

VOLUME 02

# Review of African Social and Economic Development

*edited by*

IBRAHIM BÀBÁTÚNDÉ ANOBA



GEORGE  
AYITTEY  
SOCIETY

2025

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# Introduction

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By **Ibrahim Babbatunde Anoba**  
Atlas Network, NIGERIA

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Africa's financial landscape is facing a reduction in capital investment. In 2024, African tech startups received \$3.2 billion in gross funding. While this is a relatively big sum, it is 7% less than the total secured in 2023. The number of unique equity investors has also fallen since 2022.<sup>1</sup> Amid this momentary shortcoming, the United Nations Economic Commission for Africa (UNECA) projects that artificial intelligence and emerging technologies stand to drive unprecedented development transformations on the continent. UNECA estimates these two sectors stand to add around \$1.5 billion to the continent's gross domestic product by 2030.<sup>2</sup> This financial paradox reflects the reality of progress in Africa.

It is a paradox that emanates strongly in the social and judicial landscapes. For example, in the most recent Human Freedom Index, only two African countries—the tiny islands of Seychelles and Mauritius—are ranked among the top 60 free countries in the world.<sup>3</sup> In the 2024 Human Rights Index, only Cape Verde ranks in the top 30 countries with good human rights records, while 12 of the 30 worst countries for human rights are in Africa.<sup>4</sup> However, in the same context, there are 7,432 African civil society organizations in the United Nations Department of Economic and Social Affairs database, which is more than the total number in Asia, Europe, North America, Oceania, Latin America, and the Caribbean combined.<sup>5</sup> Again, this paradox demonstrates that where there is a serious problem, there also lies an opportunity.

This volume of the *Review of African Social and Economic Development* looks at progress on the continent through the lens of financial sustainability and the pursuit of modernity in relation to law and peaceful coexistence. Although the chapters in this volume follow either of these lenses in the form of sections, the problems and solutions they each present speak to the same realities. Authors in Part I (Innovations, Entrepreneurs, and Post-Independence Financial Systems) look at the discontents in the evolution of financial institutions across the continent since the independence wave of the mid-twentieth century. They agree that African entrepreneurs, especially startups and small businesses in the informal economy, have gained less from the dividends of lib-

1 “2024 Partech Africa Tech VC Report: With US\$3.2B Raised, African Startups Show Resilience Despite 7% Drop in Funding,” *Partech*, 22 January 2025, <https://partechpartners.com/news/2024-partech-africa-tech-vc-report-with-us32b-raised-african-startups-show-resilience-despite-7-drop-in-funding>.

2 Giuseppe Renzo D'Aronco, “Artificial Intelligence in African Economic Development Potential and Challenges to Overcome,” United Nations Economic Commission for Africa, 2024, <https://repository.uneca.org/entities/publication/edc195e4-08b2-425c-bae3-532e4ddff71e>.

3 Ian Vásquez et al., “The Human Freedom Index 2024: A Global Measurement of Personal, Civil, and Economic Freedom,” Cato Institute, 2024, <https://www.cato.org/sites/cato.org/files/2024-12/2024-human-freedom-index.pdf>.

4 “Human Rights Index, 2024 (V-Dem),” Our World in Data, accessed 13 August 2025, <https://ourworldindata.org/grapher/human-rights-index-vdem>.

5 “Integrated Civil Society Organizations System,” United Nations Department of Economic and Social Affairs, accessed 13 August 2025, <https://esango.un.org/civilsociety/login.do>.

eralization. Contributors suggest that strengthening the market power of this category of entrepreneurs is critical to Africa's financial progress and the upward financial mobility of often neglected demographics like women and unemployed young Africans.

Part II (Law, Modernity, and Progress in Post-Independence Africa) broadly investigates how the making of legal policies has impacted the progress made across the continent in relation to human dignity, independence of the judiciary, modernity, and inclusivity. These chapters challenge the purpose of law and how it is both a necessity and a hindrance to prosperity. Overall, they agree that the law has largely served the interests of a ruling elite to the detriment of the masses. Contributors suggest that progress, prosperity, and modernity are only attainable if Africa is willing to fix this disparate application of the law.

The first five chapters in the volume constitute Part I. In Chapter 1, Samuel Atiku contends that Africa's enduring formal-informal finance divide constrains entrepreneurial development not merely through restricted credit availability but by structurally shaping access, terms, and developmental outcomes. Although digital innovations like mobile money and fintech credit hold the potential to broaden financial inclusion, their efficacy is contingent upon the alignment of institutional levers, including robust screening technologies, effective contract enforcement, and complementary borrower capabilities. Even technologically sophisticated mechanisms risk reproducing existing exclusions without supportive legal, regulatory, and capacity-building infrastructures. Accordingly, Atiku notes, bridging the finance gap constitutes an inherently institutional project. For example, sustainable entrepreneurial development demands the integrated deployment of digital tools in addition to legal and regulatory reforms.

In Chapter 2, Adeline M. Nembot and Stephane Atangana argue that women entrepreneurs constitute a critical pillar of economic resilience and development in Africa. Yet, structural impediments, including limited access to formal finance, property rights, productive assets, and sectoral opportunities, constrain their full potential. Although microfinance has partially expanded women's access to capital and integrated them into financial systems, it has also largely perpetuated the limitations of post-independence financial architectures, prioritizing scale and repayment over transformative empowerment. Nembot proposes that for women's entrepreneurship to drive inclusive economic growth substantively, microfinance must be reconceptualized as a gender-sensitive developmental finance mechanism, underpinned by comprehensive legal, infrastructural, educational, and regulatory reforms. In this context, institutional interventions become crucial to institutionalize inclusive access and empower African women as sustainable drivers of economic progress.

Richmond Kwesi Ansah's contribution in Chapter 3 looks at how Ghana's financial regulatory architecture exerts a dualistic influence on entrepreneurship. On the one hand, governmental oversight has proven to safeguard entrepreneurs from predatory schemes, enhanced financial inclusion via liberalization and mobile money platforms, and fostered innovation within the banking sector. On the other hand, however, the regulatory framework creates unnecessary roadblocks because it imposes procedural rigidity, fosters politicization, generates high transaction costs, and constrains entrepreneurial agency by limiting equitable access to credit. Kwesi posits that while regulation is essential for market integrity and systemic stability, its design and implementation require recalibration to reduce bureaucratic bottlenecks, depoliticize governance, and ensure parity between public and private actors. Such reforms are imperative to

enable the regulatory system to protect entrepreneurs and facilitate efficient capital mobilization for sustainable economic development.

Henri Kouam Tamto's Chapter 4 reckons that the expansion and development of small and medium-sized enterprises (SMEs) and micro-SMEs in Central Africa are systematically constrained by limited access to formal credit, a condition rooted in structural, regulatory, and informational deficiencies within the banking sector. Conventional credit scoring methodologies and existing credit bureaus inadequately capture the financial behaviors of informal-sector actors, thereby excluding a substantial segment of potential borrowers. The proliferation of mobile money services offers rich, real-time transactional data that can be harnessed to construct more inclusive and precise credit assessment models. Kouam suggests that integrating alternative data sources, enhancing financial literacy, and establishing regional credit guarantee schemes constitute critical institutional innovations necessary to broaden credit access, stimulate micro-SMEs' growth, and advance inclusive economic development within the Economic and Monetary Community of Central Africa.

In Chapter 5, Ajibola Adigun claims that standard assumptions of market rationality—individual autonomy, equitable choice, and spontaneous efficiency—are untenable in post-independence African contexts. He reminds us that markets and digital platforms operate within historical, institutional, and power-laden constraints shaped by colonial legacies, social mistrust, and structural inequalities. As such, economic behaviors among African actors often reflect adaptive strategies rather than pure rationality, which calls for a reassessment of development paradigms that promote deregulation, privatization, and technological innovation.

Chapters 6 through 10 cover Part II. In Chapter 6, Lanre-Peter Elufisan proposes that the realization of justice and inclusive development in Africa fundamentally depends on the establishment of genuinely independent judiciaries. Despite formal constitutional safeguards, persistent executive interference, systemic corruption, weak enforcement mechanisms, and underdeveloped legal frameworks continue to compromise judicial autonomy. This untenable condition has rendered courts susceptible to partisan or executive influence rather than being oriented toward public accountability. Elufisan recommends that to safeguard the rule of law and protect human rights, it is necessary to pursue comprehensive legal and institutional reforms to strengthen civil society oversight and increase engagement by regional blocs.

In Chapter 7, I contend that in postcolonial Africa, foreign legal frameworks have subordinated indigenous judicial traditions, enabling elites to use law as a tool of domination; genuine modernity requires context-specific reforms that prioritize justice, inclusivity, and cultural relevance over procedural formalism or imitation of external models. I suggest that African states should reform laws to prioritize substantive justice and reflect local histories and social realities. Embedding equity, inclusivity, and accountability can limit elite domination, protect marginalized groups, and realize a genuinely modern, contextually grounded legal order.

In Chapter 8, Zakhele Mthembu argues that a property-rights-centered legal order is indispensable for poverty reduction and sustained economic development in Africa. He notes that the weak recognition of private property undermines productive activity and constrains economic output. Realizing the developmental benefits of property rights, the essay contends, requires institutional independence of judicial and security systems, alongside the rule of law. Mthembu reminds us that at regional and continental

tal levels, enforceable legal frameworks that guarantee property rights across jurisdictions are essential to stimulate investment and facilitate durable economic growth.

In Chapter 9, Qosim Suleiman charges that Nigeria's colonial amalgamation entrenched ethnic cleavages that continue to drive unhealthy political competition. It is in this milieu that identity politics has made civic nationalism almost disappear, while reinforcing ethno-regional and religious loyalties in its place. Postcolonial mechanisms such as the federal character principle have institutionalized these divisions, framing state power as an instrument of ethnic dominance. This entrenched factionalism distorts legislative processes, privileging parochial interests over national cohesion and undermining democratic consolidation.

Jude Feranmi Adejuwon argues in Chapter 10 that understanding modernity and human development in post-independence Africa requires that we first reconceptualize prosperity so that it is anchored in Indigenous African knowledge systems, values, and ethical frameworks. Dominant development paradigms, often grounded in GDP-centric and neoliberal metrics, systematically obscure critical dimensions of well-being, including communal resilience, ecological sustainability, cultural vitality, and intergenerational equity. Feranmi further reflects that the integration of education and technological innovation with African epistemologies can enable inclusive and sustainable pathways of development. Genuine progress, therefore, is not reducible to externally imposed indicators but emerges through culturally attuned, socially interconnected, and ecologically responsible approaches that reflect Africa's distinct historical, philosophical, and communal contexts.



PART I

# **Innovations, Entrepreneurs, and Post-Independence Financial Systems**



## CHAPTER 1

# Bridging the Formal–Informal Finance Gap: How Post-Independence African Financial Systems Shape Indigenous Entrepreneurial Outcomes

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By **Samuel Atiku**

Aston University, UNITED KINGDOM

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## Introduction

Nearly sixty years after most African nations achieved political independence, the continent's financial architecture remains sharply divided. On one side sit tightly regulated, collateral-based banks inherited from colonial rule; on the other stand flexible, digitally enabled or relationship-based mechanisms that have emerged to serve cash-constrained local firms. We call this divide the formal/informal finance gap. Because information, regulatory authority, and enforcement power reside mainly within the formal sector, indigenous entrepreneurs face an uneven playing field when raising capital, managing risk, and scaling their ventures.<sup>1</sup>

In economies where land titling is incomplete, bookkeeping informal, and legal redress slow, requirements for collateral, audited statements, or personal guarantees exclude wide segments of would-be borrowers, leaving them unbanked or under-banked.<sup>2</sup> Over the past decade, mobile money, branchless banking, fintech credit, and crowdfunding have been promoted as ways to close that gap.<sup>3</sup> Yet findings are mixed: studies that highlight wider inclusion exist alongside warnings about fresh exclusions, predatory pricing, and persistent gender bias.<sup>4</sup>

Against this backdrop, this study addresses the following question:

*How, and to what extent, does the formal/informal finance gap in post-independence African financial systems influence the opportunities, strategies, and performance of indigenous entrepreneurs?*

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1 Mncube, "Overcoming the Funding Dilemma."

2 Mncube.

3 Coffie et al., "Determinants of FinTech Payment Services."

4 Kim, "Bringing Citizens to the Table"; Brailovskaya et al.

To answer, we synthesize evidence from eighteen peer-reviewed studies published during 2019–2025. Four thematic clusters emerge: (1) legacy collateral and relationship lending; (2) digital credit as a rapid-access safety-net; (3) fintech diffusion and SME uptake; and (4) alternative platforms (crowdfunding, blockchain, and AI-driven credit-scoring). A comparative reading surfaces substantial heterogeneity inside each cluster and several cross-cutting tensions overlooked by earlier reviews.

## Method

A comprehensive search of Scopus, Web of Science, EBSCO Business Source, and SSRN (cut-off date of May 30, 2025) returned 765 records. After duplicate removal, two-stage title/abstract, and full-text screening guided by the PCC (Population-Concept-Context) framework, eighteen unique empirical papers met the criteria: (1) post-independence African setting, (2) indigenous entrepreneurs/SMEs as focal actors, and (3) explicit examination of financing mechanism(s). The selection process followed PRISMA guidelines. A thematic synthesis then grouped findings inductively.

## Conceptual Framing

Two canonical theories help us understand Africa’s finance gap. First, information-asymmetry theory says lenders cut back on credit when they cannot tell good borrowers from risky ones.<sup>5</sup> To protect themselves they ask for high collateral and heavy paperwork, but these rules shut out many small local firms. The second, institutional-voids scholarship,<sup>6</sup> adds a postcolonial twist: weak registries, courts, and credit bureaus raise transaction costs for formal lenders, so informal or relational financing persists.

Digital platforms hold out the prospect of rewriting the rules of entrepreneurial finance by creating new data trails, automating credit assessments, and cutting the time and cost of search. The extent to which that prospect materializes, however, turns on three structural levers that recur throughout the studies reviewed. The first is screening technology: it matters who is allowed to judge credit-worthiness and what kinds of evidence (mobile-money histories, tax filings, social ties) count in that judgement. The second is contract enforcement: digital credit can only outperform its predecessors if repayment terms, collateral seizure, and dispute resolution remain believable to both borrower and lender once transactions migrate online. The third lever concerns complementary capabilities: entrepreneurs still need basic literacy, digital skills, and network connections to convert new financial tools into productive capital. These three levers (screening, enforcement, and capability) provide the lenses through which the empirical findings that follow are interpreted.

