



CONTEMPORARY THREATS AND CHALLENGES AGAINST JUDICIAL INDEPENDENCE IN AFRICA



Africa Judges and Jurists Forum (AJJF)

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List of Acronyms

ACHPR - African Commission on Human and Peoples Rights
ADR - Alternative Dispute Resolution
AfCHPR - African Court on Human and Peoples Right
AIPPA - Access to Information and Protection of Privacy Act
AJIF – African Judicial Independence Fund
AJJF - African Judges and Jurists Forum
AJEN - African Judicial Exchange Network
APHD - Actions Pour la Protection des Droits de l’Homme
AU – African Union
CAR – Central Africa Republic
CSO – Civil Society Organisation
DRC – Democratic Republic of the Congo
EACJ - East African Court of Justice (EACJ)
ECCIMIS- Electronic Court Case Management Information System
ECHR - European Court of Human Rights
ECOSOC -Economic and Social Council
ECOWAS – Economic Community of West African States
EIPR - Egyptian Initiative for Personal Rights
HJC – Higher Judicial Council
ICJ – International Commission of the Jurists
JSC – Judicial Service Commission
JPET - Judicial Performance Enhancement Tool
JTI - Judicial Training Institute
NBA – Nigerian Bar Association
OCJ - Office of the Chief Justice
PALU – Pan African Lawyers Union
SADC -Southern African Development Community
SAJEI - South African Judicial Education Institute
SALC – Southern Africa Litigation Centre
SERAC – Social and Economic Rights Action Centre
UN - United Nations
ULS -Uganda Law Society
WABA - West African Bar Association



Executive Summary

This study, commissioned by the African Judges and Jurists Forum (AJJF), a pan-African network of distinguished legal professionals committed to advancing justice and development across Africa. The study explores contemporary threats to judicial independence and proposes actionable remedies. The AJJF offers expert legal support to governments, intergovernmental organizations, donor agencies, private sector actors, and civil society to uphold the rule of law. This research aims to inform strategic engagement with policymakers and stakeholders, guiding legal and policy reform efforts to safeguard judicial autonomy.

Judicial independence is a cornerstone of democratic stability, human rights, and good governance. Yet across Africa, courts face mounting challenges, which range from executive overreach and corruption to chronic underfunding and systemic inefficiencies, that erode impartiality and public trust. The study identified political interference in judicial appointments, decisions, and removals as a critical threat to neutrality. Corruption through bribery and favoritism distorts judicial outcomes, while inadequate financial resources, low remuneration, and limited autonomy diminish the resilience and integrity of judges. Evidence also points to the intimidation of judges via harassment, threats, and political reprisals, further undermining fair adjudication.

In some countries, legal frameworks were found to be clear and progressive and in others, vague or outdated, enabling manipulation of appointments and disciplinary processes. The study also found that lack of transparency fosters perceptions of bias and weakens accountability. Meanwhile, slow progress in adopting digital systems hampers judicial efficiency and access, and cultural and historical legacies continue to conflict with modern principles of autonomy. The study makes the following recommendations:

A. For Legislatures in Africa

1. There is a need for constitutional and legal reforms necessary through the establishment of transparent, merit-based processes for judicial appointments, discipline, and removal, modeled after systems in some African countries like Kenya and South Africa.
2. Financial autonomy is needed for the judiciary in different African countries. It is therefore argued that granting judiciaries control over their budgets to reduce executive leverage is a key way to judicial independence in Africa. However, it is also important that African judiciaries with financial independence should operate on the principles of accountability and transparency in the utilization of funds.

B. The Executive Arm of Government

3. The need for continuous capacity building is inevitable for the judiciary in view of technology advancements, increase in workloads and recent legal developments that are reshaping different



legal systems in the continent. Increase in training for judicial officers and staff to enhance professionalism and resilience against external pressures is highly recommended.

4. There is a need to strengthen institutions in charge of the judiciary. This means there is a need to empower independent judicial regulatory bodies, including non-judicial members, to oversee appointments and discipline thereby insulating the judiciary from the clutches of politicians and excessive control from the Executive arm of government.

C. Civil Society Organisations and Donor Community

5. Constant public awareness and advocacy on judicial independence in the continent is very important. It is important that citizens are educated on their legal rights and court procedures and processes are simplified to boost public trust and engagement with the judiciary.

6. The need to enhance civil society engagement on the independence of the judiciary in Africa is important. Organisations like the AJJF, West African Bar Association (WABA), Pan African Lawyers Union, Coalition for an Effective African Court and Afrobarometer's Africa Judicial Independence Fund, etc. advocating for reforms and supporting judicial officers should have a consortium to galvanise continental advocacy on the need for judicial independence in Africa. The use of advocacy, research and public interest litigations should be encouraged and enhanced by civil society actors in the continent.

D. African Union and Regional Systems

7. Regional and international oversight on the independence of the judiciary in the continent is important. It is therefore necessary to engage bodies like the UN Special Rapporteur on the Independence of Judges and Lawyers and the African Commission on Human and Peoples' Rights Focal Point on the Independence of the Judiciary in Africa to address violations.

8. There is a need for effective legal remedies from regional judicial institutions like the African Court on Human and Peoples' Rights, the ECOWAS Community Court and the African Commission on Human and Peoples Rights which provide platforms to promote judicial standards, though enforcement remains weak.

