps that will fortify the rule of law and enhance the democratic processes in African states. In conclusion Justice Boissie Mbha reiterated that the AEJN is a vehicle for peer exchange, learning and solidarity on matters of electoral justice in Africa and that the AEJN looks forward to continued collaboration with African judiciaries.

SYMPOSIUM TAKEAWAYS AND OUTPUTS

At the close of the symposium, a final communique was adopted that summarised the key takeaways from the meeting as follows;

1. The meeting appreciated the role that the African Union has taken in establishing basic standards that need to be adhered to by African states in the conduct of democratic elections on the continent including the shift in policy from non-interference to non-indifference backed by solid human rights standards and instruments including the African Charter on Human and People's Rights, and the African Charter on Democracy, Elections and Governance.
2. The meeting reiterated that AU Member states should ensure that bodies in charge of electoral processes conduct elections in a manner which is in full compliance with their constitutions and existing electoral laws and guarantee the principle of electoral transparency.
3. The meeting noted that the role of Judges has become increasingly important in electoral justice as Africa continues on its trajectory of deepening democracy, good governance, observance of the rule of law and respect for human rights, in order to build inclusive societies, sustainable peace, security and development.
4. Welcoming the adoption of a resolution establishing a focal point on judicial independence by the African Commission on Human and Peoples Rights at the 77th Session in Arusha, the meeting further noted that elections have become a threat multiplier to judicial independence and consequently there is particular need to intentionally strengthen judicial independence in the context of electoral litigation.

5. The meeting further noted that the African Charter On Democracy, Elections And Good Governance if implemented properly, can be a tool for entrenching the universal values and principles of democracy, good governance and human rights in electoral justice and for the promotion of women's effective participation and inclusion in leadership including political life.
6. The meeting further appreciated the role of civil society including election experts to contribute to the strengthening of electoral practices as well as election dispute resolution mechanisms to entrench electoral justice to improve the freeness, fairness, credibility and integrity of elections on the continent.
7. The meeting reaffirmed that an independent and impartial judiciary and electoral court can be a bulwark in protecting civic space, free voting and tackling political corruption
8. The meeting welcomed the institutionalisation of the Africa Electoral Justice Network (AEJN) and encouraged the Network working with African judiciaries, the African Union and Sub-Regional Economic Communities to programme in the following areas among others;
 - 8.1. Strengthening of judicial/legal protection of fundamental rights during the entire election cycle.
 - 8.2. Strengthening the judiciary's collaboration with other critical players in the justice delivery chain to work in tackling corruption.
 - 8.3. Dissemination and implementation of the Principles and Guidelines for the use of digital and social media in elections in Africa 2023.
 - 8.4. Increasing awareness of the judiciary and legal profession involved in electoral litigation, of the AU standards governing democratic elections through continuous judicial and legal education and appropriate symposia
 - 8.5. Work with the ACHPR Focal point on judicial independence and the UN Special Rapporteur on the Independence of judges and lawyers to protect the independence and impartiality of elections Judges.
 - 8.6. Developing concrete measures to address delays in their finalization of electoral court disputes that undermine public confidence in electoral dispute resolution

- 8.7. Advocating for greater financial independence of the judiciary to ensure that financial resources for judiciaries are enough to fund their operations independently.
- 8.8. Increasing the networking, collaboration and exchange of information and resources among electoral judges and electoral justice experts in Africa.
- 8.9. Encouraging the development and use of Alternative Electoral Dispute Resolution (AEDR) by judiciaries to expedite the resolution of electoral disputes.
- 8.10. Developing and maintaining databases of jurisprudences codifying best practices in matters of electoral justice
- 8.11. Encouraging in appropriate situations civil society to approach the court as amicus to enrich African jurisprudence on electoral justice.
- 8.12. Helping judiciaries develop and implement frameworks to tackle information disorder (misinformation and disinformation) and its impact on judicial independence and public perception of judicial independence.
- 8.13. Supporting learning through the exchanging of information between judiciaries in AU member states to promote regional collaboration and development of shared values through jurisprudences, regional electoral bench books, compendia and electoral justice workshops.
- 8.14. Intentionally develop and implement judicial education programmes on regional instruments that have been adopted to eliminate all forms of discrimination against women on the African continent such as the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.
- 8.15. Working with civil society to encourage the monitoring of intra-party democracy and to analyse the level of institutionalisation of political parties to reduce the contagion effect of lack of intra-party democracy that increases unnecessary litigation of political disputes and clogging of the court system with political cases.
- 8.16. Developing guidelines to help judiciaries protect civic space and fundamental rights during the entire election cycle to guarantee effective participation and inclusion of women in politics and leadership.

- 8.17. Carry out solidarity missions including election observation missions to observe key electoral disputes across Africa and protect the independence and impartiality of the judiciary in the context of elections.
- 8.18. Working with judicial elders to intervene in situations of grave threats to the rule of law and judicial independence in the context of elections.
- 8.19. Working with African Judiciaries and election experts (including jurists) to target the intentional development of election jurisprudence that reflects that values, ethos and principles as encapsulated in the African Charter on Democracy, Elections and Good Governance.

FULL REPORT

Closed Session: Wednesday, 31 January 2024

The closed session was attended to by the Working Group and members of the Africa Electoral Justice Network. The session discussed matters of organizational development of the AEJN, including the development of a yearly action plan for the network. The key outcome of the closed session was the adoption of the constitutive statute of the AEJN and its logo.

OFFICIAL OPENING SESSION: THURSDAY, 1 FEBRUARY 2024

Remarks: Honourable Justice M. Chinhengo (AJJF)

The Honourable Judge outlined and explained the objectives and purposes of the Africa Judges and Jurists Forum (AJJF), its governance structure, the Judicial Elders Council, and the thematic areas it covers.



Electoral justice is more than just elections; it is about free, fair, and credible elections and the various pre-election, election, and post-election activities. Per Justice Chinhengo AEJN 2024

Honorable Justice Chinhengo explained that the aim of the Symposium was to share experiences, discuss challenges and preferred approaches in resolving election disputes and serve as an ongoing forum for peer-to-peer engagement to strengthen electoral justice across the continent. Hon. Justice Chinhengo discussed the importance and purpose of electoral systems, emphasising them as democratic methods for forming governments and technical processes for choosing representatives. It was noted that 38 out of 55 African countries have ratified the African Charter on Democracy, Elections and Governance. Hon. Justice Chinhengo outlined the purpose of the Charter, and posed the following questions as central to the Symposium:

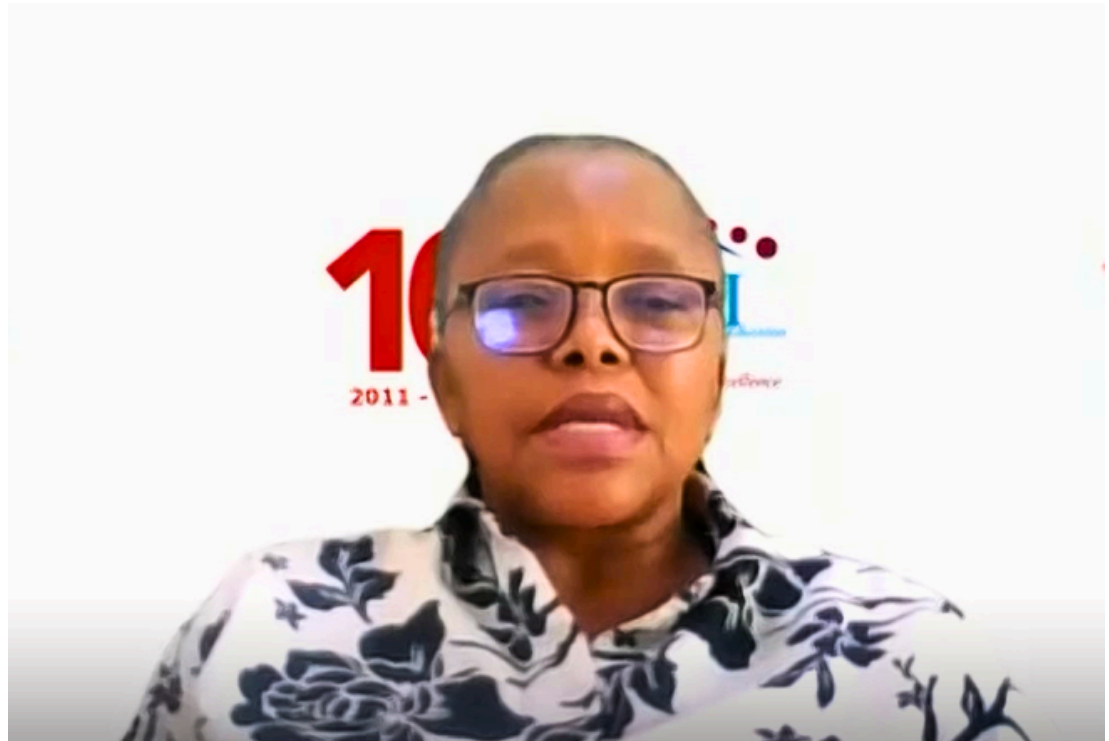
- Why is electoral justice important?
- Electoral Justice for who?

In this connection, he emphasised that electoral justice must be for the benefit of the people and that courts must apply electoral laws impartially, without fear or favour. Electoral justice and the observance and application of the rule of law are key components of AJJF's work, which underscores a commitment to developing electoral practices that are *intra vires* the constitutional frameworks and conduce to free, fair, and credible elections.

In this regard, the fundamental issues, amongst others, are that judiciaries must act independently in both form and substance and must be adequately resourced to discharge their duties effectively. Therefore, the question to ask is whether judiciaries in Africa are properly equipped to discharge their functions fully.

Electoral justice is more than just elections; it is about free, fair, and credible elections and the various pre-election, election, and post-election activities. As such, courts have a critical role to play in electoral justice. In doing this, they must work within the confines of the law and the electoral and political systems that answer to the rule of law. Justice Chinhengo also referred to the Judicial Elders Council of the AJJF comprised of retired Chief Justices that is a resource for all jurisdictions in times of crisis.

Remarks- Dr G. Moshoeu (Head, South African Judicial Education Institute (SAJEI))



The rule of law is the most fundamental feature of all constitutions, hence the need to exchange views, through robust dialogues, on the interplay of constitutionalism, good governance, and electoral justice. per DR G Moshoueu AEJN 2024

This Symposium comes at an opportune time when several African countries - about eighteen (18) of them - will hold elections in 2024. The judiciary plays a critical role in strengthening democratic governance in Africa. The rule of law is the most fundamental feature of all constitutions, hence the need to exchange views, through robust dialogues, on the interplay of constitutionalism, good governance, and electoral justice. It is, therefore, imperative for judiciaries to come together to determine how the objectives of the African Charter on Democracy Elections and Governance, as listed in Article 2, can be brought to life. Promoting adherence to the rule of law and protecting judicial independence are cornerstones of democracy. That judges face several

challenges associated with electoral litigation and justice cannot be gainsaid. Be that as it may, for electoral justice to be realised, judges must enjoy judicial independence and impartiality - particularly decisional independence to make impartial decisions.

Remarks- Hon. Chief Justice Maphalala: Chief Justice of Kingdom of Eswatini



Political interference in the judiciary's independence is a cancer that should be eradicated. per CJ Maphalala AEJN 2024

The objective of the Southern and East African Chief Justices Forum (SEACJF) is to promote the rule of law and protect the independence of the judiciary to ensure prosperity, peace, and security. The judiciary has a critical role to play in electoral justice. Many judiciaries are still considered appendages of the executives and are under attack for not supporting government policies, among other issues. As such, many judiciaries have experienced attacks from governments, unduly so. Such interference is on the rise and is a cause for

great concern because it renders the judiciary incapable of dispensing quality justice to all. Political interference in the judiciary's independence is a cancer that should be eradicated.

Welcome Remarks- Hon. Justice B. H Mbha (AEJN Chairperson)

Hon. Justice B. H Mbha presented the network and summarized key achievements of the network since its establishment. The AEJN was conceptualised in April 2019, when 19 Judges met and discussed, amongst other issues, their comparative understanding of electoral justice and the resolution of electoral disputes. Subsequently, over 40 Judges met in Malawi in July 2022 at a meeting co-hosted with the Chief Justice of Malawi Chief Justice Mzikamanda and the Judiciary of Malawi.