## Results

The eighteen studies we reviewed fall into four broad themes: legacy collateral and relationship lending; digital credit as a safety net; fintech diffusion and SME uptake; and alternative platforms (crowdfunding, blockchain, and peer-to-peer credit). A comparative analysis reveals significant variations within each theme and highlights cross-cutting tensions often overlooked.

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5 Akerlof, “The Market for ‘Lemons.’”

6 Khanna and Palepu, *Winning in Emergency Markets*.

## Theme 1: Collateral conservatism, many logics

Several papers confirm that fixed assets still dominate SME credit decisions, yet the rationale changes with local institutions. Survey work in Ghana finds that land titles and fixed-asset pledges still dominate SME loan approvals, despite two decades of financial-sector reform.<sup>7</sup> Entrepreneurs without titled property (often women) report approval probabilities 34 percentage-points lower than peers with deeds. The study also shows that relationship-based “soft information” partially offsets the collateral hurdle: business-owners who interact with loan officers weekly secure higher limits, controlling for asset ownership.<sup>8</sup>

Research demonstrates that linking commercial banks to a national credit-reference bureau raises absolute loan volumes but widens quality gaps.<sup>9</sup> SMEs with prior formal-sector footprints enjoy better terms; newcomers face longer appraisal times because thin files now flag “unknown risk.” Thus, formalization without inclusive data can entrench existing hierarchies.

In Kenya and Tanzania, interviews indicate that slow courts make collateral a compliance shield rather than a recovery device, so lenders keep demanding titles to satisfy auditors.<sup>10</sup> Rigidity is therefore institutional, not technical, and it can soften. For instance, when a South African pilot program accepted geo-tagged shack receipts in place of formal titles, uptake doubled and arrears remained stable,<sup>11</sup> proving that suitable ownership proxies can widen access without new risk.

The cost side is equally context-dependent. Kellaf highlights significant cost implications in West African trade finance, reporting a 21% rejection rate for applications primarily due to expensive Know Your Customer (KYC) checks and collateral verification, disproportionately affecting women-owned exporters.<sup>12</sup> In contrast, in Kenya, medium-sized banks demonstrated that replacing extensive site visits with streamlined relationship lending reduced turnaround time by nearly one-fifth without increasing default rates.<sup>13</sup> This indicates that collateral is not uniformly the most cost-effective screening mechanism across different contexts.

Gender effects also vary. Where asset substitutes such as machinery can be pledged, the male-female approval gap narrows. Yet where land deeds remain essential, as in export trade finance, the gap widens.<sup>14</sup>

The evidence shows that fixed-asset collateral endures because post-independence institutions—courts, audit rules, credit files—still validate property deeds more easily than the alternative data generated in the informal economy; yet whenever those same institutions recognize credible proxies such as geo-tagged receipts, relationship histories, or inclusive bureau scores, lending expands, gender gaps narrow, and costs fall.

Bridging the formal/informal finance gap therefore hinges less on inventing new technologies than on reforming the rules that determine which proofs of creditworthiness count, because it is these rules (not entrepreneurial potential) that ultimately shape whether indigenous ventures gain or lose from Africa’s evolving financial systems.

<sup>7</sup> Gyimah et al., “Lending Methodologies.”

<sup>8</sup> Gyimah et al.

<sup>9</sup> Gyimah et al.

<sup>10</sup> Mncube, “Overcoming the Funding Dilemma.”

<sup>11</sup> Mncube.

<sup>12</sup> Kellaf, “Blockchain in Trade Finance.”

<sup>13</sup> Mncube

<sup>14</sup> Gyimah, et al.

## Theme 2: Digital credit as rapid-access safety net, mixed pay-offs

Across the corpus, mobile-phone loans and instant fintech lines are praised for putting “cash in a click” into the hands of borrowers who would never pass a branch-based appraisal, yet the welfare story is anything but linear. Kenyan panel evidence shows that households granted M-Shwari type loans are 6 to 7 percentage points less likely to skip meals or delay school fees after an income shock, confirming the scheme’s safety-net promise.<sup>15</sup> A second Kenyan study<sup>16</sup> extends the result: while only one in four adults qualifies for formal bank credit, more than half have tapped digital loans, and users report a 0.28-standard-deviation jump in self-assessed well-being three months after first approval. These gains arise because the screening technology relies on mobile-money transaction traces that data borrowers already generate in the informal economy, so collateral and paperwork cease to be binding.

The same design can amplify risk once repayment enforcement is automated.<sup>17</sup> Malawian evidence reveals that late-fee sweeps from linked wallets accumulate quickly; almost a third of clients incur penalties despite holding positive balances, mainly because algorithms trigger deductions before farmers’ monthly sales clear. A low-cost SMS tutorial left default rates unchanged, suggesting that behavioral frictions, not raw information, drive distress.<sup>18</sup>

Ugandan survey evidence from mid-2020,<sup>19</sup> collected at the height of the COVID-19 lockdown, shows that mobile-money cushioned traders and households when cash channels froze, but nearly half the respondents also cited rising network charges as a constraint to continued use; digital liquidity, in other words, buffered COVID-19 shocks only while transaction costs stayed low.

Also, complementary capabilities shape outcomes, too. Kenya’s fintech boom coincides with near-universal mobile-money literacy; in rural Malawi, women with low numeracy were 40% more likely to miss repayment reminders, widening the gender gap.<sup>20</sup> Still, design tweaks can help.

A Randomized Controlled Trial (RCT) in Nigeria<sup>21</sup> found that adding a two-day “grace window” before penalty fees cut delinquency by 17% without lowering lender revenue, demonstrating that gentle enforcement, not harsher collateral, can balance protection and sustainability. This RCT randomly assigned digital loans with varying repayment schedules to participants, directly assessing the grace window’s causal effect on borrower behavior and delinquency rates.

Taken together, the studies show that rapid digital credit does blunt liquidity shocks for indigenous entrepreneurs and households, but its net benefit hinges on how algorithms screen, how repayment rules bite, and whether borrowers possess the know-how to navigate real-time finance. Where those levers align, transparent pricing, flexible grace periods, robust mobile-money literacy, and digital loans narrow the formal/informal gap; where they do not, the same tools can entrench new forms of exclusion even as they expand reach.

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15 Suri et al., “Fintech and Household Resilience to Shocks.”

16 Kim and Duvendack, “Digital Credit for All?”

17 Brailovskaya et al., “Is Digital Credit Filling a Hole or Digging a Hole?”

18 Brailovskaya et al.

19 Bongomin et al., “Contactless Digital Financial Innovation.”

20 Brailovskaya et al.

21 Björkegren et al., “Instant Loans Can Lift Subjective Well-Being.”

### Theme 3: Fintech diffusion, many paths to uptake

Fintech tools spread unevenly across Africa due to distinct interactions among three structural levers: screening technology, contract enforcement, and complementary capabilities. Survey evidence from 407 Ghanaian SMEs<sup>22</sup> shows that adopting mobile money and card-based payment rails increases when factors like chief-executive traits, business resources, and ease-of-use align. Cost, infrastructure, and perceived usefulness are the strongest predictors, consistent with the Technology Acceptance Model (TAM) and the Technology-Organization-Environment (TOE) framework. TAM posits that perceived usefulness and perceived ease of use drive adoption, while TOE considers technological, organizational, and environmental influences on innovation adoption. However, the same study reveals diffusion lags in rural areas with weak power and data networks, highlighting that effort expectancy remains a key “capability” constraint despite the low hardware cost.

The benefits of uptake also vary with market structure. Panel data from nineteen countries indicate that when total alternative credit (bigtech plus fintech) is measured, bank lending falls, suggesting borrower flight to digital upstarts; but when pure fintech credit is isolated, bank lending actually rises, implying complementarity through referral partnerships.<sup>23</sup>

Crucially, the positive spill-over disappears in districts where banks close branches, confirming that physical outlets still anchor enforcement in thin-file markets—screening alone is not enough. New scoring methods promise to loosen that anchor: a South African logistic-regression model built on mobile-network data classifies repayment risk with 90% accuracy, ten points better than bureau models, and explicitly targets borrowers with no formal history.<sup>24</sup> Because the algorithm draws on behavior that entrepreneurs already display—airtime top-ups, M-Pesa flows—it lowers screening costs without new collateral, but its authors warn that privacy regulation must keep pace or data access could become the next exclusion gate.

Taken together, these findings show that fintech diffusion can narrow the formal/informal gap when low-cost data substitutes for collateral and when banks treat digital entrants as complements rather than threats; otherwise, infrastructure bottlenecks and branch retrenchment blunt fintech’s inclusive edge.

### Theme 4: Alternative platforms—crowdfunding, blockchain, and peer-to-peer

Beyond credit, African entrepreneurs are testing platforms that bypass both collateral and lender balance sheets. A cross-country study of 215 reward- and donation-based crowdfunding campaigns during the first COVID-19 year reveals that visual signals (images, videos) and large numbers of backers strongly raise success odds, while high funding targets, long durations, and crisis-era uncertainty push them down.<sup>25</sup> Because campaigns ask for trust without legal enforcement, signaling theory substitutes for hard screening, entrepreneurs who curate rich media and frequent updates overcome information asymmetry more effectively than those who rely on text alone. Yet the overall success rate is low (only 15% of projects in the sample met their goals), showing

<sup>22</sup> Coffie et al., “Determinants of FinTech Payment Services Diffusion.”

<sup>23</sup> Mashamba and Gani, “Upstarts vs. Incumbents.”

<sup>24</sup> Ngwenya, “Credit Scoring in Africa.”

<sup>25</sup> Mamaro and Sibindi, “The Drivers of Successful Crowdfunding Projects in Africa.”

that complementary capabilities such as digital marketing and diaspora networks still act as gate-keepers to access.

Trade-oriented ventures face a different bottleneck: paper-intensive letters of credit. Documentary analysis of Morocco's OCP pilot demonstrates that moving the same paperwork onto a permissioned blockchain cut execution time from three weeks to under two hours and secured US\$400 million in fertilizer exports.<sup>26</sup> Here enforcement shifts from slow courts to tamper-proof smart contracts, so screening logic relaxes and SMEs gain entry without extra collateral, provided they can meet the digital onboarding rules.

Finally, macro panel work shows peer-to-peer credit grows fastest where bank branches are sparse and mobile-money dense, but default rates jump after 180 days, implying that algorithmic screening cannot fully replace human recovery where legal reach is weak.<sup>27</sup>

Altogether, these alternative platforms offer new routes around the formal system, yet their success depends on the same three levers: rich, trusted data for screening; enforceable digital contracts; and user capabilities to navigate novel rules. When those levers align (high-quality media cues for crowdfunding, immutable ledgers for trade finance), indigenous entrepreneurs secure capital faster and on fairer terms; when they do not, platform finance risks reproduce the very gaps they seek to close.

## Discussion

Post-independence African finance operates as a bifurcated field in which formal and informal logics (distinct underlying principles and rationales for financial practice) co-exist but rarely integrate.<sup>28</sup> This split is clearest in collateral practice. Fixed assets are still the default screen, yet their role varies with enforcement capacity. In Ghana, courts function slowly but land registries remain credible, so deeds provide an easy signal for risk committees; entrepreneurs without titles, many of them women, face sharply lower approval odds despite comparable cash flow.<sup>29</sup> In Kenya and Tanzania, titles serve mainly to reassure auditors because litigation is rarely feasible, a point confirmed by interviews with local bankers.<sup>30</sup> Recall that a South African pilot program that accepted geo-tagged shack receipts doubled loan uptake without raising arrears, showing that collateral rigidity arises from institutional habit rather than technical necessity. Costs also differ across settings. West African trade-finance rejections stem from expensive know-your-customer checks that hit women exporters hardest,<sup>31</sup> whereas mid-tier Kenyan banks that trimmed site visits cut turnaround times by one-fifth without extra default.<sup>32</sup> The evidence implies that hard collateral remains king only because courts, audit rules, and credit files still privilege land over alternative proofs of ownership.

Digital credit shifts the screening lever by replacing collateral with mobile-money traces. RCT evidence from Nigeria finds that instant loans lift subjective well-being even though loan amounts are tiny.<sup>33</sup> In Kenya the same model helps households smooth COVID-19 income shocks, yet Malawi data reveal that automated late-fee sweeps can trap thin-file borrowers in rollover debt, a risk that simple SMS training does little to

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<sup>26</sup> Kellaaf, “Blockchain in Trade Finance.”

<sup>27</sup> Mashamba and Gani, “Upstarts vs. Incumbents.”

<sup>28</sup> DiMaggio and Powell, “The Iron Cage Revisited.”

<sup>29</sup> Gyimah et al., “Lending Methodologies and SMEs Access to Finance.”

<sup>30</sup> Mncube.

<sup>31</sup> Kellaaf.

<sup>32</sup> Mncube.

<sup>33</sup> Björkegren et al.

prevent.<sup>34</sup> Digital liquidity offers insurance but only while fees remain transparent and grace periods humane. Information asymmetry thus shrinks, in line with Akerlof's theory of lemons,<sup>35</sup> yet behavioral frictions remain.