9. There is need to highlight best practices at the national level by regional institutions to enable peer-learning among different government judiciaries across the continent



1.0 Introduction

At its core, the principle of judicial independence entails the freedom of judicial officers to apply the law impartially without undue influenced from anyone.¹

It is a multi-dimensional principle that involves several facets including institutional independence, decisional independence, individual autonomy, security of tenure for judicial officers, fiscal independence and fair, transparent and merit based appointment processes that are driven by an independent body. This study aimed at identifying contemporary key threats and challenges confronting judicial independence in Africa with the view to suggest recommendations which can be considered by various actors to strengthen judicial independence on the continent. The study was conducted largely through a doctrinal review of existing materials, including regional, international and domestic legal instruments, reports on threats against judicial independence and interviews with selected experts.

This report is divided into three substantive parts namely (a) discussion on the relevant regional and international norms on judicial independence, (b) key threats and challenges affecting judicial independence on the continent and (c) recommendations for consideration.

2.0 International and Regional Normative Framework on the Independence of the Judiciary

There are international normative frameworks that protect and promote judicial independence. At the international level, the International Covenant on Civil and Political Rights (ICCPR) is the main source of legal obligations of African states in relation to judicial independence. The ICCPR has been widely signed and ratified by several African states. Although the ICCPR does not expressly address the obligation of the states to respect and protect judicial independence, it contains provisions which directly engage with the duty of states to respect, protect and promote judicial independence. These include provisions on the right to effective remedies for human rights violations,² the right to fair hearing³ and the right to equality before the law.⁴ In 1985, the United Nations General Assembly adopted the United Nations Basic Principles on the Independence of the Judiciary to provide guidance on the obligations of States in respect of the independence of judges, in order to give effect to the various human rights protected under international law, including the ICCPR. The following are amongst the key obligations of states as identified in the UN Basic Principles:

¹Rule 1 of the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985.

² Articles 2(3).

³ Article 14

⁴ Article 26



- a) The State must guarantee and respect the independence of the judiciary, including by adopting legislative and constitutional mechanisms that guarantee the independence of judges.⁵
- b) Judges must be free to decide cases impartially, without restrictions, improper influences, inducements, pressures, threats, or interferences, whether direct or indirect, from any quarter.⁶
- c) The judiciary must have jurisdiction over all issues of a judicial nature and not be subject to revision by non-judicial bodies.⁷
- d) States must provide the judiciary with adequate resources to properly perform its functions.⁸
- e) Judges must enjoy secure tenure until retirement or the end of their term.⁹
- f) Judges must receive adequate remuneration, pensions, and conditions of service.¹⁰
- g) The selection, appointment and promotion of judges must be based on merit, integrity, and competence, without discrimination.¹¹
- h) Procedures for the disciplining of judges, including their removal from office, must be provided for in the law, must be transparent, fair, subject to independent review and the reasons for removal must be specified in the law.¹²
- i) Judges, like other citizens, are entitled to freedom of expression and association, provided they maintain the dignity and impartiality of their office.¹³
- j) Judges must enjoy personal immunity from civil suits for monetary damages for acts performed in the exercise of their judicial functions.¹⁴

Several other resources have been developed to endorse and further interpret these obligations.¹⁵ For example, the United Nations General Comment No. 32 underscores the obligation of states to establish courts that are independent from the executive and legislative branches, undertake measures to protect judges and ensure their freedom to exercise judicial functions free from

⁵ Principle 1 of the UN Basic Principles

⁶ Principle 2 of the UN Basic Principles

⁷ Principle 4 of the UN Basic Principles

⁸ Principle 7 of the UN Basic Principles

⁹ Principle 12 of the UN Basic Principles

¹⁰ Principle 11 of the UN Basic Principles

¹¹ Principles 10 and 13 of the UN Basic Principles

¹² Principles 17–20 of the UN Basic Principles

¹³ Principle 8 17–20 of the UN Basic Principles

¹⁴ Principle 16 of the UN Basic Principles

¹⁵ See for example, Bangalore Principles of Judicial Conduct (2002, endorsed by UN 2006) and the Commonwealth (Latimer House) Principles on the Three Branches of Government (2003).



political influence, interference, or pressure¹⁶ and to ensure security of tenure for judges, including through legal guarantees against arbitrary removal from office.¹⁷

At the Africa regional level, the main instrument on the protection of judicial independence is the African Charter on Human and Peoples Rights (African Charter).¹⁸ In particular, article 26 of the African Charter provides that States parties to the Charter ‘shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter’. Respect and adequate protection of the independence of the judiciary is indispensable for the full protection and realisation of several other rights that are guaranteed under the African Charter, including the right to fair trial.¹⁹ While interpreting the right to fair trial, the African Commission on Human and Peoples’ Rights (African Commission) adopted principles and guidelines²⁰ on the right to fair trial (Fair trial principles) and several of these are directly linked to the scope of obligations of States under article 26 on the protection of judicial independence. The following are key obligations of states, highlighted by the African Commission as part of the Fair Trial Principles:

- a) the independence of judicial bodies and judicial officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities.²¹
 - b) there shall not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law.²²
 - c) the process of appointing judicial officers must be transparent, accountable and shall safeguard the independence and impartiality of the judiciary.²³ Judicial officials may only be removed or suspended from office for gross misconduct incompatible with judicial office, or for physical or mental incapacity that prevents them from undertaking their judicial duties’.²⁴
- Judicial officials facing disciplinary, suspension or removal proceedings shall be entitled to guarantees of a fair hearing including the right to be represented by a legal

¹⁶ See para 19.

¹⁷ Para 19-20.

¹⁸ African Charter on Human and Peoples Rights, adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

¹⁹ Guaranteed under article 7 of the African Charter.