The second annual meeting of AEJN in Malawi had the theme “Judges on the frontline of African Democracy: Enhancing the Electoral Adjudication Process.” The critical outcome of that event was the decision taken to formalize the structural existence of the Network and concretise its objectives. This led to the drafting and subsequent historic adoption of the Constitutive Statute and logo, on 31 January 2024 in Victoria Falls, Zimbabwe. The adopted Constitution emphasises the importance and centrality of the vote and the voter in electoral democracy. This resonates with the theme of the Symposium - *“Turning the Hope of the African Charter on Democracy, Elections and Governance to Action: The Role of the Judiciary in Upholding the Rule of Law and Ensuring Free, Fair, and Credible Elections in Africa.”*

Honorable Justice Mbha explained that the aim of the Symposium was to share experiences, discuss challenges and preferred approaches in resolving election disputes and serve as ongoing forum for peer-to-peer engagement to strengthen electoral justice across the continent.

Welcome Remarks- Hon. Mr. Justice L. Malaba (Chief Justice, Zimbabwe)

It is important to understand that electoral justice is not an event but a journey as is informed by the African Charter on Democracy, Elections and Governance. The Charter drives judicial intellectualism, which is important for electoral justice. It contains principles that breathe life into the electoral systems in Africa. The Hon. Chief Justice congratulated all participants for attending the Symposium. He also thanked the organisers for the wonderful work of organising such an august event. He acknowledged the choice of Zimbabwe to facilitate peer-to-peer knowledge exchange in electoral justice, which is not only about judges; but about African people and constitutionalism. He stated that the Symposium enables the sharing of common values to electoral justice, that have been adopted as common global standards.

Chief Justice of Zimbabwe,
Luke Malaba
“Electoral justice is not only for
peer to peer exchange with
judges. It is about the state of
affairs, it s about
constitutionalism and it is
about people of Africa. So
everyone is a critical
component “

**Keynote Remarks & Official Opening of the Symposium- Dr. K. Matlosa
(Ex Director for Political Affairs, African Union Commission & Author of
the African Charter on Democracy, Elections & Governance)**



Although elections are essential to democracy, they are not synonymous with democracy; it is wrong to equate elections with democracy. This is the fallacy of electoralism. Dr K Matlosa AEJN
2024

Dr. K. Matlosa gave a historical account and context that explains why the AU ended up adopting the African Charter on Democracy, Elections & Governance. He spelt out the importance of the shift from the OAU doctrine of non-interference to the AU doctrine of non-indifference, as a shift that gave legal teeth to the AU - and provided the basis for the African Charter on Democracy, Elections & Governance to be developed and adopted. Evidence abounds that the AU principle of non-interference was largely to blame for the OAU's complicity in the genocide in Rwanda among other violations of human rights in post independent Africa. The doctrinal change and paradigm shift to non-indifference heralded a new era where member states could not use national sovereignty to shield human rights abuses; rather, it would be used to inculcate a culture of constitutionalism and respect for human rights and the responsibility to protect.

Dr. K. Matlosa discussed the three formative instruments of 2002 that led to the Democracy Charter, as well as the genealogy of the Democracy Charter and all the core facets of democratic governance it covers. Granted, the Charter has not been ratified by all 55 countries; as such, the reasons for this were interrogated, with emphasis on the need for its total ratification.

Dr. K. Matlosa discussed the link between the Charter and electoral justice, and defined the fallacy of electoralism. He noted that although elections are essential to democracy, they are not synonymous with democracy; it is wrong to equate elections with democracy. This is the fallacy of electoralism. In certain environments, elections can serve as a convenient shield for autocracy. In that regard, they function as a double-edged sword.

The principles of electoral justice, its purposes and stages were discussed, as well as the role of the judiciary and the election management bodies (EMBs).

He said that twenty-four (24) elections will be held in Africa in 2024. Therefore, the question that begs an answer is how many will be free, credible, and fair.

Lawfare, which is the politicisation of the judiciary or judicialisation of politics, has adverse effects on electoral democracy – per Dr K Matlosa AEJN 2024

Dr. K. Matlosa emphasised that democratic hemorrhage must be avoided or eliminated as it undermines democracy through military and executive coups that diminish electoral integrity. Lawfare, which is the politicisation of the judiciary or judicialisation of politics, has adverse effects on electoral democracy. The impact of democratic hemorrhage is the loss of faith in elections, i.e., poor voter turnout and declining figures and dwindling public trust in leadership and elected institutions. As the statistics from Afrobarometer indicate, the most trusted public leaders are religious leaders at 66%, with the judiciary at 51%. The least trusted are opposition parties, parliament, ruling parties, local government, and EMBs. The trend is that people trust institutions that are not elected more than those that are elected. What are the implications of this trend on electoral democracy in Africa?

SESSION ONE: CONSTITUTIONALISM, GOOD GOVERNANCE AND ELECTORAL JUSTICE

SESSION CHAIR: HONORABLE JUSTICE DR. M. MALILA - CHIEF JUSTICE OF ZAMBIA



The session dissected and discussed the concepts of constitutionalism and good governance as cornerstones for electoral justice. It covered what adherence to constitutional governance entails, as well as the nexus between electoral justice and good governance. It underscored that minimum standards of constitutionalism must, in effect, improve good governance.

Deconstructing Constitutionalism, its conceptual underpinnings and how it relates to justice: Hon. Justice L. Malaba, Chief Justice, Zimbabwe

Hon. Justice L. Malaba discussed how constitutionalism results from applying and observing fundamental principles. There is no democracy or elections outside the law, and elections do not necessarily coincide with democracy. Constitutions prescribe all the principles that must be observed to ensure good governance. In essence, electoral processes are concepts of law, which are

legally provided and binding. The law prescribes the standards that must be used to measure electoral processes. It follows, therefore, that there is no constitutionalism without a constitution. The AU is a medium of setting up these standards which are incorporated into constitutions. Once they are incorporated, they are part of the law, and inform the rule of law. Africa has chosen a democratic and representative form of government under its constitutions. This is the basis of constitutional democracies, which are *intra vires* of the constitutions.

According to Hon. Justice L. Malaba, judiciaries must understand that the rule of law circumscribes their terrain and safety. A judicial officer must be able to make an independent decision on the law by carefully applying and interpreting its principles. It is important to note that it is the exclusive domain of the judiciary to interpret and apply the law. The rule of law drives democracy and good governance and is binding on everyone.

Electoral processes are juristic activities that are legally defined for a specific purpose. Voting, campaigning, assembly, and association are all juristic activities of a specific nature that are defined by the law.



There is no democracy or elections outside the law, and elections do not necessarily coincide with democracy – per CJ Malaba AEJN 2024

Hon. Justice L. Malaba went on to state that, as a matter of principle, elections must be free and fair. They must be won through the electoral process. People should not win elections through the courts. When an electoral dispute is brought to court, the presumption of constitutionality of election applies. In that regard, a challenger has to show grounds for such a challenge, and the court proceeds from the presumption of constitutionality of an election.

Electoral justice is broader than the court process; it starts with everything being done in accordance with the dictates of the constitution and the law and the people being happy with the impartial and clear application of the law before, during and after elections. The purpose of an election is to put a government in power that truly reflects the will of the electorate as expressed in free, fair, legal and credible elections. As the elections are governed by the law, there will always be a judiciary that applies the law to ensure that the rule of law prevails in dealing with electoral disputes. Those who participate in the constitutional and electoral processes are all subject to one thing: an objective standard. They must do that which is allowed by the principles of constitutionalism. Judiciaries are part of the structure that maintains good governance; the decisions judges make will remain judicial decisions, albeit with political effect.

PANEL: Building Blocks for Good Constitutional Governance and Fundamental Principles of Electoral Justice: Perspectives from Practical Experience

Constitutionalism, Good Governance, and Electoral Justice: The Kenyan Experience - Justice I. Lenaola (Kenya)



Lack of confidence in structures of electoral justice including the EMBs and the courts resulted in severe post-election violence in 2007 in Kenya that saw over 1000 deaths and internal displacement of over 350 000 people.

Hon. Justice Lenaola reaffirmed that good governance, constitutionalism and the rule of law are cornerstones of electoral justice and democracy. Constitutionalism plays a critical role in a democratic government by providing a framework that ensures adherence to the rule of law, protects individual rights and liberties, establishes the limits of separation of powers, and promotes accountable and transparent governance. Key institutions must be established to realise these values.

Governments are the foundations upon which all elections are to be conducted. The Kenyan Constitution (as well as other African countries Constitutions) speaks to judicial authority deriving from the people and being vested in the courts. Hon. Justice Lenaola highlighted that the problem in Africa is that judiciaries are sometimes timid and hide behind the technicalities of the law. This conduces to electoral injustices.

Before 2010, there were fears in Kenya of a climate of a lack of electoral justice. The lack of confidence in structures of electoral justice including the EMBs and the courts resulted in severe post-election violence in 2007 that saw over 1000 deaths and internal displacement of over 350 000 people. Such fears were arrested through the open and transparent enquiries into the electoral justice shortcomings through commissions of inquiry and ultimately by the enactment of legislation governing election procedures by parliament. Kenya also carried out institutional reforms of key institutions of democracy such as the EMB and the Courts. In order to ensure that all eligible voters would be on the voters roll, Kenya introduced the continuous voter registration system.

A new constitution was adopted that provided for among others:

- The right to vote;
- The right to be a candidate;
- The right to register;
- The right to vote in secrecy;
- Principles of law that the courts must enforce;
- Period within which the court must finalise an electoral dispute, and
- Use of technology in the transmission of results, and in compliance with the requirements of the law. Technology is increasingly at the centre of electoral justice.

Justice Lenaola summarized some of the important issues that must be considered for effective electoral justice as follows:

- Clear and realistic timeframes for resolution of election disputes. Can real justice be delivered during the time constraints provided for by the law? How can the timelines created by statute be managed, when looking at the caseload?
- The standard of proof and the burden of proof are also of fundamental importance to be clearly understood at law. What standard is used, and the practical situations where the burden of proof is shifted to the EMBs;
- Respect by all key election stakeholders for the judiciary whose decisional independence must be beyond reproach. It is important to find ways to

enhance the respect for electoral court decisions. There cannot be justice only when a party wins. There is also a need to introspect to ensure that the decisional independence of the judiciary is without reproach;

- How to guarantee information integrity before, during and after elections given that artificial intelligence generated information has been propagated using new information communication technologies and social media to damage the reputation of judges sitting in electoral courts, and how this affects the dignity of the courts, EMBs and electoral systems? Mis-information, dis-information and mal-information pose a real threat to information integrity during elections and can be quite damaging to the reputation and standing of judicial officers involved in electoral adjudication. There may be need to develop a social media policy framework and media guidelines for those that appear before the court, so as to minimise the attacks that judges face when adjudicating electoral disputes.

Plenary

Based on participants' practical understanding of constitutionalism, good governance, and electoral justice, they shared challenges and effective approaches to implementing the African Democracy Charter and electoral justice. Where governments stray from constitutionalism, there are no remedies outside the law. Whoever is affected must find a remedy within the confines of the law and take the issue to court. Wrongs are legally defined, and the law must be used to resolve them. Where there are challenges with social media, the guidelines for the use of social media must be developed and applied conscious of the need to promote and protect the right to freedom of expression. The other approach is to have media summaries summarising the salient points that can be disseminated to the public. There must be a mechanism in place as well that punishes counsel who willfully breach such guidelines.

Judges must not necessarily dismiss electoral petitions on technicalities. It has become fashionable for petitioners to use the law as a sword or campaign tool. The question of the diaspora vote was debated comparatively. In Zimbabwe, it was explained that the Constitution excludes the diaspora vote. It provides that voters must be physically present at the polling station. An amendment to the Constitution may rectify this.

Key Takeaways of this session:

1. With the shift in policy from non-interference to non-indifference the African Union has established elaborate standards in the conduct of democratic elections on the continent backed by solid human rights standards and instruments including the African Charter on Human and People's Rights, and the African Charter on Democracy, Elections and Governance. The next phase of the struggle for democratisation and a key purpose of electoral justice is to bridge the gap between standards and practices in African jurisdictions.
2. Election dispute resolution and the jurisprudence emerging in EDR must centre the rights of the voter so that people who occupy public office reflect the will of the people expressed in free, fair and credible elections and not the preference of the judiciary.
3. African states must move from good constitutions to good constitutionalism so that the rule of law is entrenched and fundamental rights protected during the entire election cycle.