Fintech diffusion among established firms shows a similar blend of promise and constraint. Ghanaian SMEs adopt mobile-payment apps when peers demonstrate success, illustrating normative imitation, but only where network reliability and digital skills keep user costs low.<sup>36</sup> A forty-seven-country panel indicates that fintech boosts credit in jurisdictions with stronger consumer protection, whereas banks retreat in weaker environments, leaving unsecured niches to digital entrants.<sup>37</sup> Logistic models built on telco data predict repayment well in South Africa, yet privacy rules will determine whether such tools reach scale.<sup>38</sup> Technology therefore complements formal finance only when regulators orchestrate field-level coordination, consistent with the institutional-voids view that missing intermediaries block market deepening.<sup>39</sup>

Alternative platforms provide partial escapes from the collateral trap. Crowdfunding campaigns succeed when entrepreneurs supply rich media that signal credibility to dispersed backers,<sup>40</sup> substituting narrative transparency for legal guarantees. Nonetheless, language and diaspora networks limit reach, reproducing new digital voids alongside older institutional gaps. Moroccan blockchain pilots cut trade-finance processing from weeks to hours, yet capital controls still bar crypto settlement.<sup>41</sup> Peer-to-peer volumes surge where branches are scarce, but default rates rise after six months because weak courts hamper recovery.<sup>42</sup> Smart-contract logic can streamline paperwork, yet formal law retains ultimate authority, a case of what Scott labels "coercive isomorphism."<sup>43</sup>

Overall, the evidence depicts punctuated rather than linear change. Incremental digital innovations chip away at collateral and information frictions, but deep inclusion requires complementary reforms such as movable-asset registries, unified digital identities and faster commercial courts. Rwanda's collateral-registry rollout offers proof; once courts and registries were synchronized, formal SME borrowing expanded.<sup>44</sup> Without such groundwork, technology reallocates rather than enlarges capital, occasionally entrenching gender bias. Women continue to face weaker property rights and caregiving expectations that shape loan use.<sup>45</sup> Algorithms trained on male-centered data risk reproducing this bias, which underscores that institutional asymmetries are legal, organizational, and socio-cultural all at once.

Comparative cases reinforce these conclusions. In India, the creation of a central collateral registry linked to GST e-invoice data reduced filing times and helped lift SME term-loan growth by over 10% in three years.<sup>46</sup> In Brazil, a rapid expansion of mobile and credit-card lending raised access but also pushed indebtedness to record highs, prompting the 2021 Over-Indebtedness Law.<sup>47</sup> Similar misalignments therefore occur

<sup>34</sup> Brailovskaya et al.

<sup>35</sup> Akerlof.

<sup>36</sup> Coffie et al.

<sup>37</sup> Sanga and Aziakpono, "FinTech Developments and Their Heterogeneous Effect."

<sup>38</sup> Ngwenya.

<sup>39</sup> Khanna and Palepu, "Winning in Emerging Markets."

<sup>40</sup> Mamaro and Sibindi, "The Drivers of Successful Crowdfunding Projects."

<sup>41</sup> Kellaf.

<sup>42</sup> Mashamba and Gani.

<sup>43</sup> Scott, *Institutions and Organizations*.

<sup>44</sup> Gillingham and Buckle, "Rwanda Land Tenure Regularisation Case Study."

<sup>45</sup> Kim and Duvendack.

<sup>46</sup> India, Reserve Bank of, *Report on Trend and Progress of Banking in India*.

<sup>47</sup> Marques and Bertoncello, "Consumer Credit and Over-Indebtedness in Brazil."

outside Africa, yet the colonial legacy and slower regulatory catch-up make the African gap more persistent. Bridging it will depend less on new apps than on re-calibrating the rules that deem which proofs of creditworthiness count, because those rules ultimately shape whether indigenous entrepreneurs benefit from Africa's evolving financial systems.

## Conclusion and Recommendations

This scoping review set out to answer a single question: How, and to what extent, does the formal/informal finance gap in post-independence African financial systems influence the opportunities, strategies, and performance of indigenous entrepreneurs?

Across eighteen recent empirical studies, the gap is shown to do more than limit the volume of credit. It actively shapes who receives funds, on what terms, and with what developmental pay-offs. Three structural levers (screening technology, contract enforcement, and complementary capabilities) run through every financing mode examined. When these levers align, for instance when mobile-money transaction data substitute credibly for collateral and repayment rules remain humane, new mechanisms widen the pool of viable borrowers, cushion shocks, and encourage productive risk-taking. When they fail to align, such as where courts are slow, data are exclusive, or users lack digital literacy, even the most sophisticated platforms reproduce the very exclusions they were designed to erase.

The evidence reframes the goal of bridging the formal/informal finance gap as an institutional project rather than a purely technological one. Incremental digital innovations are necessary but not sufficient; they must be complemented by reforms that recognize diverse proofs of creditworthiness, accelerate dispute resolution, and build borrower capabilities at scale. Only then will Africa's evolving financial architecture consistently translate greater financial access into durable entrepreneurial gains, leading to higher employment, deeper value chains, and more resilient local economies.

For researchers, the review highlights four pressing frontiers (long-run firm outcomes, gender-specific mechanisms, measurable enforcement frictions, and cross-border spill-overs) where new data and study designs can reveal whether the gap is truly closing. For policymakers and financiers, the findings underline a practical mandate: treat digital tools, legal reforms, and capacity building as parts of a single system.

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## CHAPTER 2

# Microfinance and Women’s Entrepreneurship in Africa: Break or Continuity with Traditional Financial Systems Post-Independence?

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## Introduction

Since independence in the late 1950s and early 1960s, significant changes have been made to Africa’s financial systems. These systems underwent major reforms in the 1980s following the introduction of structural adjustment programs (SAPs)—a series of market-oriented economic reforms that often included the liberalization of the financial sector—and in response to the limitations of conventional financial systems.<sup>1</sup> In fact, commercial banks and other formal financial institutions have always remained risk-averse, elitist, and urban-centered; they have often struggled to adequately cater to the needs of women, particularly those working in the informal or rural sectors. To address these issues, many African countries have been struggling to create inclusive financial systems that address the needs of their diverse populations.

Post-independence financial systems were initially influenced by colonial legacies and state-run banking institutions. According to Aryeetey<sup>2</sup> and Demirguc-Kunt et al.,<sup>3</sup> these traditional financial institutions prioritized collateral-based financing and catered mostly to urban, male-dominated commercial firms. As a consequence, they largely excluded marginalized populations and the informal sector, particularly women entrepreneurs in rural communities. Many African countries thus inherited a financial system that focused primarily on financing large companies and local economic elites. However, the main characteristics of these financial systems were the high concentration of banks in Africa’s major cities and criteria for access to credit that were ill-adapted to local socio-economic realities.

It was against this backdrop that microfinance took off on the continent. At first, it took the form of community initiatives, then it was established as formal institutions. The aim of this transformation was to overcome the challenge of financial inclusion. In this context, the advent and rise of microfinance institutions (MFIs) have been heralded as

<sup>1</sup> Otchere and Simbanegavi, “Financial Sector Development in Africa—An overview.” 1–5.

<sup>2</sup> Aryeetey, *The Complementary Role of Informal Financial Institutions in the Retailing of Credit*.

<sup>3</sup> Demirguc-Kunt et al., “The Global Findex Database 2021.”

a turning point in Africa's financial evolution, particularly in addressing gender disparities in financial access and supporting the entrepreneurial aspirations of women.

Entrepreneurship in Africa is characterized by a high representation of women compared to other regions. Nearly 26% of women in Sub-Saharan Africa are involved in entrepreneurial activities. Women entrepreneurs are vital to the resilience of communities, the generation of jobs, and household support. Indeed, recent analysis from development institutions confirms a growing engagement of women entrepreneurs in non-traditional and high-growth sectors across Africa. This trend sees women launching and leading businesses in digital technology and innovative services, such as fintech and edtech.<sup>4</sup> Furthermore, there is a notable push into the renewable energy sector, with identified opportunities in solar, clean cooking, and green technologies.<sup>5</sup> This is in addition to their expanding role beyond subsistence farming into more lucrative segments of agricultural value chains, including processing, logistics, and marketing.<sup>6</sup>

However, most of their activities are in the informal sector, which means that they have little access to conventional financing. In addition to this, there are other constraints that also limit women's entrepreneurship such limited access to property and productive resources, lack of entrepreneurial training and digitalization, and concentration in sectors that are less profitable for traditional financial institutions.<sup>7</sup> Since independence, the emergence of microfinance as an alternative to conventional financial institutions has restructured the African financial landscape. It has encouraged the integration of women into a financial world where they were not sufficiently included. This brief will analyze the similarities and differences between the conventional financial systems that have existed since independence and the microfinance model in Africa, with a particular focus on assessing the impact of the latter on women's entrepreneurship. Specifically, it examines microfinance's effect on women entrepreneurs' access to funding; analyzes how microfinance constitutes simultaneously a continuity and a break with traditional financial systems; and explores innovative experiences and lessons learned from other countries.

## **1. Impact of Microfinance on Access to Finance for Women Entrepreneurs**

In recent years, microfinance has played a crucial role in improving women's access to financial services across Africa, offering an alternative to the traditionally exclusive and male-dominated formal financial systems.

### **Access to Funding and Increased Access to Credit and Savings**

Traditional banks often require formal collateral, fixed employment, and a strong credit history, conditions that many women entrepreneurs, especially in the informal sector, cannot meet. Microfinance institutions (MFIs), however, have introduced collateral-free lending, group-lending models (like solidarity groups), and character-based lending approaches that rely on social collateral.

Over time, the growth of microfinance in Sub-Saharan Africa has made it possible for women to become increasingly financially included. With a rate of over 60%, women

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<sup>4</sup> International Finance Corporation, "The Ingredients Helping Africa's Women Entrepreneurs Succeed."

<sup>5</sup> International Renewable Energy Agency, "Wind Energy: A Gender Perspective."

<sup>6</sup> African Development Bank Group, *Annual Development Effectiveness Review 2024*.

<sup>7</sup> African Development Bank and Economic Commission for Africa, "African Gender Index 2023 Analytical Report."

make up the majority of the clientele of microfinance institutions, despite being under-represented in traditional commercial banks.<sup>8</sup> However, even within microfinance institutions, the amount of loans given to them is still less than that given to men. These differences are more likely to be explained by variations in the characteristics of businesses, such as size, industry, and formality, than by overt prejudice.

MFIs have opened doors to financing for women who otherwise lack collateral, formal employment, or credit histories. Unlike commercial banks, MFIs often use group lending models (e.g., solidarity groups), peer guarantees, and flexible repayment terms tailored to women's realities, particularly in the informal economy. According to its audited annual report for 2022, KWFT (Kenya Women Microfinance Bank) provided services to 199,185 active women borrowers as of December 2022. This figure represents a steady increase over the preceding period, growing from approximately 181,928 active borrowers at the end of 2021 and 160,000 at the end of 2019, demonstrating a clear and consistent growth trajectory in its outreach over time.<sup>9</sup>

## **Expansion of Financial Inclusion**

MFIs have significantly expanded the reach of financial services to underserved populations, particularly women in rural and informal settings. By offering small loans, savings facilities, insurance, and financial literacy programs, MFIs have created an enabling environment for many women to start or expand their businesses. According to the Global Findex Database 2021, more than 40% of African women had access to an account in 2021 at a formal financial institution or through a mobile money service, a significant improvement from just over 20% in 2011.<sup>10</sup> Microfinance is a major contributor to this growth, particularly in countries such as Kenya, Tanzania, and Ghana.<sup>11</sup>

## **Empowerment through Financial Independence**

Access to microfinance services enables women to start or expand businesses, leading to greater autonomy in household decision-making, improved self-confidence, and increased contributions to family welfare. Studies in Ghana and Uganda show that women who access microfinance report higher levels of decision-making power in their homes and increased spending on health and education. For many women, microloans act as a first step into formal financial ecosystems, often leading to greater integration into mobile banking and digital financial services.

## **Promising Innovations and Regional Successes**

Some MFIs and financial innovations are addressing these limitations by combining credit with business support and leveraging digital tools. Digital microfinance via mobile platforms (e.g., *M-Pesa* in Kenya or *Orange Money* in West Africa) reduces transaction costs and increases convenience for rural women.

<sup>8</sup> Taonga and Kueredza, "The Extent of Accessibility of Microfinance Services by SMEs Owned by Women."

<sup>9</sup> Kenya Women Microfinance Bank, *Financial Statements*.

<sup>10</sup> Nandru et al., "Determinants of Digital Financial Inclusion in India."

<sup>11</sup> Demirguc-Kunt et al., "The Global Findex Database 2021."

## 2. Breaks and Continuities with Traditional Financial Systems

### Microfinance as a Break with Traditional Financial Systems

*Democratizing Access to Capital:* Traditional financial institutions generally require physical collateral, credit histories, and formal income statements, which constitute barriers that exclude most African women. MFIs, by contrast, rely on group lending, social collateral, and trust-based models. This innovation has allowed many women, particularly in rural areas, to start or expand small businesses. In this case, joint and several guarantees have replaced physical guarantees.

*Seeking Out Women as Economic Agents:* Unlike banks that focus on corporate or male-led enterprises, many MFIs deliberately seek out women, recognizing their role in household welfare, savings, and reinvestment. Programs such as the Village Savings and Loan Associations (VSLAs) and Grameen-style lending prioritize gender-sensitive financial inclusion.

*Integrating Capacity-Building:* Microfinance models often include entrepreneurship training, financial literacy, and mentorship, which are components absent in traditional banking services. These elements not only improve the viability of women's businesses but also contribute to their autonomy and self-confidence. Collectively, these core innovations—along with greater proximity to remote communities, simplified administrative procedures, and an operational model adapted to small-scale activities—represent a fundamental departure from traditional banking.<sup>12</sup> Yet, despite these innovations, microfinance also perpetuates certain patterns inherited from post-independence and colonial financial systems, thereby limiting its transformative potential.

### Continuities with Traditional Financial Systems

While microfinance represents a clear break from traditional banking in terms of access, its transformative potential is often constrained by its continuation of older patterns of exclusion. The core issue is that microfinance operates within, rather than fundamentally challenging, the broader structural inequalities women face. Therefore, its promise can only be fully realized if it is part of a wider ecosystem of reform, including legal empowerment, access to markets, and social protections. This continuity is visible in several areas:

*Exclusion by Design:* While appearing inclusive, MFIs can inadvertently perpetuate exclusion. Women may gain access to small loans but remain trapped in low-growth sectors,<sup>13</sup> a situation often exacerbated by the short-term nature of micro-credit but fundamentally rooted in pre-existing social norms and market limitations.

*Short-Term, Consumption-Oriented Lending:* Similarly, the observation that many microloans are used for daily needs or emergencies is not just a feature of the loan product but is also an indication of the precarious economic environment in which entrepreneurs operate, where strategic investment is a luxury many cannot afford.

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<sup>12</sup> Abrar et al., "What Makes the Difference?" 759-778.