²⁰ Principles and Guidelines on the Right to a Fair Trial and Legal Aid in Africa, 2003.

²¹ Paragraph 4 (a) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

²² Paragraph 4 (f) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

²³ Paragraph 4 (h) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

²⁴ Paragraph 4 (p) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.



representative of their choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.²⁵

In addition to adopting the Fair Trial Principles, the African Commission has also issued communications which have underscored some of the above stated obligations of states. For example, in the case of *Tsatsu Tsikata v. Republic of Ghana*, the ACHPR held that the government of Ghana breached Article 26 by failing to guarantee the independence of the judiciary, particularly in the manner of judicial appointments and executive conduct.

The African Court on Human and Peoples' Rights (the African Court) has also had a few opportunities to flesh out the interpretation of article 26 of the African Charter. In *Sébastien Germain Ajavon v. Republic of Benin*,²⁶ the applicant alleged that Benin Republic violated his rights by dissolving the Constitutional Court's Bureau (its administrative leadership) and appointing new members via an executive decree, undermining its independence. He claimed this interfered with his pending case before the Court and violated fair trial rights. The African Court held that the executive's unilateral dissolution of the Constitutional Court's Bureau and appointment of new members breached Article 26 of the African Charter, as it compromised the Court's independence.²⁷ Furthermore, the Court held that the executive's actions violated the principle of judicial independence, which requires judges to be free from external control, particularly from the executive branch.²⁸

In *Alfred Agbesi Woyome v. Republic of Ghana*,²⁹ the applicant challenged a Supreme Court decision in Ghana, alleging bias and lack of impartiality due to political influences and procedural irregularities in a case involving financial claims against the state. The Court examined whether Ghana's judiciary met the standards of independence and impartiality under Articles 7 and 26 of the Charter. The Court found no conclusive evidence that the Supreme Court was subject to external influence or lacked independence, as the applicant failed to provide sufficient proof of systemic bias or executive control. However, the Court reaffirmed that judicial independence requires structural safeguards (e.g., secure tenure, transparent appointments) and freedom from undue influence.

In *Konaté v. Burkina Faso (2014)*³⁰ a journalist in Burkina Faso, Lohé Issa Konaté, was convicted of defamation and sentenced to imprisonment. He approached the African Court raising concerns about the independence of Burkina Faso's judiciary in handling his case. The Court found that the national judiciary's application of defamation laws violated Article 9 (freedom of expression) and Article 7 (fair trial rights). It noted that the judiciary's failure to balance competing rights suggested a lack of impartiality, possibly influenced by state interests.

²⁵ Paragraph 4 (q) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

²⁶ *Sébastien Germain Ajavon v. Republic of Benin* Application No. 013/2017, Judgment of 29 March 2019, and Reparations Judgment of 28 November 2020.

²⁷ Paragraph 292 (xix) of the Judgment on Merit.

²⁸ Paragraphs 141, 281-82 of the Judgment on Merit.

²⁹ *Alfred Agbesi Woyome v. Republic of Ghana* Application No. 001/2017, Judgment of 28 June 2019.

³⁰ *Konate v Burkina Faso*, Application 4 of 2013.



The Court ruled that domestic remedies (e.g., appeal to the *Cour de Cassation*) were ineffective because they could not challenge the law's constitutionality, implying structural weaknesses in judicial independence. The case highlighted how a lack of judicial independence can exacerbate violations of other rights, such as freedom of expression. The Court clarified that effective remedies require a judiciary capable of independently reviewing laws and executive actions.³¹

In Tanganyika Law Society and Others v. Tanzania (2013), the applicants challenged Tanzania's ban on independent candidates in elections, alleging that national courts failed to provide an independent and effective remedy due to political pressures.³² The African Court ruled that Tanzania violated Article 13 (right to participate in government) and Article 7 (fair trial rights). It found that domestic judicial processes were insufficient, as they lacked the independence to challenge constitutional provisions influenced by political interests. The Court ordered Tanzania to take legislative and constitutional measures to remedy the violations.

3.0 Key Threats and Challenges to Judicial Independence in Africa

This section looks at the critical threats and challenges constraining judicial independence in Africa. The threats and challenges identified include political interference; corruption; lack of judicial financial independence; weak institutional framework; threats to judicial safety; low public perception and lack of trust; colonial legacies and structural issues; and executive overreach and weak rule of law.

3.1 Political Interference

Political interference is a major threat and challenge to judicial independence on the continent. Usually, political interference occurs when government bodies exert undue influence over judicial decisions, in pursuit of political interests. Such actions can compromise the impartiality of judges, and often erodes public trust in the legal system.³³

Political interference is quite prominent in sensitive legal cases, such as electoral disputes or corruption trials. In recent years, Malawi, Zimbabwe, Uganda, Central Africa Republic and Senegal have presented notable cases of political interference. In response to the Supreme Court's decision to annul the results of the 2020 presidential election, the then government of Malawi attempted to place the then Chief Justice Andrew Nyirenda and Justice Edward Twea into early retirement. In the process, the two judges were threatened and placed under immense pressure. However, they survived the attempts thanks to a court interdict against their removal and a change of government. In Uganda, the now former Justice of the Supreme Court, Judge Esther Kisaake, was forced into exile and early retirement after insisting on delivering a

³¹Ibid.

³² *Tanganyika Law Society and Others v. Tanzania*, Application No. 009/2011.

