The Judiciary and the Rule of Law in Africa
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Summary and Keywords

In a liberal conception of democracy, courts play an important role in facilitating the rule of law by controlling the abidance to rules and by holding the political branches of government accountable. The power of constitutional review is a crucial element for exercising horizontal accountability. Courts across Africa are vested with the power of constitutional review, and, generally speaking, their independence has substantially increased since the beginning of the 1990s—even though African courts enjoy overall less independence than the global average for courts’ independence.

Within the African region, the level of judicial independence varies widely, between contexts that rarely allow judicial independence and contexts where courts have more power to challenge the government. Furthermore, across the continent, African courts experience undue interference—which frequently takes place informally. Informal interference can occur through the biased appointments of judges, verbal and physical threats, violent attacks, the payment of bribes, or the ouster of sitting judges. Informal networks—held together by ties based on shared educational trajectories, common leisure activities, religion, kinship relations, or political affiliations—are the channels through which such pressure can be transmitted. Yet judges also can actively build informal networks: namely, with the legal community, civil society, and international donors, so as to insulate themselves against undue interference and to increase institutional legitimacy.

Research has shown that the agency of judges and courts in signaling impartial decision-making, as well as in reaching out to society, is crucial to constructing legitimacy in the African context. In contrast, the explanatory power of electoral competition as an incentive for power holders to support judicial independence is not straightforward in the context of Africa’s political regimes, where the prospect of losing office is associated with financial, and in some cases even physical, insecurity. However, research on judicial politics in Africa is still only preliminary, because the field requires more comparative studies in order to fully reveal the political repercussions on Africa’s judiciaries as well as to delineate the scope conditions of the prominent theories explaining judicial independence.

Keywords: judicial politics, judicial independence, courts, political institutions, democratization, constitutional review, informality, sub-Saharan Africa, rule of law, African politics