SESSION TWO: PROTECTING INDEPENDENCE AND IMPARTIALITY OF ELECTION JUDGES

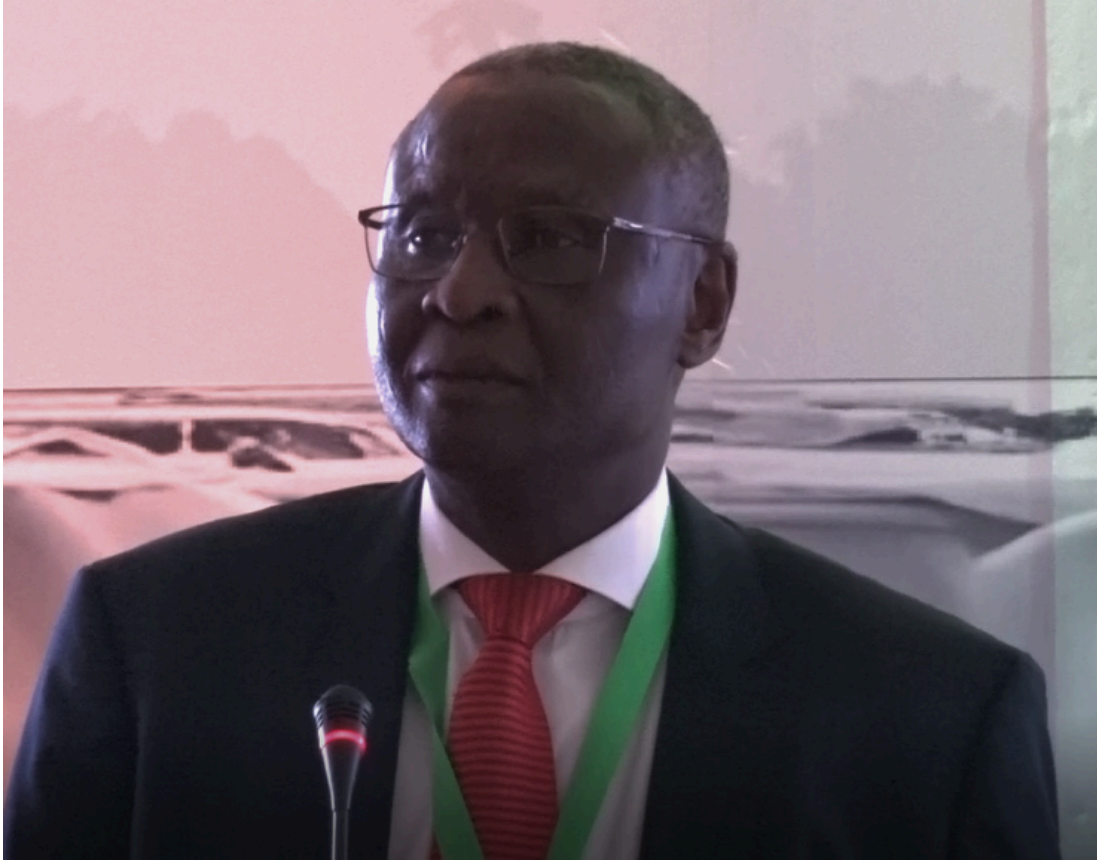
**SESSION CHAIR: JUSTICE M. KAWIMBE - CONSTITUTIONAL COURT OF
ZAMBIA AND AEJN MEMBER**

Judges are subject to more and more attacks against their integrity during elections, with an increased number of election disputes filed before the courts. Thus, the session explored how election judges need to be prepared to identify these threats and respond promptly to avoid tarnishing the institutions and their integrity and impartiality during the election process. It allowed the session participants to discuss the trends in external and internal threats to their independence and impartiality, focusing on the measures that can help them ensure protection, notably through monitoring and judicial observation of elections.

Protecting the independence and impartiality of election judges: Justice D. Zondi – President of the Electoral Court of South Africa

Judges must maintain their independence and impartiality. The judicial function is located in the Constitution, which states that courts are subject only to the Constitution; courts must discharge their function without fear or favour. Judicial function vests in the courts and judicial authority is not for the benefit of the judge, but for the people.

Hon. Justice Zondi highlighted that electoral courts must be independent and impartial. The objective of the electoral process is to produce free and fair elections.



Judges are subject to attacks during elections; they have no control over social media issues as they speak through their judgments. per Justice Zondi AEJN 2024

An independent electoral body must manage election processes, and where there is a challenge, it must be adjudicated by an independent and impartial body. Judges are subject to attacks during elections; they have no control over social media issues as they speak through their judgments. It is imperative to develop mechanisms that protect judges from social media attacks. Judicial Independence is associated with accountability, impartiality, and representativeness.

In resolving electoral disputes, expediency and efficiency are of paramount importance as they eliminate suspicions of corruption. As such, litigation from elections must not drag on for long. Matters must be adjudicated promptly. Baseless attacks on the judiciary must be discouraged as they undermine

judicial independence as well as public confidence in the legal system and the rule of law. All judiciaries must have in place mechanisms that protect judges from social media attacks.

Presentations: UN and AU Mechanisms on the protection of the independence of judges and lawyers in the context of electoral justice-

Hon. Commissioner Professor R. N Loy – Chairperson and Special Rapporteur on Human Rights Defenders and Focal Point on Independence of the Judiciary: African Commission on Human and People’s Rights

Commissioner Prof R. N Loy noted that Judicial Independence in Africa is a big theme. Protecting the independence and the impartiality of judges adjudicating electoral disputes is very important. Elections are a source of perennial conflict and a threat multiplier to judicial independence. Most of the electoral processes in Africa are contested and usually end in court before a judge or magistrate making the judiciary a key institution in electoral democracy in Africa.

He recommended and referred judges to the ACHPR resolution(s) and soft law protecting the right to a fair trial and access to justice in Africa applicable in all situations including when in EDR processes which unequivocally provide that the judicial officer must enjoy both institutional and decisional independence in the execution of their mandate. Soft law gives directives that help in monitoring judicial independence and impartiality. The AU has created a Focal Point, that looks at the factors that affect judicial independence in all cases including electoral disputes and evaluates the national practices that affect it. The ACHPR wants to partner the AEJN and African judges to strengthen the mandate of the ACHPR Focal point on Judicial Independence. Judges, as defenders of human rights, must do their work at whatever level they are independently, impartially, expeditiously, without fear or favour. They should

not be under the strong arm of the executive or other powerful interests. The other issue that concerned him is the independence of magistrates, who are usually under the control of the state. He expressed concern about jurisdictions where the independence of magistrates is compromised by virtue of being under the control of the Executive.



"Let's be aware of one thing, judges are the protectors of human rights (...) we expect a lot from judges whatever their level. In electoral justice, your decisions are crucial for Africa."
"Judges have a "duty of ingratitude" towards the authority that elected or appointed them."
*Per Hon. Commissioner
Professor R. N Loy
AEJN 2024*

Commission.

Commissioner Prof R.N. Loy commended members of the judiciary to take note of Regional jurisprudence on human rights as they resolve disputes in their different jurisdictions emphasizing that this is very important to enrich Africa's jurisprudence. This symposium is important as it is a building block towards achieving Agenda 2063, the Africa We Want by the AU

Ms. M. Satterthwaite. UN Special Rapporteur on Independence of Judges and Lawyers

Ms. M. Satterthwaite joined the symposium online and stressed the crucial role of judges in electoral justice and the role of the UN and her role as a special rapporteur to support judges and lawyers and denounce abuses.



There must be dialogue with governments to meet international standards of judicial independence. There is a need to identify and recommend ways of improving judicial systems. Impartiality and independence of the judiciary must be secured by the law and must be entrenched as a fundamental human right. Impartiality means that the Judge(s) must not be influenced. Judicial independence and impartiality are the foundations of other rights.

"Independence of the judges is Vital to the realization of rights "
"Independence of judges guarantee that the same laws apply and ensure that nobody is above the laws, regardless of their powers or wealth"

*Ms. M. Satterthwaite,
UN Special Rapporteur
for Judges and
Lawyers*

Judges who are not independent cannot adjudicate without fear or favour, hence independence and impartiality are cornerstones to access to justice. If there is no effective check on the power of the state, it can infringe the rights of people, by compromising judicial independence. Therefore, independent judges are central to constitutionalism. Threats or violations of judicial independence may come as reforms to courts or judicial systems. It must thus be interrogated as to what effect these have on the court. Does the reform culminate in control over the court? It must be noted further that influential people or businesses may influence judges, whatever the form of attack, judges must receive support in the protection of their judicial independence.

She stressed that it is common for her UN office to receive complaints and communication showing that authoritarian regimes erode powers of judiciary by introducing new measures to limit court's power to judicial review or control disciplinary proceedings of judges, indirectly or directly resulting in removal of judges. She pointed out the importance of remaining vigilant and to report these threats to get international support.

Plenary

During this plenary, participants reacted to the Key Note presentation by sharing challenges and effective approaches to implementing the Democracy Charter in ensuring electoral justice as well as challenges and innovative practices to push back on threats to judicial independence related to electoral adjudication. Where judges are under cyber-attack, they should continue with work, and the attacks must be investigated. Where there are complaints against the judge, they must be investigated and dealt with expeditiously. When it comes to financial independence, judiciaries must be financially and institutionally independent. They must not depend on anyone. Therefore, there is a need for full independence, including financial independence.

Key Takeaways of this session:

1. Judicial function vests in the courts and judicial authority is not for the benefit of the judge, but for the people. Therefore judicial independence and accountability is a prerequisite for effective election dispute resolution and electoral justice
2. Baseless attacks on the judiciary must be discouraged as they undermine judicial independence as well as public confidence in the legal system and the rule of law. All judiciaries must have in place policy mechanisms that protect judges from social media attacks while not undermining the right to freedom of expression.
3. Measures to protect the judiciary from interference by executive power should be put in place, including financial autonomy. Allegations against judges should be swiftly independently and impartially investigated.
4. The ACHPR has created a Focal Point, that looks at the factors that affect judicial independence including in electoral disputes and evaluates the national practices that affect it. Judges who face threats should alert /report these attempts to undermine their independence to regional or international mechanisms such as the ACHPR Focal Point on judicial independence or the UN Special Rapporteur on independence of judges and lawyers. The AEJN must partner the ACHPR, the UN Special Rapporteur on Independence of Judges and Lawyers and African Judges and Jurists Forum to strengthen the mandate of the ACHPR Focal point on judicial independence.

SESSION THREE: THE ROLE OF CIVIL SOCIETY IN ADVANCING HUMAN RIGHTS AND GOOD GOVERNANCE THROUGH ELECTORAL JUSTICE.

**SESSION CHAIR: S. SEBATHA – COMMUNICATIONS EXPERT – AFRICA
INITIATIVE OF WOMEN HUMAN RIGHTS DEFENDERS (WHRD INITIATIVE)**

This session's principal focus was protecting human rights in the context of electoral justice. The session focused on specific civil and political human rights that are underpinned by electoral justice and fairness. It explored the crucial role of civil society organisations in monitoring the process, enhancing voters' understanding of the electoral process, and denouncing abuses. It also considered how electoral adjudication, whether occurring during the prime electoral periods or otherwise, impacts the advancement or, in unexpected cases, repression of human rights.

Panel - In defence of human rights: A critique of minimalist and activist approaches in electoral adjudication- Dr. T. Banda, Southern African Institute of Policy, and Research (SAIPAR) (Zambia)



The role of the courts is to entrench constitutionalism and the rule of law and that may be difficult if courts are faced with sheer volumes of petitions, where the election is won through the court as opposed to the ballot. Per Dr. T Banda AEJN2024

According to Dr. Banda, both minimalist and maximalism approaches seek to explain the extent to which judges play a role in the adjudication of cases. Under minimalism, a judge exercises a lot of restraint and he or she rules narrowly. In practice, he or she will be unintrusive, literal and textual. On the other hand, under judicial activism or maximalism approach, a judge will be involved in broader issues, including striking down laws and he or she will go beyond the narrow confines of the law. He or she often infuses broad societal considerations and policies. Both approaches are controversial and therefore it is difficult to prefer one approach over another. There is no consensus as to which approach should be followed.

These two approaches have been tested by electoral petitions that have become rife in Africa. Volumes of electoral petitions take away the judges from their actual role, which is not to gratify any political player but to apply the law as it is. These disputes overwhelm courts. As a result, people are disincentivised from the need to resort to the courts due to various costs such as time. As such, about 95% per cent of cases will never come to court. Interestingly, however, it is a fact that major electoral disputes end up in the formal court. Courts will then be used to decide the outcome of elections as opposed to the ballot. These high volumes of electoral petitions focus us on whether or not electoral petitions enhance democracy. The role of the courts is to entrench constitutionalism and the rule of law and that may be difficult if courts are faced with sheer volumes of petitions, where the election is won through the court as opposed to the ballot. Post-electoral contestation means that the election is concluded in court. Principled modification and change of the law

are affected by the large volumes of electoral cases as electoral disputes end up in the court system, crowding out the other ordinary forms of litigation.