³³ Laws Learned Editorial 'Judicial Independence and Political Neutrality in Modern Law' July 9, 2024, available online at <https://lawslearned.com/judicial-independence-and-political-neutrality/> (accessed 13th August 2025).



dissenting judgment in one of the petitions against the 2020 general election.³⁴ In Zimbabwe, the now former Judge of the High Court, Erica Ndewere was forced out of office after she made a series of decisions in political cases in which she reportedly resisted political interference. One of the decisions she made was to grant bail to a prominent opposition leader.³⁵ ³⁶

The judiciary in the Central African Republic (CAR), has experienced direct executive interference. A notable case occurred in October 2022, when President Faustin-Archange Touadéra removed Danièle Darlan, the President of the Constitutional Court, by presidential decree, citing her retirement as a law professor as a "definitive impediment" to her judicial role.³⁷ This followed Judge Danièle Darlan's decision to rule against the attempt by the President to run for a third term. In Senegal in 2024 the Constitutional Council invalidated a law that had been passed by parliament which sought to postpone the presidential election. Following this decision, the members of the Constitutional Council were harassed by the government, including through threats of prosecution on allegations of corruption.³⁸ An analysis of these examples from different countries shows that when judges demonstrate courage to enforce the law impartially in politically sensitive cases, they are likely to face retribution including death threats and forced removal from office.

3.3 Judicial underfunding

The judiciary is a cornerstone of constitutional democracy, yet across much of Africa it suffers from chronic underfunding. Recent studies demonstrate that unlike the executive and legislature, judiciaries rarely control their own budgets and often depend on allocations from finance ministries that prioritise other sectors.³⁹ This financial dependence undermines judicial independence and weakens public trust in the courts.

One consequence of underfunding is the lack of adequate infrastructure and personnel. For example, in Nigeria, the United Nations Office on Drugs and Crime has reported that many courts operate in dilapidated conditions without reliable electricity or digital systems,

³⁴ See Justice Mavedzenge "The Price they pay for their independence: Understanding the persecution of Judges in Africa, Southern Africa Public Law (2024).

³⁵ Ibid.

³⁶ Chidi Odinkalu 'Around Africa, Judicial Independence Confronts Viral Authoritarianism' 23rd September, 2020 available online at <https://www.justiceinitiative.org/voices/around-africa-judicial-independence-confronts-viral-authoritarianism> (accessed 28 June 2025).

³⁷ Office of the High Commission for Human Rights 'Central African Republic: Independence of judges and institutions key to stability and transitional process, says UN expert' 4 November 2022, available online at <https://www.ohchr.org/en/press-releases/2022/11/central-african-republic-independence-judges-and-institutions-key-stability> (accessed 12 July 2025).

³⁸ <https://africacenter.org/spotlight/senegal-constitutional-crisis/>

³⁹ International Commission of Jurists, *The Independence of the Judiciary: Protecting Human Rights in Africa* (2019).



contributing to significant delays in justice delivery.⁴⁰ In Kenya, the Judiciary of Kenya's 2021 Annual Report⁴¹ noted that budget cuts had left rural courts without proper facilities, forcing judicial officers to work in makeshift structures and compromising the dignity of court proceedings. Such conditions diminish the accessibility and credibility of the judiciary.

Judicial underfunding also manifests in poor remuneration and inadequate staffing, which can lead to corruption and case backlogs. In Zimbabwe, the Law Society of Zimbabwe⁴² has raised concerns about judges' and magistrates' low pay, warning that financial vulnerability exposes them to external inducements. Similarly, in Malawi, a recent study of the justice sector by the African Union⁴³ observed severe shortages of judges, leading to prolonged pretrial detention and the violation of fair trial rights. In Sierra Leone courts struggle with inadequate infrastructure, case backlogs, and limited access to modern technology.⁴⁴ Similarly, in Ghana, the judiciary has faced difficulties expanding court networks into rural areas due to budgetary constraints, leaving many communities without meaningful access to justice.⁴⁵

These examples demonstrate how insufficient funding directly undermines the protection of fundamental rights and the rule of law but also the capacity of the judiciary to act independently against the interests of the executive for fear of retribution through underfunding.

3.3.2 Inadequate Judicial Appointment Processes

The inability to have a clear judicial appointment process that is devoid of executive interference seriously affects judicial independence in the continent. For example, Uganda's judiciary operates under a weak institutional framework because the President, has significant control over appointment and dismissal of judicial officers. This is as a result of the fact that the 1995 Constitution does not have clear protections for judicial autonomy. As a result of the limited independence of Uganda's Judicial Service Commission, some of the judges appointed by the President have been amenable to decide election cases that were favourable to the ruling political party despite evidence to the contrary.⁴⁶

Governments in Africa often exert influence over judicial appointments, discipline, and removal of judges, undermining impartiality. In some African countries, national constitutions allow executives significant control over these processes, weakening judicial autonomy. For example,

⁴⁰ United Nations Office on Drugs and Crime (UNODC), *Strengthening the Integrity and Capacity of the Judiciary in Nigeria* (2016).

⁴¹ Judiciary of Kenya, *State of the Judiciary and Administration of Justice Annual Report 2020/2021* (2021).

⁴² Law Society of Zimbabwe, *Statement on the Conditions of Service for Judges and Magistrates* (2020).

⁴³ African Union, *Justice Sector and Rule of Law Review: Malawi Country Report* (2020).

⁴⁴ Economic Community of West African States (ECOWAS), *Justice and Governance in West Africa: Report on Access to Justice* (2020).

