



Continental Trends in Electoral Dispute Resolution Architecture.

Paper presentation by Arnold Tsunga¹ at the High-level continental dialogue for electoral stakeholders on strengthening electoral dispute resolution in Africa. 24-26 March 2026, Raddison Blu, Nairobi, Kenya.

Honourable judges, esteemed members of electoral management bodies, and distinguished colleagues

Introduction

Africa does not suffer from a lack of electoral dispute resolution (EDR) systems.

It suffers from systems that are increasingly legalised, but not always legitimised. EDR has increasingly become the final battlefield of elections, and an arena where electoral political legitimacy is ultimately decided. As final arbiters of political power, the judiciary is increasingly seen as the most consequential unelected institution in Africa's electoral politics.

In recent times, one of the key players in catalysing progress with elections are judiciaries and other quasi-judicial and administrative electoral dispute

¹ Arnold Tsunga, a senior executive and civil society leader is the Principal Managing Partner at Tsunga Bamu Law International, the Rule of Law and Elections Advisor at Africa Judges and Jurists Forum and Coordinator of the Africa Electoral Justice Network.

resolution (EDR) mechanisms². Electoral disputes are now an area of emerging common practice³.

Across the continent, disputed elections increasingly culminate in litigation before courts, tribunals, and electoral management bodies (EMBs). The growing judicialisation of electoral politics reflects both progress and strain, progress in the formalisation of constitutional and legal frameworks to resolve disputes, and strain in the capacity of these systems to command legitimacy in deeply contested political environments.

This presentation provides a continental diagnostic of trends in EDR architecture, focusing on three interrelated dimensions: institutional design, prevention mechanisms, and systemic pressures. It argues that Africa does not suffer from a lack of EDR systems; rather, it faces a crisis of credibility, coherence, and preventive capacity.

Institutional Design & Evolution of EDR Architecture in Africa. Architecture is Expanding, But Not Resolving Conflict.

Across Africa, we see more institutions, but not necessarily better outcomes. African countries have progressively constitutionalised and formalised electoral dispute resolution. This has taken several institutional forms,

1. First, **multi-layered systems** combine party-based dispute mechanisms, EMB complaint processes, specialised electoral courts and traditional court systems. These systems aim to absorb disputes early and reduce pressure on apex courts. Multiple entry points along the electoral cycle.
2. Second, **court-centred systems rely** primarily on ordinary courts to adjudicate disputes. These systems benefit from jurisprudential

² <https://kubatana.net/wp-content/uploads/2021/06/IFES-Publication-4.pdf>

³ <https://www.defenddefenders.org/wp-content/uploads/2017/03/EAC-Elections-dispute-Management-and-Resolution-Report.pdf>

continuity but lack specialised capacity in dealing with problems intra and interparty problems that arise within the electoral cycle.

3. Third, **hybrid systems** rely on evolving or ad hoc mechanisms due to fragile or incomplete institutional environments.

While these models differ in structure, they share a common trend: the increasing centrality of legal institutions in resolving electoral conflict.

Pre-Election	Election	Post-Election
Electoral Commission	Electoral Court	High Court
Electoral Court	High Court	Supreme Court
High Court		Constitutional Court

Pre-Election Phase

- *Electoral Commission/Tribunals* - Handle administrative objections and complaints, including voter registration issues, nomination disputes, and other pre-election grievances.
- *Electoral Court* - Specialised court with status equivalent to the High Court. Serves as the principal forum for election petitions. Functions as a quasi-appellate body, reviewing decisions of Electoral Management Bodies in countries such as South Africa, Namibia, and Zimbabwe.
- *High Court/Supreme Court* - Act as courts of appeal and judicial review over electoral processes. Play a preventive role by intervening before and during elections to ensure legality, fairness, and compliance with constitutional and electoral laws. Interpretive authority over electoral law.

Election Phase

- *Electoral Court* - Hears disputes relating to the conduct of elections, including procedural irregularities and complaints arising during polling.

- *High Court* - Exercises concurrent or complementary jurisdiction over disputes concerning the conduct of elections. Maintains a preventive function through urgent applications and interim relief. Provides authoritative interpretation of electoral laws as applied during the electoral process. Interpretive authority over electoral law.

Post-Election Phase

- *High Court* - Plays a corrective role, addressing disputes arising after the election. May hear certain election petitions or related legal challenges depending on the legal framework. Interpretive authority over electoral law.
- *Supreme Court of Appeal* - Serves as the primary appellate forum for electoral disputes from lower courts.
- *Constitutional Court* - Exercises original jurisdiction over presidential election petitions. Provides final and binding determinations on constitutional electoral disputes.

In summary we see

- **More courts** → **not more trust**
- **More laws** → **not more legitimacy**
- **More litigation** → **not necessarily less conflict**

Emerging Systemic Pressures

Africa does not face a deficit of EDR mechanisms; rather, it faces a deficit of credibility, coherence, and preventive capacity in how those mechanisms function under pressure.