B. Idowu, Kimpact Development Initiative (KDI) (Nigeria)



Introduction and establishment of communication desks and social media handles within the judiciary are pertinent. When the public is in need of information about cases and such information is not easily available, the public resorts to information on social media creating a fertile ground for misinformation and disinformation. per Mr B Idowu AEJN2024

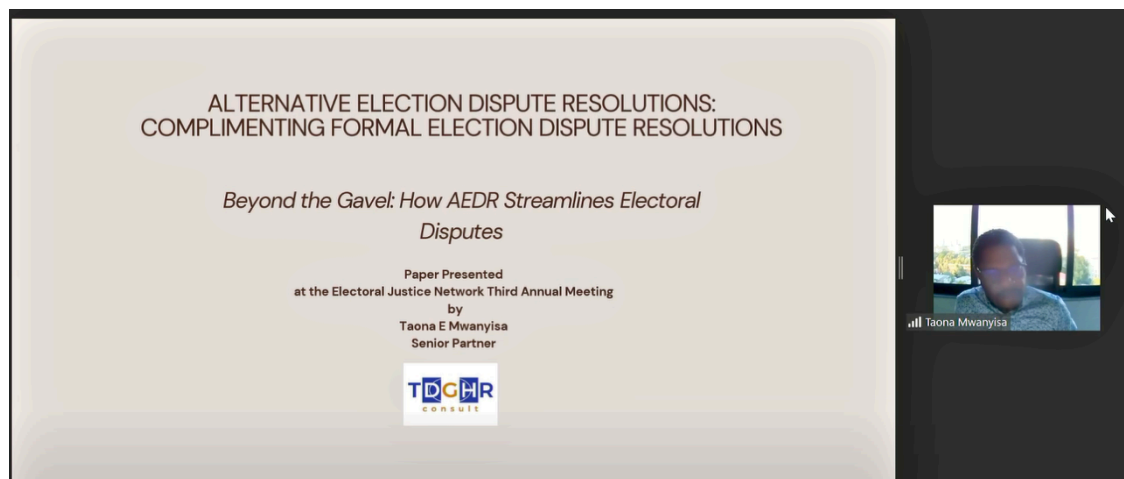
As an example of what civil society can do to help in EDR, Mr Idowu presented to the participants the work that his organisation KDI did in the last elections in Nigeria. He spoke of The dashboard and EDR monitoring project that looked at the quantity and quality of the EDR and attitudes of the general population to the EDR processes and outcomes.

The increasing involvement of the judiciary in adjudicating electoral disputes and making final decisions has contributed to judges coming under attack from the citizenry. Although these attacks are unjustified, they are due to citizens' limited understanding of the electoral processes and how courts

conduct their procedures. Legalese or legal nomenclature used in and by the courts may be wrongly interpreted by the public, resulting in misconceptions that galvanise all sorts of fears and attacks. To mitigate or deal with these attacks, Mr. Idowu stressed that the introduction and establishment of communication desks and social media handles within the judiciary are pertinent.

When the public is in need of information about cases and such information is not easily available, the public resorts to information on social media creating a fertile ground for misinformation and disinformation. These must be used to communicate with the public when necessary. The communication desk and social media handles are effective in the fight against information pollution/disorder, which causes unwarranted attacks on judicial officers. There is also a need to exercise a lot of restraint in electoral petitions, in particular, by avoiding dismissing or deciding cases based on technicalities as opposed to merit, as this can cause the public to misunderstand, mis-interpret or be confused and lose confidence in the judiciary.

Presentation: Alternative Election Dispute Resolutions (AEDR) and the role civil society can play to promote AEDR in complementing formal election dispute resolutions (EDRs)- Mr. T. Mwanyisa (Election and Governance Expert)



AEDR methods include mediation, negotiation, arbitration, and fact-finding. The potential and advantages they present in dealing with electoral disputes cannot be ignored... they are cost-effective, time-efficient and preserve good relationships between and among disputing parties. per Tendai Mwanyisa, AEJN2024

The panelist discussed how Alternative Electoral Dispute Resolution (AEDR) can be a useful process to complement the formal court adjudication to resolve electoral disputes, seeing this as an area that civil society could be more invested in. From his experience in a number of jurisdictions such as Zambia, Zimbabwe, Malawi and Liberia the question has always been how effective is AEDR in resolving election disputes and complementing the role of the formalized election dispute resolution institutions. He emphasized that AEDR mechanisms are not there to replace the formal dispute resolution mechanisms but to complement them.

AEDR methods that may be used include mediation, negotiation, arbitration, and fact-finding. The potential and advantages they present in dealing with electoral disputes cannot be ignored. In particular, they are cost-effective, time-efficient and preserve good relationships between and among disputing parties. It is also a fact that formal dispute resolution mechanisms are often overwhelmed, and these AEDR mechanisms can be instrumental in reducing the burden.

Despite these advantages, AEDR mechanisms have their disadvantages. The major being the lack of enforcement mechanisms, thereby leading to the undermining of the whole process. If, however, these challenges are addressed, these AEDR mechanisms can play a critical role in electoral justice.

PLENARY

Participants shared experiences on how best to protect human rights in the context of electoral justice. Participants stressed the importance for institutions to be proactive in sharing information; they should not be reactive. The general consensus was that lack of information creates knowledge gaps

that cause people to use social media to share inaccurate information. Voter education must be an elaborate process; it must go beyond the voting day. The question of voter and civic education is a role that civil society must embrace to improve the quality and integrity of elections in Africa. Voting must be understood as a process, not an event. EDR must take an election cycle approach in order to effectively contribute to electoral justice, especially given that certain irregularities that happen well before the election day events are usually a strong determinant of the election outcomes.

Key Takeaways of this session:

1. Election disputes usually overwhelm the judiciary and affect the ability of the judiciary to attend to other matters requiring justice.
2. It is important that Alternative Electoral Dispute Resolution methods be developed and used consistently to reduce the volumes of election disputes that find their way to the Courts. AEDR includes mediation, negotiation, arbitration, and fact-finding.
3. States must find ways of making AEDR decisions legally enforceable as a method of guaranteeing electoral integrity.
4. Government/ institutions should guarantee transparency of complaints, legal challenges, proceedings and decisions

FRIDAY, 2 FEBRUARY 2024

DAY 1 RECAP

A participatory recap exercise involving all participants was held in which participants raised the issues that arose in Day 1 that they felt were important. Notwithstanding how electoral disputes are decided, the emerging

jurisprudence and or the decisions given must reflect the will of the people and not the preference of the courts as to who should be in public office. The preponderance of electoral disputes ending up in courts is an inevitable reality. The challenges posed by electoral disputes on the judiciary are an area for intervention by the AEJN.

The cause of most petitions is administrative issues which must be dealt with at the level of the Election Management Body (EMB) or political parties administration. As such, EMBs have a responsibility to strengthen administrative structures as the foremost key responsibility holders in the electoral process. Electoral processes involve stakeholder cooperation; they do not begin at the court's doorstep but begin much earlier, hence the need to take an election cycle approach in electoral justice.

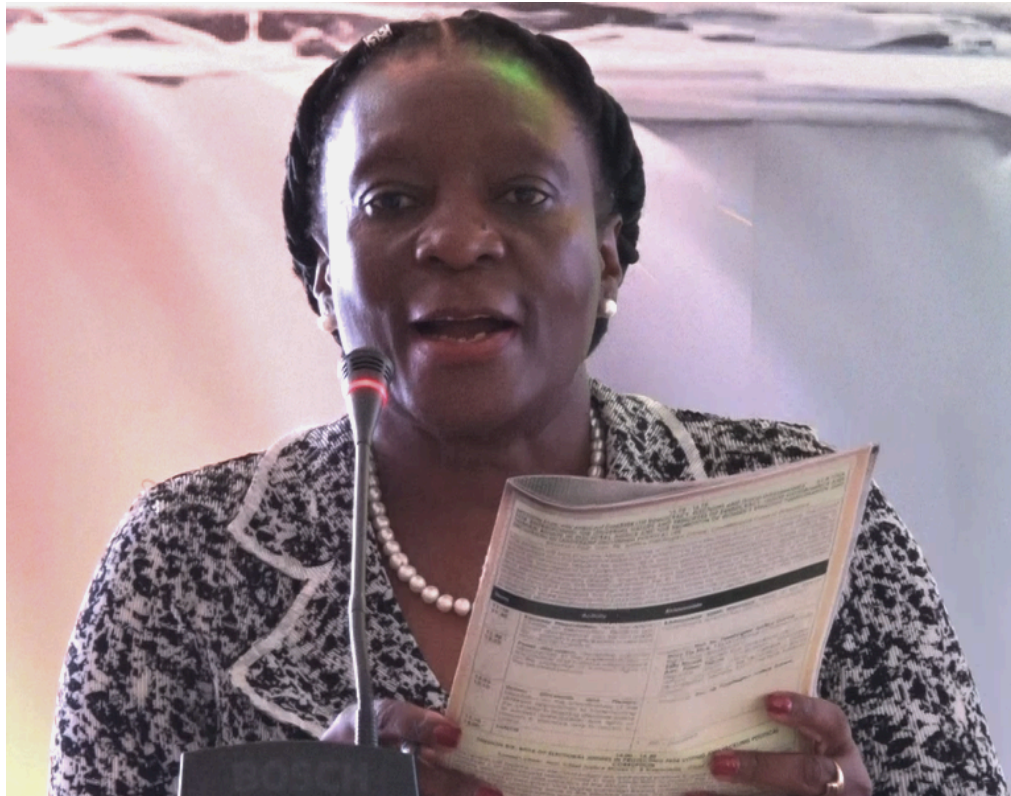
There is enhanced vulnerability for the judiciary through the advent of social media when dealing with EDR given that most elections are hotly contested in a polarized and toxic environment. As such, there is a need to regulate social media through the implementation of social media guidelines that protect the integrity of EDR while safeguarding the enjoyment of fundamental human rights and civic space rights such as freedom of expression. Elections do not necessarily correlate to democracy. They can promote autocracy if manipulated.

Elections should not be won through court petitions but through the votes of the electorate in a free, fair and credible election. The election dispute resolution process and the jurisprudence emanating from the courts must centre the rights of the voter so that the leaders who emerge after elections are those who are chosen by the voters and not necessarily those preferred by the courts. Though court adjudication of electoral disputes is important, the concept of electoral justice is wider than just court adjudication. Courts get swamped by disputes that need to be resolved in a time sensitive manner and this exerts a lot of pressure on judicial officers. Many disputes that find themselves to the courts are resolvable through AEDR that need to be better developed.

SESSION FOUR: TRANSPARENCY MEASURES IN ELECTORAL JUSTICE TO DELIVER JUSTICE FOR CITIZENS

**SESSION CHAIR: HONOURABLE R. JUSTICE MAKARAU
CONSTITUTIONAL COURT OF ZIMBABWE**

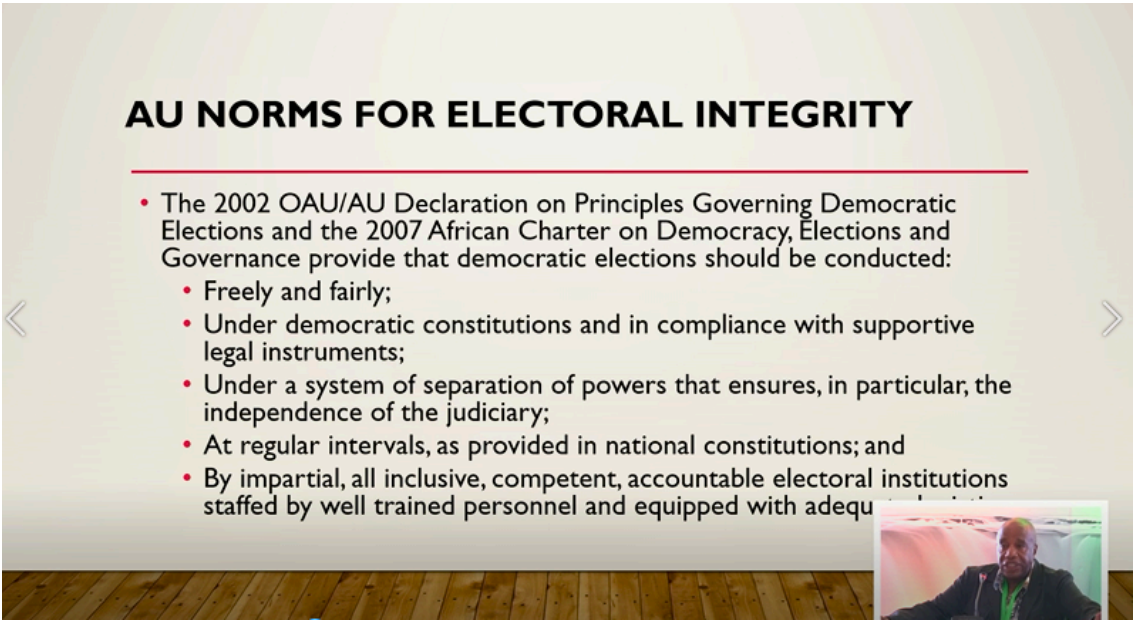
The session focused on the symbiotic relationship between the universal adherence to the principles of democracy and electoral justice on the African continent. The presumption embedded in the session's sub-theme was that universal adherence to the principles of democracy on the continent ensures the right conditions for electoral justice, in particular transparency in the decision-making and in the process of adjudication of election disputes.