<sup>13</sup> Kirmani, "The Role of Religious Values and Beliefs." 115-128.

*High Cost of Access:* Despite their social mission, MFIs frequently charge interest rates as high as 30-60% annually, which undermines their developmental potential. These costs constitute barriers erected by formal institutions post-independence, which charged high fees and required prohibitive documentation.<sup>14</sup>

*Instrumentalization of Women:* Both traditional systems and MFIs often treat women as tools of economic stability (e.g., repayment enforcers or community stabilizers), rather than as full economic agents. Group lending models based on peer pressure reproduce social control mechanisms that can stigmatize or overburden women.<sup>15</sup>

Microfinance in Africa has undeniably opened new opportunities for women's entrepreneurship by bypassing some of the rigidities of traditional financial institutions. In doing so, it represents a partial break with post-independence financial systems that marginalized women. However, in many respects, it continues old patterns of exclusion, repackaged under new forms.

### 3. Limitations of the Current Microfinance Model for Women's Entrepreneurship

While microfinance has undeniably increased women's access to financial services, it often falls short of transforming structural inequalities in ownership, opportunity, and economic power. It remains embedded in neoliberal logic that prioritizes financial sustainability over developmental impact. Scholars argue that without a shift in institutional logic and accountability, microfinance will remain a cosmetic improvement on a structurally flawed system.

Furthermore, microfinance has not displaced the formal banking sector but rather operates in its shadow, while serving those whom the traditional systems deem "unbankable," yet without the necessary policy protections or growth trajectories to move beyond micro-survivalism.

Although microfinance has had a definite positive impact in supporting women's entrepreneurship in Africa, there are nevertheless some limitations to its actions:

*The "missing middle":* There is a "missing link" in the financing of small businesses run by women.<sup>16</sup> On the one hand, commercial banks do not finance them because they consider them too small or too risky. On the other hand, microfinance generally offers small loans, which are not enough to enable businesses to grow effectively.

*Identical approach:* Women entrepreneurs are not a homogeneous group in which there is a similarity of sectors of activity, stage of development, or even growth ambitions. However, microfinance offers standard products that do not take this diversity into account.

*Poverty reduction vs. growth:* Many of the programs offered by microfinance focus on poverty reduction, ignoring the growth and innovation potential of women-owned businesses.<sup>17</sup>

<sup>14</sup> Ogunrinde, "The Role of Financial Inclusion in Women's Economic Empowerment."

<sup>15</sup> Sarfo et al., "Perceived Value of Microfinance and SME Performance." 172-185.

<sup>16</sup> Global Entrepreneurship Monitor, "Women's Entrepreneurship Report."

<sup>17</sup> Maldonado-Castro and Montero-Navarro, "Mapping the Intellectual Structure of Microfinance and Women's Empowerment."

## 4. Innovative Experiences and Lessons Learned

Across the continent there are a number of innovative approaches that improve the impact of microfinance on women's entrepreneurship.

The Business Development Fund program in Rwanda, for example, offers a combination of specific credit guarantees for women entrepreneurs, mentoring, and technical training. This program and other initiatives in Rwanda have shown positive results, with a significant increase in access to finance for women entrepreneurs.<sup>18</sup>

In Kenya, M-Pesa, a mobile banking service providing microfinance services, was launched in 2007. The aim was to reduce transaction costs and improve rural women's access to financial services. Since then, an average 20% increase in savings has been observed among users of this service, as well as more investment in their businesses.<sup>19</sup>

Finally, in Senegal, microfinance programs tailored to agricultural value chains where women predominate are showing encouraging results. There have been significant increases in participants' incomes over several years.<sup>20</sup>

All these experiences demonstrate the need for a holistic approach that considers the different contexts and needs of women entrepreneurs.

## Conclusion and Policy Recommendations

In the wake of independence, the financial landscape in Africa has been profoundly transformed by the advent of microfinance, creating new opportunities for women entrepreneurs who did not always have access to the traditional banking system. Microfinance in Africa is less a radical departure from the post-independence financial order and more a continuation under a different name, with a focus on scale, outreach, and repayment rather than empowerment and transformation. Its ability to support women's entrepreneurship is thus constrained by the legacy of colonial and postcolonial financial systems, rebranded through donor-driven, market-based development models.

For real change to occur, microfinance must evolve into a developmental finance system, rooted in gender equity, long-term investment, training, and institutional reform. It must be accompanied by legal, infrastructural, and educational reforms that genuinely empower African women as economic leaders. Our recommendations aim to transform microfinance from an instrument for reducing poverty to a lever for the economic development of women entrepreneurs. To achieve this, a coordinated approach is needed between the various players (regulators, financial institutions, development organizations, women entrepreneurs). Specific recommendations include:

### **Set Up a Pan-African Guarantee and Growth Fund Focusing on Women Entrepreneurs.**

To remedy the “missing middle,” we recommend the creation of a guarantee and support mechanism at the continental level, starting with a US\$500 million guarantee fund. This fund will have public-private governance, with a majority of its members being African women entrepreneurs, and will develop progressive guarantee tickets adapted to the different phases of a company's life (start-up, expansion, consolidation).

<sup>18</sup> Rwanda Development Board, “Annual Report 2022.”

<sup>19</sup> Van Hove and Dubus, “M-PESA and Financial Inclusion in Kenya.” 568.

<sup>20</sup> ACEP, “Sénégal: How Microfinance Is Boosting Small Players.”

This initiative should be led by key players such as regional central banks, the African Development Bank (AfDB), and ministries of finance for institutional leadership, in close partnership with professional associations of African women entrepreneurs for governance and evaluation. We propose a two-year pilot phase in five countries representative of the various regional economic communities, followed by a gradual rollout from the third year based on an impact assessment.

## **Adapting Regulatory and Institutional Frameworks to Financial Inclusion.**

This involves revising prudential standards for women's SMEs and creating national "regulatory laboratories" where innovative financial products will be tested with evaluation periods of twelve to twenty-four months. It will also be critical to mandate "gendered" reports for all financial institutions, with annual publication of indicators on women's financial inclusion.

This transformation must be supported by national financial regulators, regional central banks and finance ministries. The proposed horizon for this is one to four years, moving from regulatory diagnosis to full deployment, including a regulatory reform phase and an implementation period.

## **Foster the Design and Scaling of Gender-Smart Financial Products.**

Beyond institutional funds and regulatory changes, MFIs and banks must be incentivized to innovate at the product level. The proposed "regulatory laboratories" should be mandated to test and validate new models, including:

- **Long-term, growth-oriented loans:** Structuring loans with longer tenures (24-48 months) and grace periods tied to the business cycles of sectors where women are prevalent (e.g., agriculture, light manufacturing), allowing businesses time to generate returns before repayment begins.
- **Asset-based and value-chain financing:** Developing products specifically for acquiring productive assets (machinery, technology) or for financing specific stages of a value chain, moving beyond simple working capital loans.
- **Integrated "Credit-Plus" Models:** Creating loan packages that automatically include non-financial services like technical training, digital literacy, and market linkage support. A small portion of the loan or an associated grant could be earmarked for these capacity-building activities, ensuring they are utilized.
- **Contingency and Insurance Mechanisms:** Building-in small, optional insurance components (e.g., health, crop failure) or an emergency loan facility within the main loan to prevent productive capital from being diverted to household emergencies. This directly addresses the issue of loans being used for non-business needs.

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## CHAPTER 3

# How Post-Independence Financial Liberalization Reforms in Ghana Affect the Financial Freedom and Growth of Ghanaian Entrepreneurs

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## Introduction

*I heard a chime from my phone. It was a WhatsApp notification. When I opened it to read the message, I noticed I had been added to an unknown WhatsApp Group. The name of the group sounded familiar: Beige Foundation. This Foundation awarded me a sum of money for my outstanding academic achievements at the university. I had agreed with the Foundation to invest the money for three years. I travelled to Accra to sign the investment contract documents. I was expecting to have this money, which was invested in Beige Bank, in three years as capital to build my ice cream processing business, which I was piloting on campus. When I read the message, my face dropped. There was bad news. Beige Bank has been dissolved, and it appeared I was going to lose my investment, which I did. This was my first blow in the Ghanaian financial system as an entrepreneur.<sup>1</sup>*

The quote above illustrates how an entrepreneur's dream was adversely affected by the radical reform in the Ghanaian banking sector in 2017. Perhaps a little history may help us understand what led to the radical reform in 2017. In 2010, the World Bank and International Monetary Fund (IMF) assessed Ghana's financial sector and reported that Ghana is not materially compliant with 14 of the 25 Basel Core Principles. The Basel Core Principles are joint IMF and World Bank universal standards for regulating and supervising banking systems.<sup>2</sup> Ghana first adopted the Basel Core Principles in the 1990s when the Ghanaian financial system had been in an abyss, and the government embarked on structural adjustment to aid the recovery of the financial sector and the economy.

The IMF and World Bank introduced the Basel Core Principles in Ghana to tighten regulation of its financial system. They did not contextualize the standards to fit the Ghanaian system; rather, as George Ayittey puts it, they "trotted out a phantom list

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<sup>1</sup> Ansah, Testimony of ACEYE Co-Founder.

<sup>2</sup> Fabiana and Salomao, "2024 Revised Basel Core Principles for Effective Banking Supervision."

of economic success stories”<sup>3</sup> by merely introducing it. The National Democratic Congress (NDC) government, finding the standards incompatible with the Ghanaian financial system, did not implement them during its tenure from 1992 to 2000. The National Patriotic Party (NPP) Government, however, attempted to implement the Basel Principles in 2001 when they took power from the NDC government from 2001 to 2008.<sup>4</sup> This was largely influenced by the fact that the NPP government appointed Bank of Ghana governors and finance ministers who had backgrounds in the Basel Principles because they had worked with the IMF or World Bank.

For instance, Yaw Osafo-Marfo (appointed as the finance minister) was a consultant to the World Bank,<sup>5</sup> and Paul Acquah (appointed as Bank of Ghana governor) was a deputy director at the IMF. Hence, there were tighter regulations in the Ghanaian financial system from 2001 to 2008 when the NPP was in power.<sup>6</sup> When the NDC government took back power from 2008 to 2016, it relaxed the Basel Principles and lessened government regulation. When the NPP government took back power, again, in 2016, they reimplemented the Basel Core Principles. The NPP Government cited that when they took over the administration of the country in 2016, many banks were insolvent, had poor corporate governance, and faced severe liquidity impairments.<sup>7</sup> These banks could not meet the Basel Principles when they were implemented, which led to their collapse, merger with other banks, or acquisition by other banks.

This shows that there is high politicization of the Ghanaian financial system, such that each successive government exercises discretion on how the financial system should run. The incongruent change in regulatory and governance frameworks of the financial system from one political party to another makes it unstable, fluid, and unreliable. Thus, entrepreneurs face high levels of uncertainty and complexities since they are unsure of how the financial system will be governed and regulated by successive governments. Most importantly, since the NDC is back in power, there is uncertainty about what arrangements to govern the financial system.

This raises crucial concerns, particularly concerning the progress or doom of budding entrepreneurs who have insufficient capital. It is common to meet young entrepreneurs with brilliant ideas lamenting that lack of access to funding and poor cash flows. The financial system undoubtedly has a strong hand in every business in Ghana, if not the backbone of every business in Ghana. Therefore, the government’s arrangement of the financial system no doubt has a direct impact on entrepreneurial and economic growth. The dynamics of the economy in general are tied to the effectiveness and health of the financial system in the country.<sup>8</sup> This implies that entrepreneurs’ progress and development are inextricably linked to the robustness, stability, and trustworthiness of the financial system. The Ghanaian financial system, currently regulated by four institutions (see Figure 1), underwent liberalizing reforms following independence. These liberalizing reforms have been unstable and highly subject to the political ideologies of successive parties that have ruled the country, particularly with their views on the need to adopt the Basel Core Principles.

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3 Ayittey, *Indigenous African Institutions*.

4 Owusu-Antwi, “Impact of Financial Reforms on the Banking System in Ghana.”

5 Savage, “Yaw Osafo-Maafu, Please, Are You Still Being Paid as the President’s Senior Advisor?”

6 Jones, “Developing Countries Navigating Global Banking Standards, Ghana.”

7 Tindi and Hinneh, “Digital Media Coverage of the 2017-2018 Banking Crisis.” 1588-1603.

8 Ouedraogo and Sawadogo, “Financial Development, Financial Structure, and Economic Growth.” 3139-3162.

# History of Ghana's Financial System Post-Independence

The Ghanaian financial system has undergone several reforms since the country gained independence in 1957. Although these reforms aimed at improving the financial system, they did not always yield positive outcomes. Therefore, it is important to examine the impediments to the successful delivery of these liberalizing reforms. These reforms have been influenced by the Basel Core Principles, whose implementation has been highly politicised, making it more of a nuisance to the effectiveness of the Ghanaian financial system. In this chapter, I will critically assess how these liberalizing reforms have impacted entrepreneurs, and I will make recommendations on how the financial system could be further strengthened and restructured to promote and support entrepreneurs in Ghana. This endeavour is necessary because the financial system's effectiveness is dependent on policies, governance, regulations, and best practices that are put in place to ensure the smooth and effective movement of money through the economy.

Post-independence, some radical reforms have occurred in the Ghanaian financial system. Notable amongst them are liberalization of interest rates, removal of credit thresholds, introduction of private banking systems, and deregulation of the banking sector.<sup>9</sup> In the next section, I will analyze the events that led to these reforms, from the pre-liberalization era to the liberalization era.

## Pre-Liberalization Era

Before Ghana gained independence, its financial system was controlled by a body of colonial policies that were unfavorable to the citizenry. The banking sector, for instance, was exclusively used for government transactions; interest rates were highly controlled; entry was restricted; financial intermediation was restricted; and credit programs were developed and managed exclusively by the government. The banking institutions at the time were owned by the state, except Barclays and Standard Chartered Bank, which were operating as foreign private banks in Ghana to serve colonial expatriates and a few members of the local elite.<sup>10</sup>

For the first thirty years after independence in 1957, the financial system went through structural reforms with a major focus on fixing exchange rates to enable international trade. This period, which spanned from 1957 to the 1980s, is known as the *Pre-Liberalization Era*.<sup>11</sup> During this period, the government focused on international trade rather than on boosting the local financial system. Hence, the government focused on raising national-level investments by changing investment patterns to state borrowing and offering low-interest-rate loans and credit facilities to the public sector. Deposits taken from private individuals were lent to the state at lower interest rates to boost state investment. The inflation rate began to go up such that depositors lost the value of their money. By 1981, it reached 100%. People lost confidence in the banking sector and abandoned it. Within this period, the domestic financial system was repressed and highly distorted. People were no longer saving in the bank. The banks were no longer liquid because inefficient state investments made the public

<sup>9</sup> Bawumia et al., "Ghana's Reforms Transform Its Financial Sector." 1-4.