⁴⁵ Judicial Service of Ghana, *Annual Report* (2021)

⁴⁶ Hanifa Tyakagire and Shamrahayu A. Aziz 'Judicial Independence: A Continued Political Interference in Recent Judicial Proceedings in Uganda' Vol. 6 (1) (2024) *International Journal for Multidisciplinary Research (IJFMR)*, 1-12.



in Nigeria, the National Judicial Council makes recommendations to the President for federal appointments into the judiciary and State Governments for appointment in the State judiciary. Appointment into the Supreme Court of Nigeria requires the approval of the Senate and the appointment as the Chief Judge of a State is by the Governor through the recommendation of the National Judicial Council and approval of the State House of Assembly.⁴⁷

3.5 Low Public Perception and Lack of Trust

Low public perception and lack of trust is a key challenge of judicial independence in Africa. Democracy is generally built around the people and when their confidence in a critical democratic institution like the judiciary wanes, it portends trouble for the system. Several citizens in Africa view their judicial officers with suspicion. Some are seen as agents of the government. Others are accused of corruption and partiality which erodes the trust and confidence that citizens have on their judiciary. Below are some of the examples where low public perception and lack of trust have affected the fortunes of the judiciary in Africa.

Recently, a former president of Nigeria labeled the judiciary and the Independent National Electoral Commission as corrupt. This assessment is a generally held belief fueling low public perception and lack of trust in the judiciary.⁴⁸

In Kenya, despite judicial reforms post-2010, public trust remains low due to perceptions of corruption and delays in justice delivery. A 2021 survey by Transparency International found that 45% of Kenyans believed judges were corrupt. This distrust emboldened the executive to defy court orders, such as President Uhuru Kenyatta's refusal to appoint 41 judges recommended by the Judicial Service Commission in 2019. Low public confidence meant there was little societal pushback against this interference, undermining the judiciary's ability to assert its authority.

⁴⁷ Sections 230 and 270 of the 1999 Constitution of the Federal Republic of Nigeria. See also Theresa U Akpoghome 'Judicial financial independence and its effectiveness in Nigeria' in Conrad Bosire (ed) *Judicial Financial Independence in Nigeria* (2024), 199 – 226.

⁴⁸ Kingsley Ike 'Obasanjo Slams INEC Chairman, Judiciary in New Book, Calls it 'Court of Corruption' August 24, 2025, available online at <https://www.abujapress.com/2025/08/obasanjo-slams-judiciary-over.html> (accessed 27 August 2025).



4.0 Cross Cutting Issues on Judicial Independence

Although this study focuses on the independence of the judiciary, it should also be noted that there are some cross-cutting issues that have been identified during the study. While this section is not comprehensive the researcher has limited the exploration to three components of women representation, persecution of women and social media and judicial independence.

4.1 Women Representation in the Judiciary

The unequal representation of women in the judiciary poses a challenge and a threat to judicial independence in Africa. In the past there was a chronic under representation of women in the Judicial system.⁴⁹ Which eroded public confidence as lack of diversity perpetuates underlying gender biases, limits the quality of decisions and has a direct impact on the societal perception of judicial independence.⁵⁰ Gender representation is a fundamental to principle of gender equality. *‘The mere presence of women judges enhances legitimacy of courts, sending a powerful signal that we are open, [independent] and accessible to all who seek justice’*⁵¹

According to UNDP, Africa has the world’s largest number of women heading Constitutional Courts and acting as Chief Justices.⁵² Despite the fundamental increase of women in judiciary, the ratio of women to men is still unequal.⁵³ Women are generally underrepresented in superior courts of record with only about 40% of female judges mostly in the lower courts.⁵⁴

It is generally understood that increasing women’s representation in the judiciary will enhance judicial independence, increase trust and improve gender-sensitive decision making, thereby reducing patriarchal biases in the continent. Some countries have provided constitutional guarantees to which has resulted in the increased gender representation in the judiciary.⁵⁵ For example, article 174(2) of the 1996 South African Constitution provides for gender balance in

⁴⁹ Women Representation in the Judiciary has come a long way but remains far from equal. (2023) <https://thecommonwealth.org/news/blog-womens-representation-judiciary-has-come-long-way-remains-far-being-equal>

⁵⁰ Judith Holihasinirina, Public Perception of Statutory Independence and the Role of International Organisations in Promoting Judicial Independence in Madagascar. Vol.15 No.1 (2024)

⁵¹ UNDP, Women in Justice in Africa; A Comparative Study of Women Judges in 14 Countries. (2023)

⁵² Ibid.

⁵³ In South Africa according to Gender Matter as of 2021 41.5% women are judges. What does the South Africa’s Judiciary look like? (2021) <https://www.judgesmatter.co.za/opinions/what-does-south-africas-judiciary-look-like/>. While in Zimbabwe women make up about 44.7% Court Watch 07-2024 Gender Balance in the Judiciary (2024)

⁵⁴ United Nations Development Programme ‘In Africa, women judges improve trust in courts, bring justice to the less privileged and empower women and girls, June 6, 2023, available online <https://www.undp.org/news/africa-women-judges-improve-trust-courts-bring-justice-less-privileged-and-empower-women-and-girls> (accessed 25 August 2025).

⁵⁵ Article 174(2) of the 1996 South African Constitution (1996)



judicial appointments. Despite constitutional provisions in most African countries and the increased representation of women mindset change it is still critical.⁵⁶

The under representation of women in superior courts can in turn result in gender-based discrimination. African societies are generally still very patriarchal especially in how they view the role of the women in public spaces and leadership. For instance, the performance of women judges is also viewed through a gendered lens. In Seychelles a former Chief Justice Twomey had to endure gendered bias both externally the public⁵⁷ and internally by fellow judges. Equal representation of both men and women allows mindset shifts which enable increased independence of women. While this issue presents itself as numerical equality it is a contemporary threat to judicial independence if half of a community is not representative and is scrutinised through patriarchal frames and persecuted on the basis of their sex.