The session explored the basic principles of democracy and transparency that ought to be universally accepted on the African continent. It also explored principles under the AU Charter and the Convention on ensuring access to

justice and information for all. This session discussed the importance of transparency measures in electoral justice, such as televised hearings in election disputes, engagement with CSOs and bar associations to increase understanding of the role of the judge and drafting clear and simple judgments in electoral disputes.

Keynote Presentation: Towards a Common Ground: Forging shared values in adherence to the principles of democracy on the African continent in relation to transparency- Dr. K. Matlosa, Former Director for Political Affairs at the AU & Visiting Professor Centre for African Diplomacy and Leadership University of Johannesburg



AU NORMS FOR ELECTORAL INTEGRITY

- The 2002 OAU/AU Declaration on Principles Governing Democratic Elections and the 2007 African Charter on Democracy, Elections and Governance provide that democratic elections should be conducted:
 - Freely and fairly;
 - Under democratic constitutions and in compliance with supportive legal instruments;
 - Under a system of separation of powers that ensures, in particular, the independence of the judiciary;
 - At regular intervals, as provided in national constitutions; and
 - By impartial, all inclusive, competent, accountable electoral institutions staffed by well trained personnel and equipped with adequate resources.

“Procedural certainty as a notion denotes that all legal, regulatory and procedural aspects of elections must be transparently known by all stakeholders before, during and after elections.

Substantive uncertainty is a notion that denotes that outcome of elections in the form of results must be known after elections following announcement by the Election Management Body (EMB)” per Dr. Matlosa AEJN2024

Dr. K. Matlosa began by highlighting that electoral integrity is a key component of electoral justice and transparency is a cornerstone of democratic electoral governance. Transparency is deemed central to procedural certainty and substantive uncertainty, which are fundamental concepts of democratic electoral governance. Procedural certainty denotes that all legal, regulatory, and procedural aspects of elections must be transparently known by all key stakeholders before, during, and after the elections. Conversely, substantive uncertainty denotes that the outcome of elections in the form of election results should be known only after the elections, following their announcement by the relevant EMB.

It is important to distinguish between democratic electoral governance and autocratic electoral governance. To that end, the electoral cycle details the interlink between the procedural and substantive aspects of democratic electoral governance. Dr. K. Matlosa noted that procedural compliance is an issue in Africa and that electoral procedures are not effectively articulated to the voters. Electoral integrity ensues when elections are based on democratic principles of universal suffrage and political equality. It is characterised by an election managed and administered professionally, impartially, and transparently throughout the three stages of the electoral cycle (pre-election, election day and post-election stages). The guiding norms and principles under electoral integrity are as follows: -

- Constitutionalism;
- Rule of law;
- Justice;
- Ethical conduct;
- Impartiality & independence of the EMBs;
- Accountability;
- Level playing field and fair treatment of all stakeholders; and
- Legitimacy of the election outcome.

The 2002 OAU/AU Declaration on Principles Governing Democratic Elections and the 2007 African Charter on AU Norms for Electoral Integrity, provide the following additional principles under which democratic elections must be held: -

- Freely and fairly;
- Under democratic constitutions and in compliance with supportive legal instruments;
- Under a system of separation of powers that ensures the independence of the judiciary;
- At regular intervals, as provided in national constitutions; and
- By impartial, all-inclusive, competent, accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.

Dr. K. Matlosa brought up that there are twenty-four (24) national elections scheduled in Africa for 2024. These should provide room to assess the continent's readiness to adhere to the outlined international and regional electoral standards including the African Charter on Democracy, Elections and Governance. Currently, there are many challenges to electoral integrity and these challenges include: -

- Gerrymandering;
- Vote buying;

- Repression;
- Hacking the election;
- Ballot box-stuffing
- Playing the international community;
- Misinformation and disinformation through digital and social media; and
- Health pandemics such as the recent COVID-19.

The rigging of elections has become a sophisticated scheme that involves the use of technology to manipulate the ballot count. Be that as it may, there are possible solutions on the way forward to combat the challenges mentioned bedeviling electoral integrity in Africa. Dr Matlosa proposed solutions some of which are captured as follows: -

- Institutional strengthening of independent EMBs and the judiciaries;
- Ensuring the effectiveness of election-related dispute resolution mechanisms (both formal and informal);
- Entrenching intra-party democracy;
- Promoting inter-party-political tolerance anchored on dialogue; and
- Institutionalising civic and voter education through the formal and non-formal education systems.

Respondent: With a focus on the Kenyan experience of improving transparency and building trust in the election adjudication process- Hon. Justice D. Musinga: Chairperson of the Judicial Committee on Elections and Justice of the Supreme Court of Kenya



The notorious electoral violence experienced by Kenya in 2007 was partly the result of a lack of public confidence in the judiciary's capabilities. At the time of the 2007 elections, the Kenyan judiciary was perceived as too politicised in favour of the President to adjudicate on electoral or political disputes objectively. As a matter of principle, there must be transparency in the electoral processes to build public confidence and trust in the judiciary's role in providing electoral justice.

Establishing the Kenyan Judiciary Working Committee on Election Preparations to address issues regarding transparency in the electoral process, according to Hon. Justice Musinga, was a milestone¹.

¹ The specific terms of reference for the Judicial Committee on Elections were as follows: -

- To advise the judiciary on the administrative arrangements and measures for the efficient disposal of election-related disputes;
- To develop and implement, in conjunction with the Judiciary Training Institute, a training programme for the efficient and effective management of election disputes for judicial officers and support staff;
- To develop and design a system for monitoring and evaluating the management and administration of election-related disputes in court;
- To liaise and coordinate with stakeholders to ensure efficient, effective, and timely resolution of election related disputes and offences; and
- To advise the judiciary on the information that needs to be developed and disseminated to the public on the avenues open to it to pursue electoral disputes and the approaches that will be employed.

The work of the Committee in terms of its mandate has a restorative effect concerning the promotion of transparency in electoral adjudication. The Committee is thus crucial in restoring public confidence in the judiciary and facilitating wholesale changes in the electoral adjudication processes. The Committee is a standing committee of Kenya that involves all levels of the judiciary as part of its membership.

As part of the work of the Committee, various stakeholders, such as the Law Society of Kenya and civil society, were consulted in the reformation process. The Committee was chaired by Hon. Chief Justice Maraga on several occasions. The Committee was also credited with creating an electoral benchbook containing past decisions to assist incumbent judges in delivering electoral justice. In addition, judges with experience in dealing with electoral matters were invited for debrief meetings to consolidate challenges and lessons learnt during the electoral period for reference purposes. Furthermore, all electoral decisions by judges were uploaded by researchers on the Kenyan Judiciary website for access by stakeholders and the general public.

The Kenyan experience highlights the importance of a judiciary Electoral Committee and the role of judiciary in supporting reform. Since the inception of the Committee, visible improvements in the adjudication of electoral disputes have been witnessed in Kenya. The African Union (AU)- Common Market for Eastern and Southern Africa (COMESA) [Electoral Observation Report](#) and the European Union Observation Report in 2022 evidenced the successful work of the Committee in implementing electoral reforms.

Panel: Discussions on important emerging jurisprudence from the region including the African Court

Hon. Justice M. Kawimbe: Drafting clear and simple judgments to be understood by litigants



A judgment must effectively communicate the final decision or jurisprudence emerging from the case. It must be written in simple and clear language. Misunderstanding of judgments fuels misinformation, given social media's growing influence, which plays a significant role in swaying public perceptions. Hon. Justice Kawimbe recommended the following structure for judgment writing:

- Identification of issues in dispute;
- Statement of the law;
- Application of the law to the facts and settlement of issues;
- The decision; and

- Final orders.

Judgments present an opportunity for the judiciary to build public trust and confidence. Judgments must bring clarity to issues for all stakeholders in the electoral process. Judgments also aid the rule of law as they assure people that the courts are better placed to resolve their disputes instead of resorting to unconstitutional means. Clear judgments are also necessary given the greater population's varying degrees of literacy and legal knowledge. Hon. Justice Kawimbe stressed that electoral justice becomes accessible to all concerned people when the entire judgment and the central issues are communicated in an easy-to-understand manner. Clarity and simplicity are central to judgment writing.

Legal precedent results from clearly drafted judgments. When the legal reasoning is transparent, the decided case becomes a guide for subsequent domestic and regional matters. Media discourse is also impacted by the clarity of judgments handed down by the courts. More importantly, how a judgment is drafted can influence whether it is accurately distributed and consumed by the media. Judicial legitimacy is influenced by the quality of judgments delivered by courts. In equal measure, justice and accountability are upheld through clear judgments.

F. Owuor, Executive Director Electoral Law, and Governance Institute of Africa (ELGIA)



The key issues emerging in the resolution of presidential election disputes in Africa [include] certain challenges... the dominant problem comparatively was the phenomenon called the inconclusive electoral cycle... Simply put elections reveal certain shortcomings and challenges in one cycle are not conclusively addressed and imported to the next election cycle...resulting in countries being in a permanent election mode - per Felix Owuor AEJN2024

Developments in Africa over the last two decades reflect a growing commitment by governments to hold periodic elections. Whilst periodic elections are essential to democracy, they do not guarantee sustainable democracy. Mr. Owuor noted that the following cross-cutting themes characterise recent elections within Africa:

- Inconclusive Electoral Cycle;
- Weak constitutional and legal framework for holding elections;
- Weak Institutional and Administrative Frameworks for managing elections (Election Management Bodies);

- Inadequate mechanism for Electoral Dispute Resolution (EDR);
- Re-emergence of electoral conflict or violence; and the
- Judicialisation of politics and the politicisation of the judiciary.

Most African constitutions and electoral legislation provide for the judicial challenge of election results, except Tanzania, whose Constitution explicitly ousts the jurisdiction of the judiciary and endows its EMB with the final authority in presidential petitions. It has been noted that there is a significant spike in the filing of presidential electoral disputes for the courts' resolution in Africa.

Due to the increased presidential petitions, there is a body of comparative and emerging jurisprudence in Africa, such as the doctrine of substantial effect, which is being misapplied in most African courts. The same observation holds that substantial irregularities and illegalities are two distinct concepts that are often conflated in most African domestic courts.

Courts must administer substantive justice and, as such, must not be unduly fettered by technicalities. Regarding the burden of proof, it was intimated that where the material evidence required included essential election data under the custody of the EMB, the evidential burden ought to be imposed on the EMB and not the petitioner. Mr. Owuor also highlighted the standard of proof in petitions, which also involves quasi-criminal elements. There is a need for the uniformisation of the standard of proof.

African Concourts and Supreme Courts have differing approaches on the burden of proof and standard of proof before an election can be overturned and there is need for judiciaries to develop shared values on this given the emerging strong jurisprudence coming from Kenya (2017) and Malawi (2019) and the need for the jurisprudence to align with the objectives of the African Union as per the African Democracy Charter.

Mr Donald. Deya – Chief Executive Officer of the Pan African Lawyers Union (PALU)



Judiciaries across Africa should strive to use uniform standards in adjudicating electoral disputes. It will be harder to influence or intimidate judicial officers if similar standards are upheld throughout the continent. African international tribunals can help strengthen decisions in domestic courts. It helps clear up the perception of judicial bias and partisan interest in dealing with domestic electoral matters. Regional solidarity also grows as the interplay can help in raising awareness of issues affecting other states.

The regional courts can make a declaration that insulates domestic judges when they must make tough decisions that may be sensitive in a repressive state. African domestic courts have been very active in electoral dispute resolution because the public and stakeholders have compelled them to make pronouncements on these issues. Courts are duty-bound to determine matters placed before them even if this includes dismissing matters improperly placed before them.

Plenary

Group discussions were held on the judicial perspectives about electoral justice and democracy to inform a roadmap of commitments to strengthen the transparency of electoral justice in future elections. Following these discussions, it was a general suggestion that social media platforms must be held to account under the Principles and Guidelines for the Use of Digital and Social Media in Elections in Africa 2023 where they misinform or disinform the public.

Regarding the shift of the burden of proof, the initial burden is on the applicant, once it has been established that there were illegalities, then the burden shifts given that the best evidence is in the reserve of the Electoral Management Body.