<sup>10</sup> Adams and Agbemadie, "Financial Liberalization and Banking Sector Performance in Ghana." 11598-11608.

<sup>11</sup> Ackah and Asiamah, "Financial Regulation in Ghana." 107-121.

sector default on its loan repayments. The financial system took a deep dive. That was when a wave of liberalizing reforms began, aimed at rectifying these anomalies in the financial system.

## Liberalization Era

By 1983, the financial system was in a deplorable state, and the economy at large was in mayhem. The then-Provisional National Defence Council (PNDC) government introduced a comprehensive reform scheme aimed at liberalizing the financial system. For instance, the banking legislation was revised through the passing of the Banking Act 1989, which introduced the Financial Sector Adjustment Programme (FINSAP). FINSAP was targeted at restructuring the banking sector to develop the financial markets and liberalize the financial environment to promote efficiency and prudent credit allocation.

By the end of the 1990s, more private banks were able to enter the financial industry, and interest rates were liberalized, so they varied from bank to bank, although the Bank of Ghana established benchmark rates. The financial system was also sanitized by the adoption of standardized accounting standards, which promoted accountability and transparency. With liberalization, the Ghanaian financial system saw a remarkable improvement. For instance, the economic growth rate increased by 6.7%. Savings and deposits increased, which increased the money-to-GDP ratio by about 100%. The government's involvement was also restricted to oversight activities. The Ghanaian financial system began to prosper.<sup>12</sup> In 2007, new dynamics began to erupt in the financial system. For example, banks introduced ATMs to reduce queues and provided personalized services like mobile banking, internet banking, different investment packages, varied interest-earning savings, different credit facilities, faster cheque clearing, and interbank operability. There was also stronger competition in the financial system. This is illustrated by the fact that new banks entered the banking industry. Ghana's financial liberalization reforms had a major impact on economic performance.

## What Is the Implication of These Reforms for Entrepreneurs?

Despite the liberalizing reforms, every aspect of the Ghanaian financial system is regulated and governed by the central government. This is evidenced by the fact that all four sectors of the financial system are regulated by bodies providing functions such as licensing, setting standards, and setting codes of conduct for practitioners (see Figure 1). The regulatory frameworks established by these bodies undoubtedly provide some benefits for entrepreneurs, but they also create negative consequences that need to be dealt with. Since liberalizing reforms are good initiatives and can be beneficial when implemented well, I will acknowledge the positive impacts they have made so far, before highlighting the bottlenecks stifling these reforms.

### Regarding the positive consequences

First, these reforms have prevented fraudulent schemes from abusing the financial system.<sup>13</sup> Over the years, multiple fraudulent schemes have emerged promising good investment packages to entrepreneurs. These attractive investment returns attract

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<sup>12</sup> Ayittey, *Defeating Dictators*.

<sup>13</sup> Asamoah, "The Impact of the Financial Sector Reforms." 73-84.

entrepreneurs who would want to multiply their capital to start or scale their businesses. Notable amongst these schemes are the cases of MenzGold Ghana, DKM, and so on. The Bank of Ghana issued warnings against these fraudulent entities to make the public aware that they were not approved and that investing with them was risky. The regulatory frameworks have ensured that entrepreneurs can pinpoint legitimate financial institutions and shun fraudulent financial arrangements. Therefore, entrepreneurs who make careful investigations before investing can avoid falling prey to these fraudulent schemes.

Second, deregulation and liberalization have brought competition and innovation to the financial system, allowing entrepreneurs to exercise freedom of choice.<sup>14</sup> When the financial market liberalized, more financial institutions entered the market and intensified competition.<sup>15</sup> The intense competition among banks, financial houses, and stockbrokers has given rise to competitive investment and savings interest rates, and lower borrowing interest rates. These dynamics encourage depositors—both local and foreign—to bring money to the financial system. While depositors receive good returns on their savings, funds are also made readily available for entrepreneurs to access credit and capital loans. Because entrepreneurs get access to loan capital, they can build, run, and scale their businesses.

Third, deregulation has enhanced financial inclusion. Because of the liberalizing reforms, telecommunications firms can provide mobile money services, which have been widely adopted by businesses for quicker and easier transactions.<sup>16</sup> When Ghana gained independence, the financial system was completely controlled by the central government and colonial remnants of the banking system; private firms could not introduce financial payment systems. With reforms and deregulation, which limited the government to oversight roles, entrepreneurs were able to engage in financial transactions through mobile money services and other accessible services such as susu clubs, microcredit, savings and loans, and so on.

Lastly, it relieves oppression from financial institutions, entrepreneurs, and the citizenry. The relaxation of the restrictions in the sector ensures there is openness in trade and efficient consumption of output.<sup>17</sup> The free market determines the equilibrium interest rate, which forces banks to introduce attractive interest rates to borrowers. Moreover, banks can come up with innovative and flexible products such as mortgage plans, staff loans, flexible repayment plans, start-up targeted products, and so on, without much interference from the government.

For example, ABSA Bank Ghana offers a small and medium enterprise (SME) special loan, Bank of Africa offers an SME Support Facility, Unique Bank of Africa (UBA) has an SME working capital facility, and Consolidated Bank of Ghana (CBG) has the SME Smart Loan. ABSA Bank Ghana has even introduced a low-interest rate loan facility for women entrepreneurs, youth-led businesses, and agribusinesses. Ghana Commercial Bank (GCB) has also introduced collateral-free loans for entrepreneurial SMEs. This freedom allows banks to innovate and provide varied and personalized services to entrepreneurs.

<sup>14</sup> Cantah et al., “Bank Competition and Financial Sector Stability in Ghana.” 133-154.

<sup>15</sup> Dadzie and Ferrari, “Deregulation, Efficiency, and Competition in Developing Banking Markets.” 328-340

<sup>16</sup> Antwi, *Bank Reforms, Competition, and Stability in the Ghana Banking Industry*.

<sup>17</sup> Owusu-Antwi, *The Effect of Financial Restructuring on the Degree of Competition*.

## Regarding the negative consequences

On the negative side, the regulation of the financial system has created excessive bureaucracies, which makes it more difficult for entrepreneurs to access credit facilities, especially in rural communities.<sup>18</sup> It also restricts the operations of financial institutions. Although banks have some form of liberty, they are still controlled by the regulatory framework. For example, they have liberty to set the interest rates on loans and savings, but they must fix interest rates around the Bank of Ghana base rate. Also, firms must go through cumbersome processes to be able to list stocks on the Ghana Stock Exchange platform. Entrepreneurs must provide a long list of documents to open a business account or float shares. Another cumbersome procedure is the requirement for signatories to be physically present to sign when opening a bank account. This implies that local entrepreneurs may find it difficult to collaborate with foreign partners to operate a business without the partner being physically present.

Second, the financial system has been politicized, so it sways from one policy to another.<sup>19</sup> The politicization of the financial system also creates the problem of witch-hunting, in which some financial institutions are directly targeted for political reasons. Conversely, other financial institutions enjoy undue privileges.

Third, the regulations and reforms have introduced high transaction costs, discouraging some entrepreneurs from accessing funds. Transaction charges from banks and taxes charged on transactions (for instance, the cost of transaction charges and money transfer taxes) cause financial loss to entrepreneurs.

Lastly, the financial system provides undue advantages to the public sector and relaxes governance and regulation standards for them. For instance, the non-performing loans that crippled the capital base of most of the victimized banks in 2017 were loans granted to the public sector.

## Recommendations

I recommend that the above-highlighted negative consequences of the liberalizing reforms be taken up and addressed as soon as possible.

Regulatory bodies should reduce their level of interference in the Ghanaian financial system and focus on building robust platforms that allow seamless financial transactions within the financial system. For instance, the bank account opening process could be simplified, the process of floating shares could be made shorter, and the Bank of Ghana policy rate should be relaxed.

Moreover, the government could focus on broadening the financial service provision infrastructure to integrate the Ghanaian financial system with other foreign financial systems. For instance, Ghana does not have an effective payment system that allows quick transfer of funds from Ghana to other countries. Although the government implemented the Basel Core Principles in 2017, the financial system has still not been at par with the standards required for credit card systems and remittance transfers from Ghana to foreign bank accounts. This sort of makes the application of the Basel Core Principles “a white elephant” in the Ghanaian financial system. Although transactions can be made to instantly move money from foreign

<sup>18</sup> Sarpong-Kumankoma et al., “Economic Freedom, Competition, and Bank Stability.” 1510-1527.

<sup>19</sup> Gyeke-Dako et al., “Political Business Cycle and Bank Liquidity Creation in Ghana.” 428-446.

accounts to accounts in Ghana, it is still impossible to move money from an account in Ghana to an account outside Ghana, except through the traditional wire transfer and intermediary clearing system.

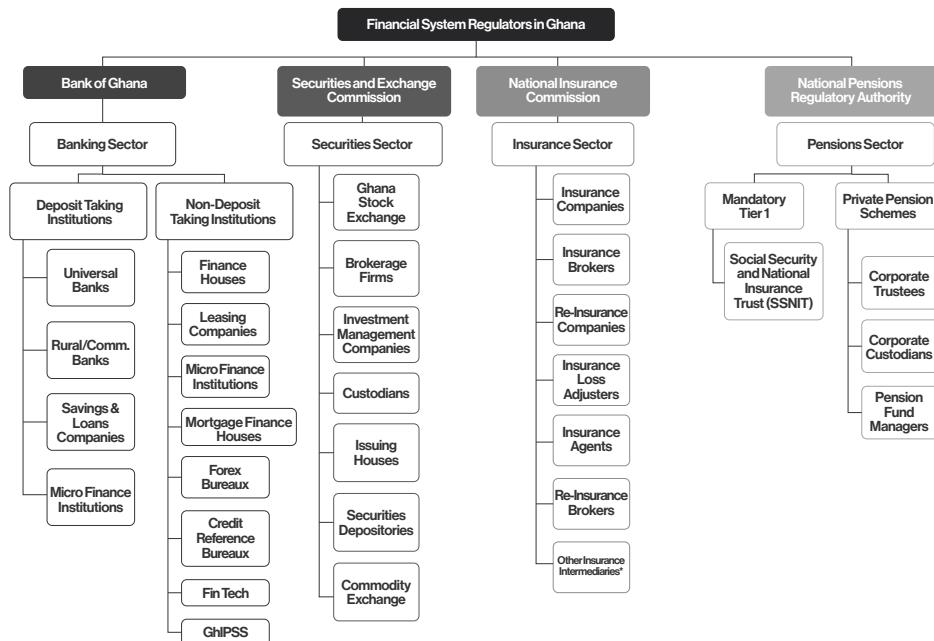
Furthermore, the governing bodies should provide proper oversight and allow equitable competition between the private sector and the public sector. Financial institutions bypass protocols to provide credit facilities to government institutions, giving them undue advantages over the private sector. The public sector renders less accountability and often defaults on loans without any sanction. To maintain sanity in the financial system, public institutions should be held accountable, encouraging them to be financially disciplined. For instance, the government could not service its domestic debts in 2022, which resulted in the devaluation of its domestic bonds and loans. When regulatory bodies provide proper, unbiased oversight and hold the government as accountable as the private sector, it will maintain discipline in the financial system.

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**Figure 1 Financial System Regulators in Ghana**



\*Other Insurance Intermediaries include Bancassurance, Insurance Loss Adjustors, Insurance Loss Assessors, Micro Insurance Agents, Insurance Investigators, Third Party Cell Captive Providers etc.

Source: Bank of Ghana

## CHAPTER 4

# Unlocking Commercial Bank Lending for SMEs in Central Africa: The Emerging Role of Credit Scoring Models

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## Introduction

There can be no development or poverty eradication without credit. This is true in central Africa with 65.3 million people<sup>1</sup> and a dominant informal sector. The Central African Economic and Monetary Community (CEMAC) is made up of six countries including Gabon, Cameroon, the Central African Republic (CAR), Chad, the Republic of the Congo, and Equatorial Guinea, with a rapidly growing financial sector. Across all six economies, Small and Medium-Sized Enterprises (SMEs) and micro-SMEs (MSMEs) are vital for their economic development but continue to face difficulties in accessing finance, even as a growing number of national and foreign banks dominate the formal financial system.

The banking sector is the main provider of finance and the region has an estimated sixty banks and 558 microfinance institutions (MFIs) (Figure 1). Over the last decade, more citizens have access to financial services with mobile money accounts rising from 9.3% in 2011 to 35% in 2021<sup>2</sup> even as bank account ownership remains low. This allows citizens to pay bills, save, borrow microloans, and transfer funds across the sub-region. This has allowed the emergence of micro-SMEs and SMEs, making up over 90% of total businesses across the CEMAC sub-region. Their highly informal nature and the lack of appropriate scoring tools exclude these businesses from accessing formal credit. The emergence of mobile money banking services accelerated financial inclusion but has not translated into greater access to loans for SMEs, as financial institutions' credit scoring models do not include transactions by electronic money.

Ultimately, many micro-SMEs need loans to grow and scale but face social and regulatory constraints, lack of collateral, and the absence of appropriate credit scoring tools to determine the creditworthiness of borrowers.<sup>3</sup> Bureaucrats praise credit bureaus for having useful data despite being only restricted to individuals employed in the formal sector. As a result, credit bureaus lack adequate data and

<sup>1</sup> Communauté Economique et Monétaire de l'Afrique Centrale, "CEMAC in Numbers."

<sup>2</sup> Author compiled simple averages from data on all six countries in the CEMAC region from various sources including World Bank Group, *Global Findex Database 2021*. See <https://docs.google.com/spreadsheets/d/1YaX9NUjljlpGD-8CWdCgJNd7KWhOFkv0zgT/edit?gid=501893764#gid=501893764>.