4.2 Persecution of Women Judges

The persecution of women judges on the continent is a persistent and multilayered challenge. Women Judges are targeted through state formalised mechanisms which undermine judicial independence, gender equality and the rule of law.⁵⁸ Women judges have been targeted through state established tribunals, disciplinary proceedings⁵⁹, transfers or dismissals.⁶⁰ There have been instances where female judges have been targeted based on their gender.⁶¹ For instance former Chief Justice Mathilda was targeted where a tribunal was set up with allegation of misbehaviour.⁶² She was the first Seychellois woman to be appointed in this role as chief justice. Women judges face persecution and political attacks because of their impartiality and there has been evidence of selective application of local laws on judicial ethics targeting female judges. For instance, Justice Erica Ndewere in Zimbabwe was controversially fired from the Judiciary in 2021 after she had granted bail to an opposition leader.⁶³

⁵⁶ J Elisa Samuel Boerekamp, When All Laws and Quotas are there, Mindset is what we need to change. (2023) <https://www.undp.org/stories/justice-all-why-having-more-women-judges-benefits-all-society#:~:text=While%20celebrating%20small%20victories%2C%20women.degree%20in%20law%20in%20Uganda>.

⁵⁷ See Constitutional Appointment Authority Report on Judge Durai Karunakaran (n 103), Further analysis on gendered persecution. Justice Mavedzenge; The price They Pay for Their Independence: Understanding the Persecution of Judges in Africa as Retribution for Their Impartiality UNISA Press 2024. Pg 15- 18.

⁵⁸ Witnesses testify in misbehavior case against Chief Justice of Seychelles (2018) <http://www.seychellesnewsagency.com/articles/9515/Witnesses+testify+in+misbehavior+case+against+Chief+Justice+of+Seychelles>

⁵⁹ Suspended High Court Judge In Dramatic U-turn (2020)

⁶⁰ Carmel Rickard, Judge Claims CJ Instructions How Cases must be decided. (2020)

⁶¹ Witnesses testify in misbehavior case against Chief Justice of Seychelles (2018) <http://www.seychellesnewsagency.com/articles/9515/Witnesses+testify+in+misbehavior+case+against+Chief+Justice+of+Seychelles>

⁶² Ibid.

⁶³ Herald 'Justice Ndewere fired' June 17, 2021, available online at <https://www.heraldonline.co.zw/justice-ndewere-fired/> (accessed 25 August 2025). See also S v Job Sikhala HMA 04-20 CRB 04-20. The opposition leader was arrested after having organised nationwide anti- government protests.



Another case in point that demonstrates both internal and external persecution of women Judges was the case of former chief Justice Twomey. The area of gender-based persecution especially of women Judges requires an in-depth study to examine the different manifestations of gendered based persecution of judges from the appointment process to the allocation of cases and critically examining aspects of workplace and sexual harassment.⁶⁴

The persecution of women judges takes on various forms such as threats, physical intimidation, sexualised attacks and smear campaigns. For instance, in the case of former Chief Justice Twomey where she had to endure misogynistic remarks against her, in which he alluded to the fact that she was an example of frailty of modern women.⁶⁵

The persecution of women stems from patriarchal attitudes and sexism that is deeply embedded in gender biases. The persecution of women judges is systematic grounded in well-orchestrated structural discrimination that is might to undermine the judicial independence of women judges in Africa. Persecution of women judges has been well documented by the Special Rapporteur on judicial independence. It is therefore critical to start documenting these cases to safeguard women judges and as a result protect judicial independence. Comprehensive research needs to be undertaken that focuses on the impact of threats on judicial independence especially as it relates to women judges.

4.3 Social Media and Independence of the Judiciary

Social media presents fundamental challenges to judicial independence. It is a powerful communication tool that has transformed society and judges are no exception.⁶⁶ social media has closed the gaps between judiciary and the public. It has drastically transformed the spread at which information is shared, communicated and received and perceived.⁶⁷ While there are positive benefits of social media in amplifying the activities of judges after rulings or judgments, it can ensnare and endanger the courts and judges.⁶⁸ For instance judges have had to deal with misinformation and doxing of judges, which aspects have gravely compromised judicial independence.

While social media presents opportunities for visibility bridging the gap between courts and the public, how it also presents serious threats to judicial independence. Social media platforms such as Facebook and X have been used to intimidate, cyberbully, and target judges and harass them,

⁶⁴ The report of the special Rapporteur urges states to adopt clear and safe procedures for women judges and prosecutors to report acts of violence or sexual harassment. Participation of women in the administration of justice 2021A/76/142

⁶⁵ Justice Mavedzenge; The price They Pay for Their Independence: Understanding the Persecution of Judges in Africa as Retribution for Their Impartiality UNISA Press 2024. Pg 15- 18.

⁶⁶ UNODC, The Use of Social Media by Judges (2018)

⁶⁷ Douglas Kwame, The Influence of Social Media on Judicial Independence Vol. 4, Issue No.1 49-61 (2024)

⁶⁸ Nathanel J. Mitchell, Judge 2.0: A New Approach to Judicial Ethics in the Age of Social Media. Utah Law Review: Vol. 2012: No. 4, Article 8.



particularly in politically sensitive cases, thereby undermining judicial independence in Africa.⁶⁹ Chief Justice Martha Koome at the opening of the 2025 Judges Colloquium themed ‘digital Transformation, Technology and Law’ - stated that;

“While social media platforms, serve as important spaces for dialogue and information sharing, they have also become arenas where the dignity of judges and judicial officers is undermined. Over the last one year, we have witnessed a worrying and ugly trend of increased cyberbullying, targeted harassment, and orchestrated online campaigns against judges and judicial officers.