As far as the standard of proof is concerned, only three (3) countries have adopted a higher standard in electoral disputes. The majority, including Zimbabwe, have been emphatic that there is no logical rationale for overburdening the applicant with a higher standard than the recognised civil standard of a balance of probabilities.

Key Takeaways of this session:

1. The guiding norms and principles under electoral integrity are as follows: -

- Constitutionalism;
- Rule of law;
- Justice;
- Ethical conduct;
- Impartiality & independence of the EMBs;
- Accountability;
- Level playing field and fair treatment of all stakeholders; and
- Legitimacy of the election outcome.

2. The way forward to improve electoral integrity in Africa includes:

- Institutional strengthening of independent EMBs and the judiciaries;
- Ensuring the effectiveness of election-related dispute resolution mechanisms (both formal and informal);
- Entrenching intra-party democracy;
- Promoting inter-party-political tolerance anchored on dialogue; and
- Institutionalising civic and voter education through the formal and non-formal education systems.

3. Judiciaries may need to reflect on establishing as Kenya did, a Judicial Committee on Elections to consolidate challenges and lessons learnt during the electoral period for policy, law and institutional reform.

4. Judgments must be written in simple and clear language to avoid misunderstanding of judgments that fuels misinformation, disinformation and mal-information, given social media's growing influence, which plays a significant role in swaying public perceptions.

5. Burden and standard of proof should be clearly stated / defined and courts should take into consideration the access to evidence for litigants

SESSION FIVE: THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOOD GOVERNANCE AS A TOOL FOR ENTRENCHING THE UNIVERSAL VALUES AND PRINCIPLES OF DEMOCRACY, GOOD GOVERNANCE, AND HUMAN RIGHTS IN ELECTORAL JUSTICE AND FOR THE PROMOTION OF WOMEN'S EFFECTIVE PARTICIPATION AND INCLUSION IN LEADERSHIP INCLUDING POLITICAL LIFE

SESSION CHAIR: HON. MR. JUSTICE P. GARWE - CONSTITUTIONAL COURT, ZIMBABWE

The session zeroed in on the African Charter on Democracy, Elections and Good Governance (ACDEG), regarded as a transformative legal tool for entrenching the universal values and principles of democracy, good governance, respect for human rights and promotion of participation of women in political life. The ACDEG has implications for electoral justice as it establishes suitable conditions for women in Africa to attain electoral justice. This session presented the AU framework in terms of the protection of women and addressed how lack of representation has serious consequences in electoral disputes, during which women's voices may be overlooked.

Keynote Presentation: How the African Charter on Democracy, Elections and Good Governance can be a catalyst for women's participation in elections and access to justice- Ambassador S. Hammad, Head of the African Governance Architecture (AGA) AU Commission



Africa has come up with various platforms and legal instruments to strengthen democracy, the rule of law, transparency, judicial independence and the participation of women and youths in elections and democracy.

Key to these is the African Charter on Democracy, Elections and Governance. The Democracy Charter calls for member states to adopt legislative and administrative measures to guarantee the rights of women and other minorities, such as youth and persons with disabilities. In addition, the Democracy Charter calls for member states to recognise the critical role that women play in developing and strengthening democracy by creating necessary conditions that ensure the full participation of women in decision-making in all structures and at all levels. Finally, it implores member states to take

deliberate steps to promote the participation of youth and social groups with special needs.

Although youths and women make up the largest percentage of the African population, Ambassador Hammad noted their political power has not reflected the existing demographics. For instance, men and women under 35 comprise approximately three-quarters of Africa's population, but youth are not representatives or leaders in the political space. The same can be said of women of all ages.

The cause for the poor participation of women and youths arises from a number of issues. These include slow ratification and lack of domestication and implementation of legal instruments and shared values, intra-state conflicts that result in the limited participation by women and the youths in political spaces, unconstitutional change of governments and lack of tolerance to diversity, among other issues.

Ambassador Hammad stressed the need to take certain deliberate measures to deal with the challenge of women and youths' lack of participation. These include ratification, domestication and implementation of the existing African legal instruments and shared values. There is also a need to give women and youth proper tools such as education and access to credible and requisite information to understand their role and rights in the socio-political national discourse.

Panel discussion: Identifying common approaches in the implementation of the Charter and national jurisprudence on the protection of women's rights in the electoral process- M. Da Silva, African Initiative of Women Human Rights Defenders (Eswatini)



Many women are excluded from various positions, including political participation. They are even excluded from their communities and families. How then should they contribute nationally? Legislative measures seem not to be working, as women are still being excluded everywhere. A concern was raised that although many legal instruments seek to strengthen women's participation, there is a lack of progress in their implementation and enforcement. Some instruments do not provide for penalties in cases of violations.

The other identified problem relates to stereotyping and cultural practices and lack of knowledge by women on the rights that they have. Ms. Da Silva further noted that hate speech against women has become a problem, and there is a need to find ways to deal with it. Finally, Ms. Da Silva emphasised that women cannot enjoy the right to political participation outside the right to life, association, and security.

**Adv. P. Tlakula - Chairperson - Information Regulator (South Africa)
Member, United Nations Committee on the Elimination of Racial
Discrimination, Member, SADC Electoral Advisory Council**



“In the digital age, cyber bullying is real. With generative artificial intelligence (Gen AI) using videos for misinformation and disinformation on the increase, this will disproportionately affect women participation more.” per Adv P. Tlakula AEJN2024

Adv. Tlakula emphasised member states' implementation and domestication challenges with Africa's regional legal instruments. She noted that many recommendations can be used to deal with this challenge. For instance, the Maputo Protocol calls for the establishment of necessary legislation to promote the participation of women, and these measures must be implemented. Also, countries must domesticate these instruments as soon as they are ratified. In addition, courts can also play a role in strengthening the participation of women. For instance, the constitutional court must use international instruments to deal with some of the issues affecting the participation of women. Several cases were given to demonstrate the role courts can play. The first was a case in which political parties

were ordered to provide information concerning the source of their resources. In another case, the court allowed independent candidates to participate in provincial and national elections. The South African courts took these decisions even though no laws directly addressed these issues. Last was a 2005 case from Lesotho. In that case, there was a challenge against the quota system. The court held that the quota system was legal since it was positive discrimination.

Group Discussion and Plenary

Civil society needs to bring cases that promote women in the electoral processes. Women should not fight this challenge alone; men need to fight with them. More importantly, unless there is institutional democracy within political parties, it will be difficult to achieve gender equality in the government. Women are more than fifty percent of the population, yet they occupy fewer political positions. Governments are run by legislation. In Zimbabwe the Constitution mandates public entities to appoint all persons on merit. Merit should also apply to men, without neglecting capable women. Political party wings such as the women's league or youth's league discriminate against women and the youth. They are used to campaign and nothing important comes out of them. They are just functionaries.

Key Takeaways of this session:

1. Although youths and women make up the largest percentage of the African population, their political power has not reflected the existing demographics.
2. All African States need to ratify and domesticate and implement the African Charter on Democracy Elections and Governance in order to create conditions that allow for women and other marginalised populations to thrive in electoral democracy.
3. Civil Society working with the AEJN need to design and implement programming that addresses stereotyping and cultural practices and lack of knowledge by women on the rights that they have.
4. Women face specific threats during elections, notably hate speech or lack of representation

SESSION SIX: ROLE OF ELECTION JUDGES IN PROTECTING FREE VOTING AND TACKLING POLITICAL CORRUPTION

SESSION CHAIR: HON. CHIEF JUSTICE MAPHALALA - CHIEF JUSTICE OF ESWATINI

The session explored how election judges address political finance, abuse of state resources or vote-buying-related cases in their jurisdictions to protect the integrity of the election and comply with objectives and provisions of the African Charter and Conventions relating to the prevention and combating of corruption. Vote buying, campaign finance violations, and the misuse of state resources can be major corruptive forces in the electoral process. The misuse of state resources introduces or exacerbates power inequalities and gives unfair electoral advantage to incumbents. These abuses can compromise the integrity of an election and reduce public trust in the legitimacy of the process and its outcomes.

Keynote Presentation: Practices and mechanisms, aligned with AU and national frameworks, to counter corruption in election processes as well as challenges faced during adjudication- (Retired) Hon. Chief Justice D. K Maraga (Kenya)

Campaign finance regulation is not only meant to prevent undue influence of donors on office bearers decisions but also to counteract the capacity of affluent members of society to exercise a disproportionate influence on the election by dominating the[election] debate – per Retired Hon. Chief Justice D. K Maraga AEJN2024

Elections are critical in ensuring that government authority is derived from the will of the people. Legitimacy is grounded on the constitutional principle that government is for, of and by the people. The African Union, through the Democracy Charter, is deemed to recognise this imperative. The preamble entrenches free, fair, and transparent elections. It requires state parties to hold regular elections. The constitutions of most countries have endowed the judiciary with the authority to determine electoral petitions. (Retired) Hon. Chief Justice Maraga highlighted that Kenya has domesticated the major principles of the Democracy Charter to conduct free, fair, and credible elections supervised by an independent EMB.

Campaign finance regulation is not only meant to prevent undue influence of donors on office bearers decisions but also to counteract the capacity of affluent members of society to exercise a disproportionate influence on the election by dominating the[election] debate. Be that as it may, regulations to curb this phenomenon are hard to enforce. Vote buying or bribery is one allegation that petitioners have found very difficult to prove in court ...the election Courts have held that an allegation on a criminal offence must be proved beyond reasonable doubt. Ballot box tampering during the transit of ballot boxes where there is manipulation through the addition or subtraction of votes is another prevalent allegation. Consequent to that, it is prudent to have results recorded and displayed at polling stations. This curbs incidents of ballot stuffing during the transition of the voting material.

Retired) Hon. Chief Justice D. K Maraga also addressed the argument that judges are not elected leaders compared to politicians who are elected. “Judges are given powers by the constitution. Don’t buy this argument that you are not elected. You have a duty as judges to enforce the constitution. You are the custodians of the constitution” argued CJ Maraga. Retired) Hon. Chief Justice D. K Maraga. “As judges we have a duty to play in the democratisation of our countries. With these riches, how come that our people are wallowing in poverty? Have we judges contributed to this?... In line with policy shift from

non interference to non-indifference, is there a role we can play as judges?” concluded CJ Maraga.

Plenary: Exploration of what can be done to improve

The plenary explored how to improve the investigation and oversight of violations. The plenary also discussed how judiciaries can ensure appropriate and enforceable sanctions and penalties on state officials who abuse state resources and against candidates or other actors who violate vote buying and political finance laws.

Whilst it may be prudent for the AEJN to undertake solid case studies of Kenya and Malawi, as these two cases provide invaluable jurisprudence on safeguarding electoral integrity and promoting electoral justice, it is equally important not to fall into the trap of only recognising judicial decisions that overturn electoral results as precedents or templates. The AEJN research and documentation therefore needs to be wider and learn from all emerging jurisprudence irrespective of the specific orders made in those cases. Regarding corruption, EMBs working with the judiciary and civil society must collaborate to combat it in the electoral sphere. A justice ecosystem approach is needed to collaboratively combat corruption and mitigate its negative impact on democratization of Africa. A case study will help, particularly in Roman Dutch jurisdictions, where issues with the standard of proof and burden of proof in electoral petitions remain inconsistent.

Defending the judicial space is not easy given the manner in which the judiciaries operate. However, home grown and continental centric platforms such as the AEJN are regional bodies where concrete resolutions to effect change can be made. In a similar vein, member states must strengthen the operating frameworks and performance standards for judicial officers upon entry into office.



Key Takeaways of this session:

1. African States and their judiciaries need to develop and implement appropriate and enforceable sanctions and penalties on state officials who abuse state resources and against candidates or other actors who violate vote buying and political finance laws.
2. A justice ecosystem approach is needed to collaboratively combat corruption and mitigate its negative impact on democratization of Africa.
3. The role of the non-state actor and foreign interests in the outcome of elections in Africa needs to be monitored on a systematic and sustained basis.

CLOSING SESSION

SESSION CHAIR: HON. JUSTICE MBHA

Vote of Thanks- Hon. Mrs. Justice Gwaunza, Deputy Chief Justice, Zimbabwe

The Hon. Deputy Chief Justice gave a vote of thanks on behalf of the Judicial Service Commission of Zimbabwe. She noted that the discussions demonstrated that collaboration between African judiciaries should transcend the realm of electoral adjudication and extend into other critical areas. She underscored that African judiciaries have a collective responsibility, as guardians of justice, to translate these discussions into actionable steps that will fortify the rule of law and enhance the democratic processes in African states. She extended her gratitude to all those who contributed to the success of the Symposium—the organisers, speakers, moderators, and all the participants. The Hon. Deputy Chief Justice concluded by observing the JSC’s success at hosting the Third Annual Meeting of the AEJN, which served as a shining example of Zimbabwean hospitality.