<sup>3</sup> World Bank Group, *Global Findex Database*.

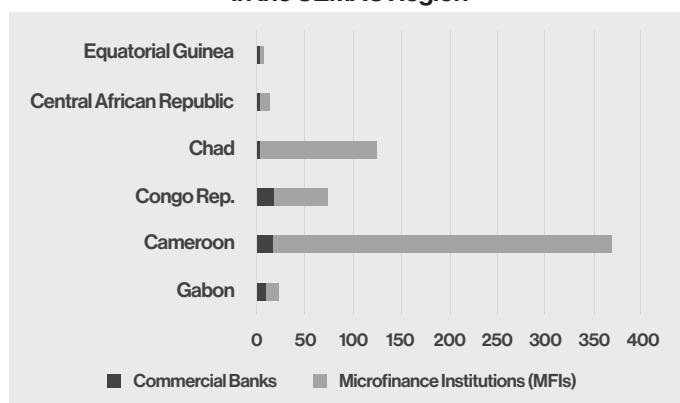
metrics to help determine the creditworthiness of borrowers. Given that credit bureaus lack newer and inclusive models of credit scoring, workers employed in the informal sector are excluded from bank credit. In 1776, classical liberal thinkers like Adam Smith noted that if consumers can access credit more easily, it will reduce fragility in the banking system and encourage competition.<sup>4</sup> Lower barriers to entry and greater competition between banks will lead to more efficient systems that properly reflect and account for risk. Hence, the need to transition towards credit scoring models based on mobile phone transactions that could enable banks to better assess the creditworthiness of borrowers.

In this chapter, Section I analyzes the current state of the banking sector and the state of financial inclusion, Section II provides an overview of the challenges SMEs face in accessing finance, and Section III makes a case for emerging credit scoring models that consider micro factors gleaned from mobile money financial services. This empirical analysis leverages data from national sources and the central bank to lay the foundations for actionable recommendations.

## Section I: Africa's Banking Sector Is Developing but Serving a Small Portion of the Population

The CEMAC banking sector is characterized by a shared central bank, a common currency, and ongoing reforms aimed at deepening financial markets and improving financial inclusion.<sup>5</sup> Meanwhile, the formal financial system is dominated by commercial banks, with fifty-two active banks across the region.<sup>6</sup> Commercial banks contribute to financial inclusion by providing credit to SMEs, youth, and women, though access remains limited. Governments and regulators have launched national strategies and credit registries<sup>7</sup> to improve access and credit risk assessment, aiming to boost inclusion for these groups.

**Figure 1: Number of Banks and Microfinance Institutions in the CEMAC Region**



Source: BEAC, IMF, Open Data, MFWA

<sup>4</sup> White, "Classical Liberal Perspectives on Banking and Financial Regulation."

<sup>5</sup> World Bank, *Combined Project Information Documents*.

<sup>6</sup> Nguena, "The Economic and Monetary Community of Central Africa."

<sup>7</sup> Business in Cameroon, "BVMAC Initiates Share Split to Enhance Financial Inclusion."

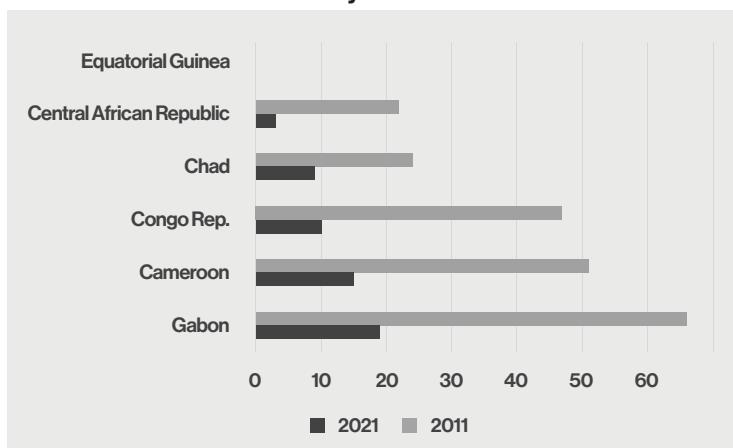
Cameroon has the largest number of banks, and the sector is highly concentrated: in most countries, three banks control about half of the sector assets, with the rest held by foreign banks. Meanwhile, over 825 MFIs are serving nearly 1.8 million citizens in the region. However, the state is dominant, particularly in Gabon, where it controls two of nine banks and holds stakes in others.

Despite the high concentration of banks and MFIs, bank account ownership is low, with only about 12.2% of adults in Cameroon having accounts,<sup>8</sup> compared to a 29% average in Sub-Saharan Africa. Across the CEMAC sub-region, the financial inclusion rate was around 32% in 2021,<sup>9</sup> with a target to reach 60% by 2027 and 75% by 2030 through regional initiatives. However, high costs of banking services (account opening and maintenance), distance to bank branches, and stringent Know Your Customer (KYC) requirements limit access.

## Bank Lending Overwhelmingly Targets Large Companies Instead of SMEs

Commercial bank loans are heavily skewed towards large companies. Data from the Bank of Central States (BEAC)—the Central Bank—finds that large companies received 63% and 60% of total loans versus 17.2% and 21.7% for SMEs in 2021<sup>10</sup> and 2022,<sup>11</sup> respectively. Less than 20% of the adult population possesses a bank account (See Figure 2), limiting access to formal bank credit. Even where they have bank accounts, they lack sufficiently acceptable collateral to access credit.

**Figure 2: Account Ownership at Bank or Mobile Money Service Provider**



Source: World Bank (2025), <https://data.worldbank.org/indicator/FX.OWN.TOTL.ZS?locations=CM-TD-CF-CG-GQ-GA>

Women and youth are disproportionately excluded, with only about 6.8% of women having formal accounts compared to 11.3% of men in the region.<sup>12</sup> The lack of money

8 International Monetary Fund, “Financial Inclusion in Cameroon.”

9 Business in Cameroon, “BVMAC Initiates Share Split to Enhance Financial Inclusion in Central Africa.”

10 Cameroon National Shippers Council, “Bank Loans to SMEs.”

11 Cameroon National Shippers Council.

12 Cameroon National Shippers Council.

to meet minimum deposit requirements<sup>13</sup> is another constraint for most borrowers, with some banks requesting up to 25% of the requested amount. Banks are involved in financial literacy initiatives and consumer protection, but efforts are uneven. Many banks lack dedicated financial education departments, underscoring the need for stronger financial literacy programs integrated into school curricula and community outreach to support inclusion.

## Financial Sector Development and Reforms

Since 2019, the CEMAC financial sector has experienced significant growth due to reforms supported by the African Development Bank. In the money markets, interbank transactions nearly doubled between 2020 and 2021. The securities market expanded rapidly, with outstanding CEMAC treasuries increasing from 1,000 billion CFA francs in 2018 to 5,820 billion CFA francs in 2022.<sup>14</sup> While recent reforms have spurred growth in financial markets and improved sector resilience, challenges remain in financial inclusion, credit access, and sector depth.

Ongoing reforms and support from international partners aim to address these gaps and foster a more robust, inclusive financial system. Even so, the banking sector's contribution to economic growth is modest, and financial intermediation is among the lowest globally.

However, the financial sector is equally vulnerable to non-performing loans, especially in the Central African Republic where NPL ratios are higher than 50%.<sup>15</sup> The risks associated with lending to a highly informal economy reduce the banking sector's contribution to economic growth across the region. The share of SME loans in the CEMAC region rose from 15.5% in H2 2021 to 21.7% in Q1 2022, before contracting slightly to 21.3% by Q3 2024.<sup>16</sup> In Cameroon, the largest country in the CEMAC region, larger companies receive three times more credit than SMEs in 2024 (67% vs 21.3%) even as SMEs make up 80% of the industrial sector. While the banking sector is developing, millions of individuals can access money transfer services but face difficulties accessing credit.

## Section II: Challenges in Accessing Finance in Central Africa

To understand why Central Africa's banking system is slow to adopt innovative credit scoring models, a review of current impediments is warranted. With the majority of SMEs and Micro SMEs operating in the informal sector, banks decry a lack of credible data and higher risk associated with the informal sector.

### 1. Lack of Collateral

Micro SMEs and SMEs sometimes face difficulties in accessing formal credit due to a lack of acceptable collateral, especially as banks require tangible assets such as land and property, which many entrepreneurs and informal sector workers do not possess.<sup>17</sup> For instance, some small-scale farmers in rural areas may own land without formal ownership documents, making it impossible to use as collateral. This disproportionately impacts youth and women who are less likely to own property. As such, busi-

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<sup>13</sup> Diktowsky, "CEMAC Panel."

<sup>14</sup> African Development Bank, "Central Africa: CEMAC's Financial Sector."

<sup>15</sup> Making Finance Work for Africa, "Central African Republic, Financial Sector Overview."

<sup>16</sup> Bank of Central African States, *Cinquante Ans au Service de l'Intégration des Peuples de la CEMAC*.

<sup>17</sup> Ngono et al., "Profitability and Bank Risk-Taking in CEMAC."

nesses are reliant on informal lenders who charge higher interest rates.<sup>18</sup> Despite being aware of the issue of collateral, commercial banks and financial institutions have not designed other forms of assessing creditworthiness, thereby preventing many potential borrowers from accessing loans to start, grow, and scale their businesses.

## 2. Limited Branch Expansion and Alternative Channels

The traditional branch-based banking model restricts rural SMEs' access to credit and other financial services such as insurance services.<sup>19</sup> However, USSD banking is used by some microfinance institutions to provide services such as savings. Establishing a branch can cost up to \$200,000 in infrastructure investment alone,<sup>20</sup> reducing the incentives for banks and pushing potential borrowers towards microlending through mobile money services. Banks like FINCA DRC have faced difficulties with expanding due to the high upfront cost. However, alternative delivery channels (ADCs) such as mobile banking and agent networks are potential solutions that are underutilized due to risks associated with implementation and limited capacity.<sup>21</sup> As a result of inadequate digital solutions and underutilized tools, entrepreneurs in rural areas face more difficulties in accessing credit.

## 3. Lack of Credit Scoring Models

Banks in Central Africa rely on traditional methods of scoring potential borrowers. However, with only 16% of the population owning bank accounts, this excludes non-bank account owners from loans. With banks refusing to lend to some SMEs for fear of losing their capital, the Cameroonian government stepped up to provide a FCFA 200 billion loan guarantee to help seventeen<sup>22</sup> financial institutions lend to non-traditional customers.

After the COVID-19 pandemic, Afriland First Bank and the government of Cameroon opened a credit line worth \$22.2 million<sup>23</sup> (approximately 14 billion CFAF) for small and medium-sized enterprises (SMEs). The African Development Bank provided a €5 million trade finance guarantee, while the UNDP and AfDB launched a \$3 million technical assistance for Equatorial Guinea to support lending to SMEs.<sup>24</sup>

Banks' ability to assess the creditworthiness of micro-SMEs and SMEs is hindered by the absence of adequate credit scoring models. If banks do not have reliable information about borrowers' financial behavior, they perceive them to be riskier and rely on governments for loan guarantees to minimize losses from loans to SMEs. They rely on credit bureaus<sup>25</sup> with no real-time data to support credit assessments.

Despite growing awareness about the need to open bank accounts and develop credit histories, the cost of financial services is prohibitively high, deterring many MSMEs and SMEs from engaging in formal banking. Take Cameroon, the largest economy in the CEMAC region, where only 12% of adults<sup>26</sup> have bank accounts due to high costs. Meanwhile, microfinance institutions that predominantly serve informal sector workers struggle to compete with larger formal commercial banks, which are faster despite charging high interest rates.

<sup>18</sup> International Monetary Fund, "Financial Inclusion in Cameroon."

<sup>19</sup> Vidal and Barbon, "Credit Scoring in Financial Inclusion."

<sup>20</sup> Gutin, *Breaking Free of the Branch*.

<sup>21</sup> Louembé et al., "Banking Sector Intermediation and Economic Growth."

<sup>22</sup> Ministère des Finances, Cameroon, "Actualisation Politique Fiscale."

<sup>23</sup> Groupement Inter-Patronal du Cameroun, "Monthly Economic Note."

<sup>24</sup> African Development Bank, "Central African Republic: African Development Bank."

<sup>25</sup> Basu et al., "Microfinance in Africa: Experience and Lessons from Selected African Countries."

<sup>26</sup> Master Card Foundation, *Expanding Access*.

## 4. Limited Financial Literacy

Many MSME owners lack the financial literacy to understand loan terms and repayment schedules, resulting in poor credit management and defaults that discourage banks from lending to this group. It is not uncommon for rural entrepreneurs to misunderstand loan conditions,<sup>27</sup> leading to disputes with lenders or unintentional defaults. Financial literacy programs are sporadic, offered by NGOs and lobby groups without being integrated into the formal education system. It was Adam Smith who viewed credit with a mix of caution and recognition of its potential. While he acknowledged that properly issued bank credit could expand the market and potentially boost economic growth, he cautioned against excessive reliance on credit, fearing it could lead to instability. Financial literacy is about educating and sensitizing borrowers on how to borrow.

## 5. Credit Bureaus Are Ill-Equipped to Address the Highly Informal Sectors' Credit Needs

The main sources of credit information in CEMAC are limited to the BEAC's central banking risk database<sup>28</sup> (established in the early 1990s and updated periodically by credit institutions) and microfinance institutions' risk databases, such as the one managed by Cameroon's National Council of Credit. However, these databases are fragmented and mostly accessible only within individual countries, limiting their effectiveness for comprehensive credit scoring across the region. While credit bureaus have grown in significance, the absence of movable collateral registries in CEMAC hampers the use of movable assets as collateral, a common practice across other emerging markets.

## Section III: New Credit Scoring Models Will Unlock Finance for Many SMEs

Banks across Central Africa face difficulties in assessing customers' credit risks due to a lack of documentation, banking transaction history and credit bureaus who not provide adequate information on the income, transactions, and activities of informal sector workers—the majority of whom use mobile money transactions to trade and pay for goods and services. Out of the 63.4 million people living in the CEMAC region, 37 million individuals<sup>29</sup> had a mobile money account in 2022. Mobile money services allow consumers to receive and send money, borrow small amounts of money (less than \$100), pay bills and tuition fees, and much more. This trend reinforces the fact that about 45.6% of mobile money activity<sup>30</sup> occurs in Sub-Saharan Africa, creating a need for credit scoring models that reflect African realities (high informality, inaccessible granular data, and micro data).