The CJ expressed concern that this sustained social media onslaught is not merely a passing wave of criticism but a calculated move to weaken the moral authority of the Judiciary and to intimidate judges into silence or into bending the law to the whims of some nefarious interests. She said:

“These platforms have become conduits for unfounded accusations, half-truths, and outright defamatory allegations intended to sow doubt and delegitimize judicial decisions. Such attacks are not merely directed at individual judges but are calculated to corrode public confidence in our entire system of justice.”⁷⁰.

Doxing is a strategy used by bloggers to share private information about Judges which gravely undermines judicial independence. For instance, when the President of Tunisia sacked 57 judges, that spoke up against his actions.⁷¹ A Blogger sympathetic to President embarked on a defamation campaign by dumping sensitive information about women judges on Facebook.⁷² social media can be used to spread disinformation and propaganda thereby threatening the security and lives of judges and their family members.

Social media can also be used to pile pressure and intimidate judges when litigants are dissatisfied with their judgements.⁷³ These platforms can also polarise a country along ethnic lines when judicial pronouncements do not favour a particular ethnicity. Furthermore, social media can be used to amplify gender based unwarranted attacks on female judges. In African countries where digital literacy is very low, false and unverified social media contents can be used against the judiciary with dire consequences if left unchecked or unmitigated. While social media is a powerful tool for communication, it has been used to attack judges as a coordinated strategy aimed at eroding judicial independence and undermine the whole justice system.

⁶⁹ CJ Koome, UN Cites cyberbully as a threat to judicial independence. <https://judiciary.go.ke/un-cites-cyberbullying-as-a-threat-to-judicial-independence-cj-koome/>

⁷⁰ CJ Koome, UN Cites cyberbully as a threat to judicial independence. <https://judiciary.go.ke/un-cites-cyberbullying-as-a-threat-to-judicial-independence-cj-koome/>

⁷¹ Reuters, Tunisian president purges judges after instituting one-man rule (2022)

⁷² Access now, how online doxxing is endangering women judges in Tunisia (2023) <https://www.accessnow.org/how-online-doxing-is-endangering-women-judges-in-tunisia/>

⁷³ The Influence of Social Media on Judicial Independence



5.0 Conclusion and Recommendations

Judicial independence in Africa faces significant challenges, characterized by executive overreach, political persecution, and systemic issues like underfunding and corruption. Judicial independence at the national level involves two types of independence, namely institutional independence and decisional independence. Institutional independence refers to the ability of the judiciary to remain independent of the Executive and Legislature in its activities. However, decisional independence means that judges should decide cases solely on law and facts avoiding influences from external factors like politics, media and pressure from power brokers.⁷⁴

Judicial independence at the national level is a mixed bag. An overview of the legal framework in most of the states examined shows a robust legal framework for the independence of the judiciary. However, political will to drive the implementation is lacking in several countries. In addition, politicians have found ingenious ways of circumventing the law to achieve their aims of destabilizing the system to achieve selfish aims of political survival.

This research has clearly identified the following as key challenges and threats to judicial independence in Africa. These include political interference; corruption; lack of judicial financial independence; weak institutional framework; threats to judicial safety; low public perception and lack of trust; colonial legacies and structural issues; and executive overreach and weak rule of law

It can be concluded that judicial independence in Africa is under threat from executive interference, underfunding, corruption, and persecution of judicial officers. While countries like Kenya show progress through constitutional reforms and judicial courage, others like South Sudan and Uganda face severe challenges due to authoritarian control.⁷⁵ Regional efforts, such as those by the AJJF, EACJ, and ACHPR, alongside training initiatives like the AJEN, offer pathways to strengthen judicial autonomy. However, sustained reforms, transparent appointment processes, and robust civil society support are essential to ensure judiciaries can uphold the rule of law and democratic governance.

The study found the existence of executive interference and political influences, during judicial appointments, which clearly compromise judicial impartiality. It was noted that in most of the countries, the president has the power to appoint and fire members of the highest judicial officers of the country which can lead to abuse of office if not well managed.

The study found evidence of corruption, internal pressures, and retaliation against judges which affects judicial integrity and independence in different parts of the continent. This has

⁷⁴PLO Lumumba and Luis Franceschi *The Constitution of Kenya, 2010: An Introductory Commentary* (2014) Nairobi Strathmore University Press, 477. See also Alnashir Visram 'Roles and Responsibilities of the Courts under the Constitution of Kenya 2010' available online at <https://new.kenyalaw.org/akn/ke/doc/article/2011-01-01/the-role-and-responsibility-of-the-courts-under-the-constitution-of-kenya-2010/eng@2011-01-01> (accessed 7 July 2025).

⁷⁵ Daniel R Ruhweza 'Judicial financial independence in Uganda: An analysis of the law and practice' in Conrade Bosire (ed) *Judicial and Financial Independence in Africa: A Study of Eleven Sub-Saharan Countries*, 125.



exacerbated the issue of the cost of justice as bribery is paid by some litigants to obtain favourable judgments.⁷⁶

The study found that most judiciaries in the continent are not financially independent which has a negative impact on the financial, institutional, and public perception factors on judicial autonomy and legitimacy? This is because the dependence on funding from the Executive, limits the ability of the judiciary to function as an independent entity.