Closing Remarks: AEJN Chair: Hon. Justice B. H Mbha - Retired Justice of the Supreme Court of Appeal & Immediate Past Chairperson of the Electoral Court of South Africa

The AEJN seeks to establish a peer monitoring mechanism for elections across the continent. This includes considering an election digest or compendium that documents African electoral jurisprudence. At the beginning of the symposium,

the AEJN adopted a constitution and a logo. The AEJN has organized significant past events such as the 24 May 2023 Webinar, where it reflected on recent past elections in Kenya and Nigeria. Similarly, in November 2023, there was a gathering focused on discussing the evidentiary rule and burden of proof in electoral adjudication. As delegates, we must serve the interests of African people. This is at the core of the AEJN's establishment and the very purpose of this gathering. Hon. Justice Mbha thanked the Chief Justice of Zimbabwe Hon Justice Luke Malaba, the Zimbabwean Judiciary and the Judicial Service Commission for successfully hosting the Third Annual Meeting of the AEJN. In particular, he thanked the Chief Justices who were in attendance emphasizing that the recognition of AEJN by the leaders of judiciaries in Africa starting with the participation by AEJN at the SEACJF meeting in Arusha, Tanzania in October 2023 bodes well for the role of AEJN as a vehicle for peer exchange, learning and solidarity on matters of electoral justice in Africa. He also thanked all the resource persons and the panelists at the Symposium. He concluded his remarks by disclosing that a debriefing session was to be held in a week to deliberate on the outcomes of the Symposium and draw lessons learnt.

ANNEXURES

ANNEXURE 1.

Africa Electoral Justice Network Statute

Article One - Description

The Africa Electoral Justice Network (the Network or AEJN) is a regional forum that brings together judges who adjudicate electoral disputes in Courts, Tribunals, and Electoral Management Bodies (EMBs), electoral justice practitioners and experts, and civil society organisations across the African continent.

Article Two - Aims and Objectives

The Network aims to serve as a pan-African knowledge hub for African Countries in matters of electoral justice.

The Africa Electoral Justice Network will pursue the following objectives:

- Facilitate the engagement, participation, and exchange of judicial-electoral information, knowledge, experience, and resources on emerging challenges to the integrity of elections.
- Facilitate cooperation and collaboration between members and strategic partners of the Network.
- Identify and exchange best practices for developing and advancing electoral jurisprudence of African Courts and Tribunals

- Identify and exchange best practices of electoral dispute resolution by Electoral Management Bodies in the region.
- Establish and refine effective capacity-building initiatives, including judicial training.
- Develop peer-review mechanisms.
- Contribute to and produce up-to-date international, regional, and national electoral justice knowledge products, including but not limited to African Election Digest, Bench Book and global Online Compendium (i.e., Election Judgments database).
- Identify Judicial Officers regionally and from across the world if need be, to provide technical advice and contribute to advocacy for reform efforts in the region.
- Promote, protect, defend and support the independence of judiciaries in Africa during judicial proceedings relating to election disputes.
- Promote the rule of law and human rights, and ensure access to justice for all, including women, persons with disabilities and other marginalized groups during the entire election cycle.
- Foster active participation and cooperation with the African Union (AU) in furtherance of the AU objective of ensuring Africa's attainment of good governance in accordance with the aspirations as articulated in the African Charter on Democracy, Elections and Governance the AU Declaration on Principles governing Democratic Elections in Africa and other regional instruments on democracy, elections and human rights.

Article Three - Values and Principles

The following principles shall govern the Network and its members:

- Independence (non-partisan), transparency, accountability, impartiality and integrity.
- Promotion of the rule of law and human rights for the benefit of all in society during the election cycle
- Promotion of democracy and good governance.
- Expeditious delivery of accessible and quality electoral justice to all.

- Ethical behavior (which includes high level of professionalism, neutrality and impartiality, equality and non-discrimination, adherence to national constitutions and legal frameworks, full disclosure of any conflict of interest).
- Focus on the centrality and importance of the voter and the vote.

Article Four – Membership

4.1 Founding Members. Judges and individuals who represent or are affiliates of institutions or centers whose representatives participated in the Network’s inaugural discussion held in Johannesburg, South Africa, on 16th and 17th April 2019 are the original and founding members of the Africa Electoral Justice Network

4.2 Member Eligibility. Membership is open to institutions and individuals that subscribe and conform to the objectives and principles of the Network, as embodied in the Network statute.

Application for Membership. The admission of new members into the Network is by invitation of the AEJN Working Group or by admission to membership upon application in a prescribed form. The Working group can confer interim membership subject to confirmation of at least two-thirds of the General Membership of the Network voting at the AEJN General Assembly (GA). If the General membership of AEJN sitting as the General Assembly refuses to confirm any new membership, then any interim status granted by the Working Group shall terminate forthwith.

4.3 Commitment: Members of the Network commit themselves to the realization of the aims and objectives of the Network.

4.4 Subscriptions. Members shall pay an annual subscription fee to be prescribed by the General Assembly from time to time. The General Assembly may prescribe different categories of fees for different types of members.

Article Five - Constituent Organs of the Network

The General Membership, Working Group, and Secretariat are the constituent organs of the Network.

General Membership. The General Membership is the Network's main body. It is vested with powers at the General Assembly (GA or Special General Assembly) to discuss any matter and make any decision concerning the existence, direction, objectives and principles of the Network.

The General Assembly will be comprised of all members of the Network.

Meetings of the General Membership. The General Membership shall meet as a General Assembly triennially. The Agenda for the Triennial shall be as follows:

- 1) Report from the Chairperson
- 2) Report from the Treasurer
- 3) Report from the Secretariat
- 4) Membership Issues
- 5) Election of office bearers, and
- 6) Any other business

Quorum: The quorum for the General Assembly shall be 30 percent of the membership.

Working Group. The Working Group is the governance authority of the Network. It has the mandate to exercise oversight on the Secretariat, adopt and ensure the implementation of institutional policies and strategies in order to entrench good governance of the Network between General Assemblies.

- **Composition.** The Working Group will have a maximum of eleven (11) members. It shall elect the Chairperson, Vice Chairperson and Treasurer.
- **Eligibility.** Members of the Working Group shall be elected by the General Membership of the Network at the General Assembly from within members of the AEJN who have demonstrable commitment and track history for the protection of all human rights, including political and civil as well as economic, cultural and social rights in electoral dispute resolution during the electoral cycle.
- **Tenure of Office and Renewal.** The term of office for the members elected to the Working Group is three (3) years, renewable for another term of three (3) years: Provided that in order to stagger the term of office of office bearers so as to maintain continuity and institutional memory, the founding Chairperson's initial term shall be four (4) years and subsequent

terms running for three years in alignment with the rest of the terms of the other office bearers.

- **Quorum:** The quorum for the Working Group shall be 6 members.

Article Six - Powers of the Working Group

The Working Group, in consultation with the General Membership, will make relevant regulations necessary for the proper functioning of the Network and the implementation of this founding statute. Such regulations will be binding on all members and organs of the Network once adopted by the General Assembly.

Secretariat. The Secretariat is the administrative body of the Network, invested with the power to participate in all the General Membership and Working Group meetings and execute its (AEJN) decisions. It will be appointed by and be accountable to the Working Group and, likewise, should present reports on its activities to the Working Group on a regular basis and to the General Membership at their triennial meetings.

Prior to the establishment of an independent Secretariat, the Secretariat may be housed within an institution identified by the Working Group and will carry out its tasks under the supervision of the Working Group.

Article Seven - Strategic Partners

In order to facilitate, support and strengthen its tasks, the Working Group may establish a Strategic Partners Council (SPC) comprising of international organizations, civil society organizations, and research institutions and centers, and other members . The SPC an advisory role to the AEJN Working Group. The Strategic Partners Council is constituted by and serves at the discretion of the Working Group.

The Strategic Partners Council may, amongst other things, suggest topics, events, and new working mechanisms, and develop analytical documents and policy suggestions.

Article Eight – Funding/Resources

The resources of the Network for the implementation of its activities, projects, and meetings shall consist of subscriptions, voluntary contributions, and contributions by external partners

Article Nine - Amendment of Statute

This Statute may be amended by a resolution of the General Assembly. Such a resolution must receive the vote of at least two thirds of the members of the Network present and voting at such General Assembly. At least ninety (90) days before the Article amending the statute is introduced, the person intending to introduce the amendment must give notice to the Secretariat of the particulars of the proposed amendment for comment by the Membership before the General Assembly.

Article Ten – Dissolution of the Network

Two-thirds of members of the General Membership can vote to dissolve the Network provided that the notice of such dissolution is served at least ninety (90) days before the Triennial that is being asked to consider the question of dissolution is held.

If upon the dissolution of Network there remain assets whatsoever, after the satisfaction of all its debts, liabilities and inventory disbursement obligations, such assets shall be donated by the Working Group as they may deem fit to such organizations or institutions in Africa as may have similar objects to the Network.

Dated at Victoria Falls, Zimbabwe this 31st Day of January 2024

Signed SIGNED ON ORIGINAL
Justice BH Mbha
Chairperson – Africa Electoral Justice Network

ANNEXURE 2

COMMUNIQUE OF THE 3RD ANNUAL MEETING OF THE AFRICA ELECTORAL JUSTICE NETWORK 2 FEBRUARY 2024

The 3rd Annual Meeting of The Africa Electoral Justice Network (AEJN) was held from 31 January 2024 to 2 February 2024, in Victoria Falls, Zimbabwe.

The Symposium was attended by the following delegates:

AEJN: Justice BH Mbha - Retired Justice of the Supreme Court of Appeal The
Chairperson of the AEJN

Members of the AEJN

Zimbabwe: Hon. Mr. Justice L. Malaba, The Chief Justice of Zimbabwe,
Hon. Judges of the Constitutional Court

Hon. Judges of the Supreme Court

Hon. Judges of the High Court

Zimbabwe Electoral Commission

Chairperson, Hon. Mrs. Justice P. Chigumba

CEO, Mr Silaigwana

Magistrates

Eswatini: The Chairperson of SEACJF, the Chief Justice of Eswatini, Hon. Mr. Justice Maphalala

Hon. Judges of Eswatini

Lesotho: Immediate Past Chairperson of the Political Affairs of AU Commission, Dr. K. Matlosa

South Africa: President of Electoral Court of South Africa, Hon. Mr. Justice D. Zondi; Adv. Pansy Tlakula - Chairperson - Information Regulator (South Africa) Member, United Nations Committee on the Elimination of Racial Discrimination, Member, SADC Electoral Advisory Council

Kenya: Honourable Judges of the Supreme Court and the Court of Appeal of Hon. Justice Isaac Lenaola, Supreme Court Hon Justice Musinga – President Court of Appeal Secretary of the Judiciary Committee on Elections

United Nations: Ms. Margaret Satterthwaite - UN Special Rapporteur on Independence of Judges and Lawyers

African Union: Ambassador S. Hammad Head of the Africa Governance Architecture, AU Political Affairs

African Commission on Human and People's Rights: Hon. Commissioner R. Ngoy Lumbu - Chairperson and Special Rapporteur on Human Rights Defenders and Focal point on Independence of the judiciary

Zambia: Hon, Justice Dr. Mumba Malila, The Chief Justice of Zambia. Honourable Judges of Zambia, Members of the Judiciary of Zambia

Botswana: Hon. Judges of Botswana

Malawi: Hon. Members of the Judiciary of Malawi, Chairperson of the Malawi Election Commission, Justice Kachale

Seychelles: Hon. Members of the Judiciary of Seychelles

Mozambique: Hon members of the Judiciary of Mozambique

Nigeria: Hon. Lady Justice President of the Court of Appeal

SEACJF: SEACJF Coordinator Sangwani and Members of the SEACJF

SAJEI: Members of the SAJEI

AJJF: Chairperson of the AJJF, Hon. Mr. Justice M. Chinhengo and Members of the AJJF

JSC of Zimbabwe: The Secretary of the Judicial Service Commission of Zimbabwe, Mr. W. T. Chikwana and JSC Secretariat

Electoral Management Bodies;

Law Society of Zimbabwe;

Civic Society Organisations; Kimpact Development Initiative (KDI) (Nigeria)

Development Partners

British Embassy in Zimbabwe.