Instant transfers are the most widely used payment instrument across the subregion. In 2022, over 96% of transactions (2.3 billion operations) in the region happened via mobile means versus 2% (48.3 million operations) using traditional bank transfers and cards.<sup>31</sup> However, mobile money is used for small payments while conventional bank transfers are used for larger transactions. In fact, 44% of transactions totaling

<sup>27</sup> Master Card Foundation.

<sup>28</sup> Nico Halle & Co. *Banking in Cameroon*.

<sup>29</sup> Bank of Central African States, *Rapport Sur Les Services De Paiement Dans La CEMAC*.

<sup>30</sup> GSM Association, *State of the Industry Report on Mobile Money*.

<sup>31</sup> Bank of Central African States.

CFA48,573 billion happened through banks, followed by 21% of transactions (CFA23,332 billion) via mobile money transfers. Both mobile money and bank transfers represent 65% of total transactions across the CEMAC region.<sup>32</sup>

Banks can integrate innovative data sources such as mobile wallet transactions, social media activity, consumer financial behavior, and even psychometrics to generate credit scores that determine whether or not a consumer is likely to default on their loan. Researchers<sup>33</sup> are applying new machine learning methods; comparing logistic regression (LR), classification, and regression trees (CART); and utilizing cascade correlation neural networks (CCNN) in Cameroon, a CEMAC member. Their findings revealed that CCNN reduced default prediction errors to 7.68%, outperforming LR and CART, which underscores the potential of neural networks in handling non-linear credit risk patterns. In summary, banks can now use high-frequency data from mobile money transactions to determine the likelihood of default before lending to a customer. It now remains to be seen if banks will be forced to adopt such models to integrate them into current scoring systems to improve credit performance.

Credit scoring models in the CEMAC region reflect a blend of traditional statistical methods and context-specific adaptations to address unique financial stability challenges. Studies in this region emphasize the interplay between macroeconomic conditions, institutional frameworks, and borrower-level data to assess credit risk. CEMAC countries should look to our neighbors to see how they are using technology to address credit gaps and reduce financial exclusion.

**Figure 3: Banking Models for Credit Scoring**

		
Credit bureau data based	Alternative data based	Hybrid model
These are platforms that rely on data collected from traditional sources, such as credit bureaus. The reach of these platforms is limited to 20% of the credit-accessing population whose data has been reported to credit bureaus.	These are platforms that rely purely on non-traditional data, including mobile wallet transactions from MNOs, social media data from sites like Facebook, Instagram, and Twitter, and weather and satellite data.	These platforms utilize a mix of both non-traditional and credit bureau data to generate credit scores that inform the creditworthiness of borrowers.

Source: Author

## Credit Scoring Models Based on Mobile Phone Transactions Are Developing Slowly

Credit-scoring models that leverage innovative methods to assess creditworthiness are increasingly used by some banks and fintech companies across Central Africa.

<sup>32</sup> Investir au Cameroun, “Mobile Money Rivals Traditional Banks.”

<sup>33</sup> Abdou et al., “Predicting Creditworthiness in Retail Banking.”

- **Maviance (Cameroon):** Maviance uses AI-driven platforms to analyze alternative data (e.g., mobile money transactions, utility payments) for credit scoring,<sup>34</sup> advancing financial inclusion in a country where mobile phone penetration is high.
- **SME Crédit Pro:**<sup>35</sup> SME Crédit Pro rose in the 2024 CEMAC Fintech Forum due to its use of transactional data and cash flow analytics to evaluate borrower reliability. This is vital for SMEs who make up 80% of the industrial sector across the CEMAC region.
- **Diool:**<sup>36</sup> Diool facilitates cross-border payments and credit services in Cameroon and Gabon, and its transactional data is used by merchants to assess creditworthiness.
- **UFI Payment:**<sup>37</sup> UFI Payment uses machine learning to analyze borrower behavior and offer digital lending solutions. They use real-time data from mobile phone transactions and commercial activities, hoping to deploy 1 million payment points by 2030 to reduce reliance on cash and expand data for fintechs.
- **Dohone:** In Cameroon and Gabon, Dohone uses data from bill payments, airtime purchases, and mobile money transfers to generate credit scores for low-income populations.<sup>38</sup> Their transactional consistency is a reliable indicator for lenders, but is still underused.
- **Afriland First Bank (Cameroon):**<sup>39</sup> One of CEMAC's largest banks, Afriland First Bank, uses data from fintech companies with better granularity to score lenders.
- **Ecobank CEMAC:**<sup>40</sup> Ecobank uses AI to analyze customer behavior across its regional network through its "Xpress Loan" product that leverages mobile wallet data to give microloans that target underbanked individuals in Gabon, Cameroon, and Chad. Ecobank is also integrating macroprudential indicators based on the regulators' CAMEL framework.

While we cannot immediately gauge the impact of these models, bank credit to the CEMAC private sector grew 10.6% in Q3 2024,<sup>41</sup> driven by loans to SMEs in agribusiness, telecoms, and trade. Assuming a conservative share of the 37 million CEMAC customers access these services, suggests that at least 370,000 MSMEs and SMEs have directly accessed credit based on high-frequency credit scoring models.

## Policy Recommendations

1. **National and Regional Credit Guarantee Schemes:** Cameroon implemented a FCFA 200 billion guarantee fund to encourage commercial bank lending to SMEs and bypass collateral requirements. Other CEMAC member countries should implement similar reforms and expand this to microfinance institutions to ensure that MSMEs and informal sector workers/entrepreneurs equally access credit.
2. **USSD Banking:** Commercial banks should consider implementing USSD banking to provide banking and financial services to individuals who do not own smartphones, and mobile agents can improve last-mile reach.

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<sup>34</sup> Lendsqr, "Key Providers for Lenders in Cameroon."

<sup>35</sup> SME Credit Pro, "Get a Business Loan in 1-2-3 Easy Steps."

<sup>36</sup> Forbes Afrique, "Diool, la Fintech qui Simplifie la Vie des Commerçants."

<sup>37</sup> UFI Payment Solutions, *Presentation*.

<sup>38</sup> Dohone, <https://www.my-dohone.com/dohone-client/?#>.

<sup>39</sup> Business in Cameroon, "Cameroon: Afriland First Bank and MTN Launch Mobile Banking Transactions."

<sup>40</sup> Guardian Post, "Government Hails Eco-bank AI Assisted Education Programme."

<sup>41</sup> Business in Cameroon, "SMEs Receive Far Less Financing than Large Companies."

3. **Leveraging Mobile Phone Money Transfers:** Integrating mobile money transaction data and other alternative data sources into banks' credit scoring models will boost access to credit for millions of MSMEs and SMEs. Financial institutions should accelerate efforts to integrate electronic mobile money transfers into their credit scoring models to support financial inclusion over the long run. Legacy banks should consider partnering with fintech institutions.
4. **Financial Literacy Programs:** Financial literacy programs targeted at MSMEs and SMEs can improve their understanding of loan terms, repayment schedules, and credit management, thereby reducing defaults and enabling them to grow and scale their businesses.
5. **Credit bureaus should encourage banks** to include electronic money transfers via mobile phones in their models. Collecting granular data can help credit bureaus better inform banking operations and create the conditions for consumers to effectively thrive in a policy setting that reflects their reality.

## Conclusion

Traditional banking practices and limited financial literacy in CEMAC countries hinder MSMEs and SMEs' access to finance. The absence of comprehensive credit scoring models, especially those tailored to the informal sector, exacerbates this challenge. While credit bureaus exist, they often lack real-time and granular data necessary for accurate credit assessments. However, the rise of mobile money offers a promising alternative data source, presenting an opportunity for banks to develop innovative credit scoring models that reflect the realities of the largely informal economy. Embracing these new models is crucial for unlocking the untapped potential of MSMEs/SMEs, improving access to credit and fostering inclusive economic growth in Central Africa.

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## CHAPTER 5

# Digital Platform Markets as Fields of Bounded Rationality

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## Introduction

Two events lately have illustrated the importance of seeing institutions of the free-market system in Africa as fields of bounded rationality<sup>1</sup>—environments where individual choices are mediated and often restricted by institutional design and historical relational contingencies.

In August 2024, Nigerian ride-share drivers fell victim to a wave of coordinated pranks involving fake ride requests from South African clients. These disruptions, linked to cross-border xenophobic tensions following a beauty pageant controversy, undermined not only their ability to earn income but also their safety and dignity as gig workers in the global digital economy. The incident, which unfolded through the Bolt and Uber ride-share platforms, illustrates the complex ways in which digital market institutions in postcolonial African states are shaped by more than price signals and rational expectations. This incident<sup>2</sup> challenges the foundational assumptions of the free-market system by exposing the limitations of models that presume markets are guided solely by rational actors responding efficiently to incentives.

The second event occurred in Washington, D.C., in March 2025, when U.S. Vice President JD Vance addressed the American Dynamism Summit, hosted by the influential venture capital firm Andreessen Horowitz. In a striking rhetorical turn, Vance criticized the legacy of globalization and free trade, arguing that the American economy must be restructured to serve domestic industrial interests through tariffs, deregulation, and strategic disinvestment from global supply chains. In doing so, Vance implicitly repudiated longstanding economic orthodoxy by suggesting that markets cannot be left to govern themselves but must be realigned through state action to serve national political priorities.

Together, these two moments—one unfolding on the streets of African cities, the other on a Silicon Valley-sponsored stage in the U.S. capital—reveal a deep tension at the heart of contemporary market economies. On one hand, Africa's embrace of digital gig platforms as engines of growth reveals a commitment to free-market tools and entrepreneurial narratives; on the other hand, the lived experiences of African digital gig workers expose the fragility and the embedded logics of these platforms in national and international contexts. On the other side of the globe, Vance's remarks indicate a rising political consensus—even among entrepreneurs—that market systems require

<sup>1</sup> Simon, *Models of Man*.

<sup>2</sup> Wepukhulu, “Bolt and Uber Drivers: ‘Xenophobic’ Prank Exposes Need to Fix Gig Economy.”

deliberate intervention to protect certain classes, industries, or national identities. In both cases, the idea of the free market as a neutral, self-regulating mechanism comes under serious scrutiny.

This chapter argues that the emerging entrepreneurial space rests on three interrelated assumptions: (1) that individuals are rational actors guided primarily by price signals; (2) that freedom of choice in market participation is available and equitable; and (3) that the spontaneous order of the market leads to efficient outcomes requiring new critical appraisals. Drawing on Friedrich Hayek's seminal essay "The Use of Knowledge in Society"<sup>3</sup> and a critical engagement with Hayek's behavioral implications, this chapter shows that these assumptions fail in practice—particularly in post-independence African contexts. In such settings, institutions are not neutral containers for market activity; they are shaped by colonial legacies, power disparities, social mistrust, and digital asymmetries. Markets, then, are not autonomous spaces of economic rationality but bounded arenas of constrained action, where policy, platform design, and historical memory combine to shape exchanges and outcomes. States and geopolitics often determine these outcomes.<sup>4</sup>

## **Theoretical Groundings: Knowledge, Hayek, and Market Assumptions**

At the heart of modern economic theory lies the assumption that individuals act rationally in pursuit of their self-interest, guided by price signals within competitive markets. This rational actor model, central to neoclassical and neoliberal economics, posits that decentralized decision-making among informed agents leads to optimal outcomes in resource allocation. Hayek's "The Use of Knowledge in Society" is often cited as the intellectual foundation of this view.<sup>5</sup> In it, Hayek argues that the price system acts as an efficient mechanism for communicating localized, dynamic information, enabling decentralized decisions and constant adaptation to change, a function often underestimated by economists focused on static models and aggregate data. Ultimately, Hayek posits that the price system allows for coordination and resource utilization beyond the grasp of any single mind, a "marvel" that facilitates complex societal organization without explicit, conscious direction.<sup>6</sup>

Hayek's insight is that the coordination of knowledge and not just incentives are essential features of economic systems. For Hayek, prices do not merely signal costs or demand but embody fragments of personal and local knowledge that are inaccessible to any single actor, including the state. This epistemological dimension of markets has long been cited as a defense of minimal regulation and the primacy of spontaneous order.<sup>7</sup> Yet, while Hayek was profoundly attuned to the knowledge problem in centralized planning, his framework often underestimates the extent to which knowledge itself is stratified by social structures, and how the mechanisms for conveying that knowledge, like price systems, can be distorted by power, history, and institutional design.

Bounded rationality, as advanced by Herbert Simon and later expanded in behavioral economics, offers an important corrective to the rational actor model by recognizing

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<sup>3</sup> Hayek, "The Use of Knowledge in Society."

<sup>4</sup> Alami, "Rebuilding the Ladder?"

<sup>5</sup> Van Horn, "Hayek's Great Society of Free Men."

<sup>6</sup> Hayek, "The Use of Knowledge in Society."