There have been misgivings about the outcome of judicial adjudication of some of these electoral disputes. Electoral disputes are not always resolved expeditiously and courts' decisions on such matters are sometimes overtaken by events.

A number of jurisdictions have seen decision of the courts coming after challenged officials have finished their term in office (Zimbabwe and Zambia are cases in point).

There is also the perception of judicial bias in some cases⁴. Increasingly, EDR has become the primary arena for contesting political legitimacy, with elections too frequently extending into courtrooms and quasi-judicial forums. This shift is driven by a range of emerging systemic pressures.

These pressures are not episodic, they are structural.

Judicialisation of Electoral Politics

Courts are no longer peripheral actors. They are now central to the determination of legitimacy of elections⁵. Presidential election petitions in countries such as Kenya (2017, 2022), Malawi (2019, 2020), Nigeria (2023), Zimbabwe (2018) illustrate the extent to which judicial decisions now shape, and in some cases determine, the final outcome of electoral processes.

We also saw the Court in Senegal being required to order the holding of elections where the Executive and the EMB will have preferred for elections to be postponed in 2023.

In 2013, the SADC Heads of state had recommended that the political situation in Zimbabwe was delicate and that elections needed to be postponed to allow for elections to be held in accordance with the new 2013 Constitution for greater credibility, but the Court in Zimbabwe ordered that elections be held in 2013.

⁴ Nkansah, Lydia. (2015). Dispute Resolution and Electoral Justice in Africa: The Way Forward. SSRN Electronic Journal. 41. 10.2139/ssrn.2788394.

⁵ International IDEA, Electoral Justice Handbook

This resort to the courts, in many respects, is a sign of progress. It reflects the growing acceptance of law as a means of resolving political conflict. But it also introduces profound risks.

When courts become the final arbiters of power, they are inevitably drawn into the political arena.

And this creates a difficult dual role:

The judiciary is no longer only a legal adjudicator, it is also a guarantor of democratic legitimacy.

This duality places enormous pressure on courts, on judges, and on the integrity of the institutions society relies on for the rule of law and separation of powers.

Ultimately judicialisation reflects a paradox: stronger legal systems, but more contested outcomes.

Political Pressure

Judges and judicial institutions especially in the electoral context operate in environments fraught with tension, where their decisions may have profound implications for political stability and power dynamics⁶. Political and executive pressure manifests itself through;

- Control over judicial appointments and the leadership of EMBs, if the appointment process is unsound, unfit persons will be elevated to the bench. Unfit judges are unlikely to enhance the independence of the judiciary⁷.

⁶ https://ajif.online/wp-content/uploads/2024/07/The-State-of-Judicial-Independence-in-Africa-AJIF-report.pdf?utm_source=chatgpt.com

⁷ <https://www.zlhr.org.zw/wp-content/uploads/2021/02/An-Analysis-of-Judicial-Selection-and-Appointments-in-Zimbabwe.pdf>

- Lack of judicial financial independence (thankfully SEACJF and AEJN ably assisted by Dr Bosire are trying to deal with)
- Strategic use of litigation by actors to influence particular outcomes⁸.
- At the same time, constraints on civic space, including the intimidation of litigants, lawyers, legitimate opposition (Tundu Lisu is a case in point in Tanzania), and observers, and restrictions on civil society participation, undermine access to justice and accountability.
- Technological and evidentiary challenges further complicate dispute resolution, particularly in relation to electronic transmission of results and biometric systems, AI and its impact on electoral justice (that AEJN/YIAGA are dealing with) are areas where courts often lack the technical expertise required for effective adjudication.

These issues are compounded by information disorder, where disinformation erodes both electoral credibility and public trust in judicial institutions.

Institutional Design Trade-offs

EDR systems across Africa are shaped by a set of recurring institutional trade-offs that influence both their effectiveness and legitimacy.

A central tension lies between speed and substantive justice, as constitutional timelines, often requiring presidential petitions to be resolved within 7 to 21 days, can constrain courts' ability to, test evidence, hear witnesses, and fully interrogate complex issues or even write reasoned judgements.

There is also the trade-off between access to/locus in the courts and the evidential thresholds needed to get substantive justice.

⁸ Ahlhaus, Svenja. 2025. "Strategic litigation as a challenge for deliberative democracy." *American Journal of Political Science* 1–16. <https://doi.org/10.1111/ajps.12981>

In many jurisdictions the Courts expect a litigant challenging elections to prove not just an irregularity, but that, such irregularity substantively affected the results.

Similarly, the balance between finality and accountability is evident in systems where apex court decisions are not subject to appeal, raising concerns about the adequacy of error correction and or perceptions of fairness.

In the final analysis, speed is **crowding out justice**, evidential thresholds and other procedural technicalities **are trumping substantial electoral justice**, finality is **limiting accountability**, and centralisation is **reducing accessibility**

The Credibility Gap

One of the most significant concerns across Africa is the persistent disconnect between legal sophistication and public trust in EDR systems. Across the continent, judicial outcomes are increasingly contested, not because law is absent, but because trust is fragile. This results in contested election outcomes notwithstanding decisions of the courts in dealing with electoral disputes.