1. The Meeting ran under the theme “Turning the Hope of the African Charter on Democracy, Elections and Governance to Action: The Role of the Judiciary in Upholding the Rule of Law and Ensuring Free, fair, and Credible Elections in Africa.” This theme guided the deliberations on issues of elections in Africa under various sub-themes.
2. The meeting appreciated the role that the African Union has taken in establishing basic standards that need to be adhered to by African states in the conduct of democratic elections on the continent including the shift in policy from non-interference to non-indifference backed by solid human rights standards and instruments including the African Charter on Human and People’s Rights, and the African Charter on Democracy, Elections and Governance.
3. The meeting reiterated that AU Member states should ensure that bodies in charge of electoral processes conduct elections in a manner which is in full compliance with their constitutions and existing electoral laws and guarantee the principle of electoral transparency.
4. The meeting noted that the role of Judges has become increasingly important in electoral justice as Africa continues on its trajectory of deepening democracy,

good governance, observance of the rule of law and respect for human rights, in order to build inclusive societies, sustainable peace, security and development.

5. Welcoming the adoption of a resolution establishing a focal point on judicial independence by the African Commission on Human and Peoples Rights at the 77th Session in Arusha, the meeting further noted that elections have become a threat multiplier to judicial independence and consequently there is particular need to intentionally strengthen judicial independence in the context of electoral litigation.
6. The meeting further noted that the African Charter On Democracy, Elections And Good Governance if implemented properly, can be a tool for entrenching the universal values and principles of democracy, good governance and human rights in electoral justice and for the promotion of women's effective participation and inclusion in leadership including political life.
7. The meeting further appreciated the role of civil society including election experts to contribute to the strengthening of electoral practices as well as election dispute resolution mechanisms to entrench electoral justice to improve the freeness, fairness, credibility and integrity of elections on the continent.
8. The meeting reaffirmed that an independent and impartial judiciary and electoral court can be a bulwark in protecting civic space, free voting and tackling political corruption
9. The meeting welcomed the institutionalisation of the Africa Electoral Justice Network (AEJN) and encouraged the Network working with African judiciaries, the African Union and Sub-Regional Economic Communities to programme in the following areas among others;
 - 9.1. Strengthening of judicial/legal protection of fundamental rights during the entire election cycle.
 - 9.2. Strengthening the judiciary's collaboration with other critical players in the justice delivery chain to work in tackling corruption.
 - 9.3. Dissemination and implementation of the Principles and Guidelines for the use of digital and social media in elections in Africa 2023.

- 9.4. Increasing awareness of the judiciary and legal profession involved in electoral litigation, of the AU standards governing democratic elections through continuous judicial and legal education and appropriate symposia
- 9.5. Work with the ACHPR Focal point on judicial independence and the UN Special Rapporteur on the Independence of judges and lawyers to protect the independence and impartiality of elections Judges.
- 9.6. Developing concrete measures to address delays in their finalization of electoral court disputes that undermine public confidence in electoral dispute resolution
- 9.7. Advocating for greater financial independence of the judiciary to ensure that financial resources for judiciaries are enough to fund their operations independently.
- 9.8. Increasing the networking, collaboration and exchange of information and resources among electoral judges and electoral justice experts in Africa.
- 9.9. Encouraging the development and use of Alternative Electoral Dispute Resolution (AEDR) by judiciaries to expedite the resolution of electoral disputes.
- 9.10. Developing and maintaining databases of jurisprudences codifying best practices in matters of electoral justice
- 9.11. Encouraging in appropriate situations civil society to approach the court as amicus to enrich African jurisprudence on electoral justice.
- 9.12. Helping judiciaries develop and implement frameworks to tackle information disorder (misinformation and disinformation) and its impact on judicial independence and public perception of judicial independence.
- 9.13. Supporting learning through the exchanging of information between judiciaries in AU member states to promote regional collaboration and development of shared values through jurisprudences, regional electoral bench books, compendia and electoral justice workshops.
- 9.14. Intentionally develop and implement judicial education programmes on regional instruments that have been adopted to eliminate all forms of discrimination against women on the African continent such as the

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

- 9.15. Working with civil society to encourage the monitoring of intra-party democracy and to analyse the level of institutionalisation of political parties to reduce the contagion effect of lack of intra-party democracy that increases unnecessary litigation of political disputes and clogging of the court system with political cases.
- 9.16. Developing guidelines to help judiciaries protect civic space and fundamental rights during the entire election cycle to guarantee effective participation and inclusion of women in politics and leadership.
- 9.17. Carry out solidarity missions including election observation missions to observe key electoral disputes across Africa and protect the independence and impartiality of the judiciary in the context of elections.
- 9.18. Working with judicial elders to intervene in situations of grave threats to the rule of law and judicial independence in the context of elections.
- 9.19. Working with African Judiciaries and election experts (including jurists) to target the intentional development of election jurisprudence that reflects that values, ethos and principles as encapsulated in the African Charter on Democracy, Elections and Good Governance.

Dated at Victoria Falls, Zimbabwe, this 2nd February 2024

Signed on Original

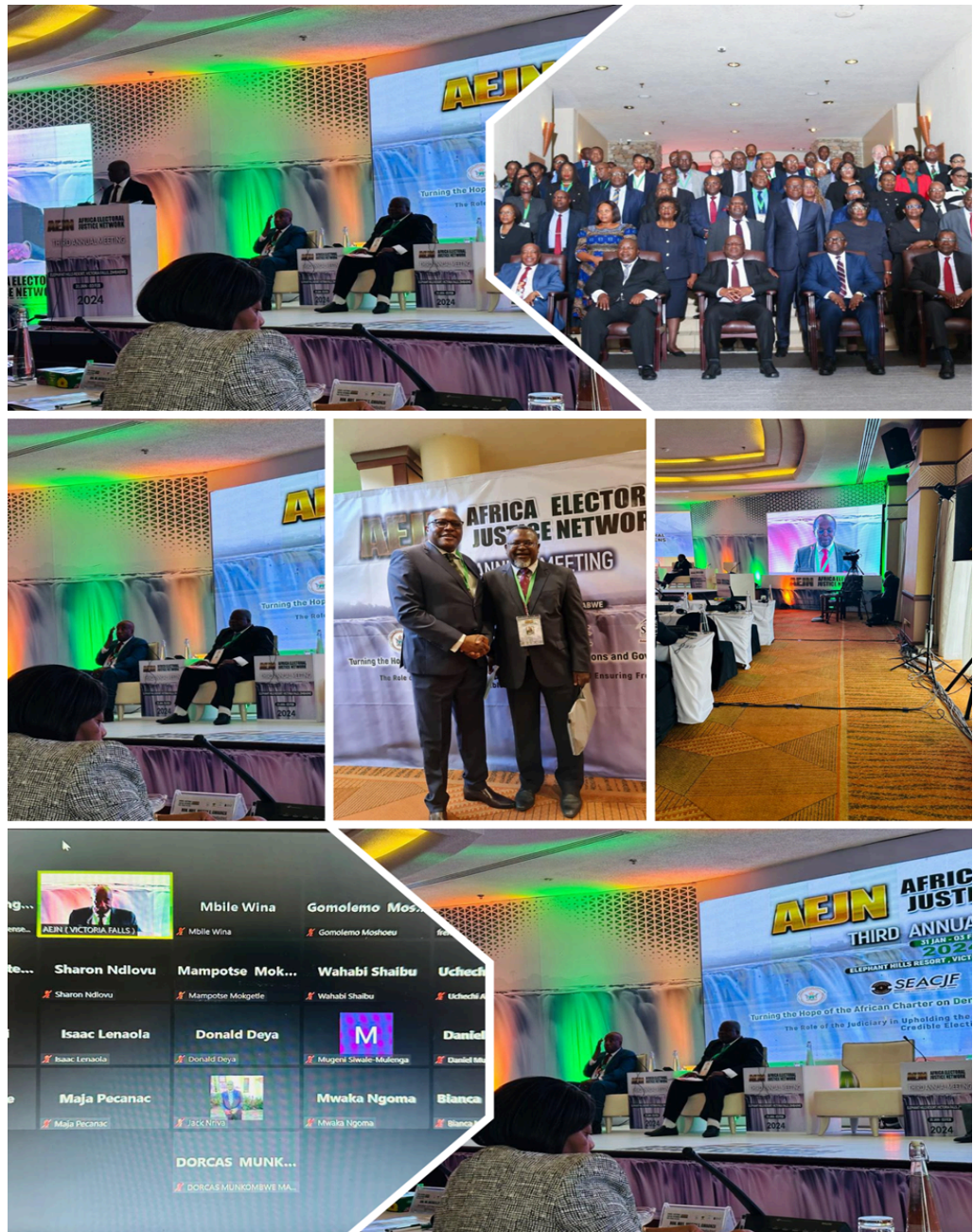
Signed: Justice B.H Mbha (Host)

Chairperson – Africa Electoral Justice Network

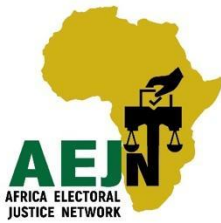
Signed on Original

Countersigned: Chief Justice Luke Malaba (co-Host)

Chief Justice of the Republic of Zimbabwe



THE AFRICAN ELECTORAL JUSTICE NETWORK (AEJN)



The Africa Electoral Justice Network was established to facilitate peer-to-peer knowledge exchange among a diverse and inclusive group of election arbiters. It aims to provide peer support for election judges and arbiters dealing with politically sensitive and challenging disputes and violations, strengthen the capacity of the judiciary and election management bodies to resolve electoral cases and disputes, enhance understanding of lawyers and civil society organizations on EDR and the mandate of judges, and help entrench and apply norms across the region. In addition, it offers an opportunity to reflect on a growing body of regional jurisprudence and discuss emerging challenges in election litigation in the region – such as the use of electronic evidence related to election technology, ensuring impartiality and independence of election judges and court-annexed mediation.

CONTACTING THE AEJN

For more details please contact the Secretariat of the AEJN. The AJJF and the SAJEI are the Secretariat of the Africa Electoral Justice Network (AEJN) contactable on tsunga@fricajurists.org (+263777283249) and MMokgetle@judiciary.org.za (+27820649194) - The Chairperson of the AEJN is Justice B. Mbha (Retired), South Africa who is contactable on bmbha91@gmail.com

COLLABORATING PARTNERS

The AEJN annual symposium for the year 2024 was made possible by the support and collaboration of the following partners;

THE JUDICIAL SERVICE COMMISSION OF ZIMBABWE (JSCZ)



The Judicial Service Commission of Zimbabwe is a constitutional body responsible for the efficient, effective and transparent administration of justice in Zimbabwe, including electoral justice. In keeping with its mandate, it is committed to the continuous judicial education and training and professional development of judicial officers

in all areas of jurisprudence, including electoral justice. The Constitution of Zimbabwe, 2013 requires judicial officers to continuously improve their knowledge of the law. The symposium is one such opportunity that the JSC intends to leverage as part of its mandate to offer judicial education and training to judicial officers, including magistrates, who preside over electoral cases.

THE SOUTHERN AND EASTERN AFRICA CHIEF JUSTICES FORUM (SEACJF)



In recognition and amplification of the important role that judiciaries play within the regions, the Southern and Eastern African Chief Justices Forum (SEACJF) was established in 2003 to, among other things, uphold the rule of law, democracy and independence of the courts and to promote contact as well as co-operation among the courts in the various regions of their operation. SEACJF provides a formal platform, structure and framework through which the Chief Justices of Eastern and Southern Africa and Africa at large are able to collectively reflect on critical issues on justice delivery and adopt action plans to address those issues in a systematic and sustained way in order to strengthen justice delivery in the region.

AFRICA JUDGES & JURISTS FORUM (AJJF)



The Africa Judges & Jurists Forum (“AJJF”) is a pan-African network of judges and jurists, who are committed to promoting the rule of law in the context of development in Africa by providing legal expertise to governments, intergovernmental organisations, donor agencies, private sector, and civil society organisations. The AJJF is registered under South African law, and it draws its membership from all the geographic regions recognised by the African Union. It also works

with all legal systems represented on the continent. AJJF espouses the vision of an Africa that is just, peaceful, united, and prosperous; and a mission of use of the law as a tool to engender African development. Its work is organised around four (4) thematic areas namely, Access to justice; Elections and the rule of law; Crisis response and the rule of law; and Economic transformation and the rule of law.

THE SOUTH AFRICA JUDICIAL EDUCATION INSTITUTE (SAJEI)



SAJEI was established to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts through continuing judicial education as provided for in the South African Judicial Education Institute Act 14 of 2008. The Institute commenced with training in November 2011.

For more details please contact the Secretariat of the AEJN. The AJJF and the SAJEI are the Secretariat of the Africa Electoral Justice Network (AEJN) contactable on tsunga@africajurists.org (+263777283249) and MMokgetle@judiciary.org.za (+27820649194) - The Chairperson of the AEJN is Justice B. Mbha (Retired), South Africa who is contactable on bmbha91@gmail.com