The study also noted that colonial legacies, traditional justice systems, and modern reforms including technology and professional development shape judicial independence in Africa. This is because most of the countries have not embraced digital technology to improve service delivery. In addition, traditional justice systems are relegated to the back door as archaic and not fit for purpose while dominance of colonial legacies is very domineering in the administration of justice in sub-Saharan Africa.

From the foregoing, the study makes the following recommendations:

A. For Legislatures in Africa

1. There is a need for constitutional and legal reforms necessary through the establishment of transparent, merit-based processes for judicial appointments, discipline, and removal, modeled after systems in some African countries like Kenya and South Africa.⁷⁷
2. Financial autonomy is needed for the judiciary in different African countries. It is therefore argued that granting judiciaries control over their budgets to reduce executive leverage is a key way to judicial independence in Africa.⁷⁸ However, it is also important that African judiciaries with financial independence should operate on the principles of accountability and transparency in the utilization of funds.

B. The Executive Arm of Government

3. The need for continuous capacity building is inevitable for the judiciary in view of technology advancements, increase in workloads and recent legal developments that are reshaping different legal systems in the continent. Increase in training for judicial officers and staff to enhance professionalism and resilience against external pressures is highly recommended.⁷⁹

⁷⁶ Africa Judicial Independence Fund ‘The State of Judicial Independence in Africa – Key Findings from a Landscape Scan’ March 2024, available online at <https://ajif.online/wp-content/uploads/2024/07/The-State-of-Judicial-Independence-in-Africa-AJIF-report.pdf> (accessed 11 July 2025).

⁷⁷ African Judges and Jurists Forum ‘Report on the State of Judicial Independence in West Africa: Contemporary Threats, Challenges and Mitigation Strategies Webinar’ 25 April 2024, available online at <https://africajurists.org/report-on-the-state-of-judicial-independence-in-west-africa-contemporary-threats-challenges-and-mitigation-strategies-webinar/> (accessed 11 July 2025).

⁷⁸ Ibid.

⁷⁹ CEELI Institute ‘Strengthening Africa’s Judicial Independence’ 4 January 2024, available online at <https://ceeliinstitute.org/news/strengthening-africas-legal-training-capacity> (accessed 5 July 2025).



4. There is a need to strengthen institutions in charge of the judiciary. This means there is a need to empower independent judicial regulatory bodies, including non-judicial members, to oversee appointments and discipline thereby insulating the judiciary from the clutches of politicians and excessive control from the Executive arm of government.⁸⁰

C. Civil Society Organisations and Donor Community

5. Constant public awareness and advocacy on judicial independence in the continent is very important. It is important that citizens are educated on their legal rights and court procedures and processes are simplified to boost public trust and engagement with the judiciary.⁸¹

6. The need to enhance civil society engagement on the independence of the judiciary in Africa is important. Organizations like the AJJF, West African Bar Association (WABA), Pan African Lawyers Union, Southern Defenders Advocate for Judicial Reforms, Coalition for an Effective African Court and Afrobarometer's Africa Judicial Independence Fund, etc. advocating for reforms and supporting judicial officers should have a consortium to galvanise continental advocacy on the need for judicial independence in Africa. The use of advocacy, research and public interest litigations should be encouraged and enhanced by civil society actors in the continent.

D. African Union and Regional Systems

7. Regional and international oversight on the independence of the judiciary in the continent is important. It is therefore necessary to engage bodies like the UN Special Rapporteur on the Independence of Judges and Lawyers and the African Commission on Human and Peoples' Rights Focal Point on the Independence of the Judiciary in Africa to address violations.⁸²

8. There is a need for effective legal remedies from regional judicial institutions like the African Court on Human and Peoples' Rights, the ECOWAS Community Court and the African Commission on Human and Peoples Rights which provide platforms to promote judicial standards, though enforcement remains weak.⁸³

⁸⁰ African Judges and Jurists Forum 'Report on the State of Judicial Independence in West Africa: Contemporary Threats, Challenges and Mitigation Strategies Webinar' 25 April 2024, available online at <https://africajurists.org/report-on-the-state-of-judicial-independence-in-west-africa-contemporary-threats-challenges-and-mitigation-strategies-webinar/>(accessed 11 July 2025).

⁸¹ Roland George-Omeni 'Africa's Judicial System: Opportunities and Challenges 18 November 2024, available online at <https://www.africanleadershipmagazine.co.uk/africas-judicial-system-opportunities-and-challenges/>(accessed 10 July 2025).

⁸² African Judges and Jurists Forum 'Report on the State of Judicial Independence in East Africa: Contemporary Threats and Mitigation Strategies Webinar, 1 February 2024, available online at <https://africajurists.org/report-on-the-state-of-judicial-independence-in-east-africa-contemporary-threats-and-mitigation-strategies-webinar/>

⁸³ Roland George-Omeni 'Africa's Judicial System: Opportunities and Challenges' 18 November 2024, available online at <https://www.africanleadershipmagazine.co.uk/africas-judicial-system-opportunities-and-challenges/>(accessed 10 July 2025).



9. There is need to highlight best practices at the national level by regional institutions to enable peer-learning among different government judiciaries across the continent

Judicial independence in different parts of Africa is under strain from political interference, financial dependence, corruption, and resource constraints. While some countries show progress through reforms, systemic challenges persist across the region. These recommendations focus on legal reforms, institutional strengthening, and public engagement, but their success depends on political will and regional cooperation.

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