Credibility depends less on the mere existence or complexity of formal mechanisms and more on how those systems are perceived in practice, particularly in terms of institutional independence⁹. Where these elements are weak or absent, even legally sound and procedurally correct decisions may struggle to command public acceptance, ultimately undermining the legitimacy of the electoral process itself.

⁹ Cowling, M. C. (1992). The distinction between actual and perceived judicial bias — a recent judicial observation. [Journal Title], [Volume]([Issue]), 142. https://doi.org/10.10520/AJA02586568_172

For example Nigeria, Zimbabwe, Siera Leone and DRC have sophisticated EDR systems that are severely mistrusted while Malawi, Kenya and Ghana have simpler EDR processes but these are seen as more credible by the people of those states.

People do not accept decisions merely because they are legal, they accept them because they trust the institutions that make them like Malawi, South Africa, Kenya, Senegal, Namibia, Mauritius, Seychelles. Countries like Zambia, Kenya, and Siera Leone have lately been taking steps to improve procedures and public confidence in EDR processes. It is important to document and publicise such efforts.

The Core Problem – The Prevention Deficit

Africa's electoral justice systems are designed to resolve disputes but not to prevent them. By elevating the importance of the role of the courts in protecting the integrity of Africa's elections, Africa has over-engineered adjudication and under-invested in prevention.

Across much of Africa, EDR systems remain litigation-heavy but prevention-light, with a structural imbalance that favours post-election adjudication over pre-election dispute management.

While stronger systems in countries such as Kenya and South Africa incorporate elements like internal party dispute mechanisms, interparty political liaison committees, accessible EMB complaint systems, and transparent results management processes, these features are not consistently replicated across the continent as countries are at different stages of democratic development.

As a result, the effectiveness of EDR depends less on formal legal design than on trust in institutional neutrality. Although there is a clear regional trend toward the increasing legalisation of electoral conflict, this has not always translated into greater public trust. That is why I am very pleased with efforts

by some jurisdictions such as Zambia, Kenya, Sierra Leone to take concrete measures to inspire public confidence and trust in EDR.

Instead, a key tension has emerged between expedited timelines and meaningful merits review, while the deeper structural weakness lies in the underdevelopment of preventive mechanisms.

The regional trajectory is therefore not simply one of “more courts” or “more petitions,” but rather a widening divide between systems that combine credible pre-election prevention with effective post-election adjudication, and those that rely predominantly on late-stage crisis litigation.

The most effective and trusted systems tend to integrate several core features: a credible and independent EMB, robust pre-election complaint pathways, well-prepared or specialised adjudicators, timelines that are efficient yet allow for substantive review, and sufficient civic space for participation, observation, and legal challenge without intimidation.

Where these elements are absent, disputes often crystallise late particularly in parts of Central, West, and North Africa placing excessive pressure on courts to resolve highly politicised conflicts under constrained conditions.

This imbalance ultimately undermines both the efficacy and legitimacy of EDR systems across the region and affects the legitimacy of outcomes following democratic elections.

This may explain why coups happen in some countries following elections. A popular coup or unconstitutional change of government happened in Gabon notwithstanding that this happened shortly after elections where the deposed president was announced the winner in landslide victories.

In ending let me reiterate that the AU has adopted positive legal and policy framework that governs democratic elections¹⁰ that AU member states have domesticated into local legislation governing elections. In pursuit of these democratic ideals many AU members states have built electoral dispute resolution systems that are legally sophisticated but unfortunately politically fragile. More needs to be done

Conclusion and Recommendations:

Over the past two decades, we have witnessed a remarkable expansion of electoral dispute resolution frameworks across the continent. Constitutional courts, electoral tribunals, specialised courts, and EMB complaint mechanisms have become standard features of our democratic architecture.

Yet, despite this institutional growth, electoral disputes continue to escalate into political crises, public mistrust, and contested legitimacy.

What needs to be done?

I therefore propose five imperatives for reform for discussion and further elaboration during the conference

1. Rebalance from post-election adjudication heavy EDR towards prevention. Courts are not election crisis managers
2. Design EDR for credibility, not just legality
3. Strengthen judicial capacity (especially in technology and new areas of knowledge like Judicial Oversight over Impact of AI in Africa's Elections for example utilising the AEJN/YIAGA tool)
4. Protect Judicial institutional independence including in the appointment process as well as judicial financial independence.
5. Build public trust in EDR and relevant institutions deliberately

¹⁰ AU legal and policy framework governing democratic elections include the African [Charter on Human and People's Rights](#), the [African Charter on Democracy, Elections and Governance](#) among others.

Courts are not designed to manage political conflict at scale, They are designed to adjudicate legal disputes. The purpose of EDR is not only to decide disputes but to resolve them in a way that sustains democratic legitimacy.

Thank you.