<sup>7</sup> Lewis, "Orders, Orders, Everywhere."

the cognitive and informational limits that constrain human decision-making.<sup>8</sup> Actors do not always optimize; instead, they “satisfice”<sup>9</sup> within the constraints of available information, time, and institutional environments. When applied to African markets, this insight becomes especially salient. In postcolonial African economies, individuals make economic decisions not simply based on prices but also on expectations of corruption, histories of exclusion, infrastructural deficiencies, social trust (or its absence), and survival imperatives rooted in colonial and international relations.<sup>10</sup>

This essay expands on Hayek’s notion of knowledge distribution by investigating how markets themselves distribute or restrict knowledge, especially in digital economies mediated by platform algorithms. What is often framed as “market spontaneity” may in fact be a deeply programmed outcome of infrastructural inequality, platform logic, or cross-border digital exchanges. The assumption that market actors are always free and informed decision-makers ignores the bounded nature of their agency. This is particularly true especially in contexts where historical structures of colonial domination have shaped the rules of participation and the architecture of economic choice. Multiple factors can contribute to a skewed distribution of property rights, understood here as control over resource attributes. Among the most widely recognized drivers of persistent economic inequalities are the concentration of land ownership and the conventional scale economies that emerge from large, fixed costs. To these, one may add the digitization of property whereby control, access, and value extraction are increasingly mediated through digital platforms and data infrastructures, which can further entrench asymmetries in ownership and access.<sup>11</sup>

Hayek’s emphasis on spontaneous order as a product of individual decision-making tends to obscure the role of institutions not just as rules of the game but as political and historical constructs. In African economies, institutions such as digital platforms, informal lending networks, and gig labor systems are not neutral vessels for economic activity; they are patterned by race, class, geography, and external dependencies. The global landscape of industrial policy operates within a stratified order: advanced economies exercise extensive and relatively unconstrained use of industrial policy; geostrategically significant emerging economies are afforded selective latitude in its application, whereas low-income countries remain vulnerable to heightened marginalization. This “three-tiered” configuration is both symptomatic of, and perpetuated by, enduring contestations surrounding the legitimacy, scope, and distributional consequences of industrial policy.<sup>12</sup>

Thus, to understand markets in these contexts, one must go beyond Hayek’s epistemological optimism and instead ask: whose knowledge counts, and whose choices are structurally foreclosed?<sup>13</sup>

Markets, when situated in bounded rationality frameworks, become less like frictionless exchanges between autonomous agents and more like contingent arenas where power, design, and relational memory converge. Hayek’s focus on decentralized coordination remains useful but only if paired with a critical understanding of how decentralization can still reproduce inequities when the starting conditions are deeply unequal. In this light, the simplified rational actor model is compounded and requires

<sup>8</sup> Simon, *Models of Man*.

<sup>9</sup> Velupillai, “Foundations of Boundedly Rational Choice.”

<sup>10</sup> North, “Understanding the Process of Economic Change.”

<sup>11</sup> Barzel, *Economic Analysis of Property Rights*.

<sup>12</sup> Alami, “Rebuilding the Ladder?”

<sup>13</sup> McCloskey, “The Statist Neo-Institutionalism of Acemoglu and Robinson.”

further scrutiny, and a new lens grounded in the lived realities of market participants becomes necessary.

## Gig Work and Digital Precarity in African Economies

The rise of the platform economy<sup>14</sup> globally and in Africa has been heralded as a sign of entrepreneurial dynamism and economic innovation. The growth of these platforms has often been interpreted through the lens of free-market optimism<sup>15</sup> but not without some reservations.<sup>16</sup> Uber, Bolt, and other gig-economy platforms are framed not merely as businesses but as enablers of individual freedom, offering African youth the opportunity to participate in the global economy with little more than a smartphone and ambition. Governments and development agencies alike have celebrated these platforms as scalable solutions to urban unemployment and informality. Yet the underlying institutional logics of these platforms tell a more complex story that is marked by precarity, opacity, and asymmetrical power.

In August 2024, a disturbing wave of fake ride requests targeted Nigerian ride-share drivers, with most of the activity traced to South African phone numbers. These co-ordinated pranks were not isolated mischief but rather digital manifestations of simmering geopolitical and xenophobic tensions that had followed a public controversy surrounding a national beauty pageant.<sup>17</sup> Although ostensibly private actors carried out these disruptions, they unfolded within transnational digital platforms like Uber and Bolt that operate without requisite local accountability or oversight.<sup>18</sup> The drivers, whose livelihoods depend on constant visibility and responsiveness within the platform's algorithm, were forced to waste fuel, time, and emotional energy chasing fictitious customers. Many suffered financial losses and, more gravely, threats to their physical safety and psychological well-being.

This incident illustrates that participation in digital markets does not guarantee empowerment. On the contrary, it often exposes workers to new forms of vulnerability embedded within the technological and institutional architectures of platform capitalism. Gig workers in African cities operate within algorithmic environments they cannot see or control, under terms of service written in foreign legal codes, and within economies where legal recourse is often inaccessible or ineffective.<sup>19</sup> The platforms themselves are designed to maximize efficiency and consumer satisfaction not worker protection.

Moreover, the very logic of platform labor relies on the myth of entrepreneurial autonomy. African ride-share drivers are regularly celebrated as “self-employed” micro-entrepreneurs, yet they have no power over pricing, limited control over working conditions, and zero security in the face of arbitrary platform decisions. Bounded rationality here is both cognitive and systemic.<sup>20</sup> Drivers must make decisions under conditions of profound uncertainty: whether to accept risky late-night fares, whether to cancel suspicious orders and risk penalties, whether to trust platform ratings that may be ma-

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<sup>14</sup> David-West and Evans, *The Rise of African Platforms*.

<sup>15</sup> Rockefeller Foundation, “Digital Jobs” Report.

<sup>16</sup> Anwar and Graham, “Between a Rock and a Hard Place.”

<sup>17</sup> Wepukhulu, “Bolt and Uber Drivers: ‘Xenophobic’ Prank Exposes Need to Fix Gig Economy.”

<sup>18</sup> Effoduh et al., “Beyond the Consumer.”

<sup>19</sup> Effoduh et al.

<sup>20</sup> Gigerenzer, “What Is Bounded Rationality?”

nipulated or weaponized. Their choices are constrained by some information gap as well as by the architecture of the digital marketplace itself.

Take for instance the cost of canceling a requested trip from Nigeria and South Africa. The digital infrastructure in South Africa with its more advanced payment technologies with a higher proportion of accounts with payment card options and the alternative cash economy in Nigeria where fewer clients have card payment options was more susceptible to the costs of pranks and cyberwarfare. The algorithmic management of the platform economy often models analogous conditions.<sup>21</sup> In short, rather than democratizing access to opportunity, platform capitalism in Africa may entrench the very inequities it claims to disrupt.

Seen through the lens of bounded rationality, these outcomes challenge the foundational assumptions of gig entrepreneurship. The idea that individuals enter markets with full information and equal agency collapses when confronted with the lived experiences of African gig workers navigating digital asymmetry and infrastructural decay. The Nigerian ride-share prank incident is not merely a case of bad actors exploiting a system, it is illustrative of the rhetoric of digital designs and a reflection of institutional design, where the architecture of participation is itself complicit in reproducing harm. These are not “market failures” in the narrow economic sense; they are expressions of how markets are socially and politically embedded.

Far from being frictionless or spontaneous, digital marketplaces in Africa are bounded by histories of dependency, external platform governance, and fragmented state capacity. As such, they offer a clear empirical counterpoint to idealized models of entrepreneurial rationality. Any serious appraisal of African economic development must contend not just with prices and incentives but with how power, exclusion, and institutional design mediate every so-called “market” exchange.

## Political Shifts in Global Economic Thought

In March 2025, U.S. Vice President JD Vance took the stage at the American Dynamism Summit in Washington, D.C., and delivered a speech that marked a dramatic departure from decades of bipartisan economic orthodoxy in the United States of America. Organized by Andreessen, the summit typically celebrates innovation and deregulated enterprise. Yet Vance’s remarks were strikingly protectionist: he denounced the legacy of globalization, called for strategic tariffs, and championed industrial policy aimed at re-localizing American supply chains and restoring domestic manufacturing. In effect, he argued that markets must be governed by deliberate state intervention to serve the nation’s strategic and cultural priorities.

While such rhetoric might once have been confined to the economic fringe, Vance’s speech reflects a growing bipartisan consensus in the United States and other advanced economies. Once rigid defenders of laissez-faire, policymakers and business leaders are now embracing a form of managed capitalism that prioritizes domestic interests, national identity, and social cohesion over abstract commitments to free trade. This shift is not merely rhetorical. Major economies are constructing new economic architectures that protect key industries and reassert state authority over markets.<sup>22</sup>

What makes this ideological reversal especially telling is its timing and its selectivity. While the Global North reconsiders the costs of globalization and reclaims state ca-

<sup>21</sup> Lubin, “Conversations Towards Practiced AI-HCI Heuristics.”

<sup>22</sup> Buchanan, “Markets, States, and the Extent of Morals.”

pacity to structure markets, African economies are still being urged to double down on free-market reforms. Multilateral lenders, private foundations, and even domestic policymakers continue to promote deregulation, digital entrepreneurship, and export-oriented growth as pathways to development.<sup>23</sup> In this split-screen reality, one set of actors is retreating from neoliberalism while another is still being disciplined by it.

The implications are profound. If America can legitimately abandon market fundamentalism to protect its citizens and strategic interests, why are African states discouraged from doing the same? Vance's advocacy for industrial policy is framed as patriotism; similar efforts in African contexts are often labeled inefficient, corrupt, or statist. This double standard reflects a deeper asymmetry in how economic rationality is defined and by whom. It also exposes the limitations of Hayekian theory when applied globally: the supposed universality of market logic dissolves when confronted with the geopolitics of who gets to deviate and under what conditions.

Moreover, Vance's speech underscores that markets are always already political. The free market is not a natural state but a constructed and contested space, shaped by law, culture, and coercion. The very notion of "letting markets work" is increasingly revealed to be a choice that powerful states can suspend at will. In this light, African countries' deepening entanglement with digital gig platforms and foreign-owned infrastructures looks less like progress and more like entrapment. While the United States insulates its workers and industries from global volatility, African gig workers are exposed to unmediated algorithmic governance with little recourse or protection.<sup>24</sup>

This emerging global divergence demands a rethinking of what constitutes rational policy. If bounded rationality means acknowledging the constraints on individual decision-making, then strategic economic planning is itself an expression of rational adaptation to systemic risk. The United States is not abandoning rationality; it is redefining it in terms of political sovereignty and institutional resilience. African states must be allowed, and indeed encouraged, to do the same.

Far from being neutral spaces of exchange, markets are geopolitical terrains where rules are applied unevenly and where economic logic is often subordinate to political will. Vance's pivot is not simply a national policy stance; it is a rupture in the ideological foundations of global capitalism, one that exposes the fragility of the extant consensus and invites African economies to assert new modes of economic reasoning grounded in context, history, and sovereignty.

## **Postcolonial Constraints and the Myth of Free Exchange**

While free market orthodoxy assumes that all individuals possess equal access to information and opportunity, the historical trajectory of African states tells a different story. Economic participation across the continent remains shaped by layered constraints such as legal, spatial, racial, and epistemes rooted in the colonial encounter. These constraints do not disappear with independence or deregulation; instead, they mutate into newer institutional forms that still delimit the choices, risks, and knowledge available to economic actors. Far from operating on level playing fields, African entrepreneurs and workers navigate through the regime

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<sup>23</sup> Ee, "Export-Led Growth Hypothesis."

<sup>24</sup> Alami, "Rebuilding the Ladder?"

of postcolonialism where past domination and present precarities coalesce into a unique political economy of uncertainty.<sup>25</sup>

Colonial rule was not just about political domination; it was also an infrastructural and epistemological project. Colonial states imposed systems of taxation, land ownership, and labor regulation designed to extract value and discipline local populations. These systems disrupted indigenous economic practices and inserted Africans into global markets on deeply unequal terms.<sup>26</sup> Even today, many of the core institutional forms in African economies’ property registration systems, corporate law frameworks, and civil service structures are legacies of this extractive order. They do not simply enable economic activity; they regulate it in ways that continue to disadvantage historically marginalized actors.

Moreover, the psychological and relational effects of colonialism persist in how individuals perceive opportunity and trust institutions. In many contexts, formal institutions such as banks, courts, and government offices are still viewed with suspicion, while informal networks such as family, ethnic ties, and religious communities serve as the primary vehicles of economic coordination.<sup>27</sup> This dual institutional reality means that bounded rationality is not just a matter of imperfect information; it is a deeply social phenomenon, influenced by relational expectations, survival logics, and learned mistrust. People often reject formally “rational” economic decisions because those decisions are mediated by experiences of betrayal, dispossession, or systemic exclusion.

The entrepreneurial space in postcolonial Africa is thus doubly bounded: by cognitive and informational limits, and by institutional environments inherited from colonial designs. For example, a Lagos-based ride-share driver deciding whether to invest in a car loan may not merely calculate interest rates and repayment schedules. The calculus also includes the volatility of the local monetary unit *naira*, the likelihood of police harassment, the cost of platform fees, the unreliability of the electricity grid needed to charge their phone, and the experience of prior schemes that promised financial inclusion but delivered predatory debt. These decisions, though seemingly sub-optimal from a neoclassical perspective, are entirely rational within the constrained horizons of experience and institutional trust.

This is not to romanticize informality or suggest that African economies are incapable of modernization. Rather, it is to emphasize that modernization cannot be imposed through imported market models that ignore context such as the failed Structural Adjustment Programs,<sup>28</sup> which are policy packages prescribed by the International Monetary Fund (IMF) and the World Bank to developing countries as conditions for accessing financial assistance. Typically, these programs encompass measures such as economic liberalization, the privatization of state-owned enterprises, and reductions in public expenditure, with the stated objective of fostering macroeconomic stability and long-term growth. Carried out primarily in the 1980s and 1990s, these policies stand as a cautionary tale: though grounded in market orthodoxy, they decimated public services, widened inequality, and undermined local productive capacities, all in the name of liberalization.<sup>29</sup> Today’s digital platform economy risks repeating the same mistake—glorifying entrepreneurial freedom while ignoring the institutional scaffolding required for fair participation.

<sup>25</sup> Hickel et al., “Plunder in the Post-Colonial Era.”

<sup>26</sup> Hickel et al.

<sup>27</sup> Ekeh, “Colonialism and the Two Publics in Africa.”

<sup>28</sup> Ayittey, “Why Structural Adjustment Failed in Africa.”

<sup>29</sup> Heidhues and Obare, “Lessons from Structural Adjustment Programmes.”

Understanding African markets through the lens of postcolonial constraints helps reframe what rationality means in these contexts. Decisions that deviate from textbook economic logic may in fact reflect adaptive strategies for navigating unpredictable and extractive systems. This reframing forces a reconsideration of the dominant development paradigms that emphasise deregulation, privatization, and technological innovation as self-evident goods. It also challenges the universalism of economic models that presume free exchange, overlooking the historical and political conditions that shape what is considered “free” and for whom.

Hayek’s notion of dispersed knowledge remains relevant, but it must be coupled with an acknowledgment of how geopolitics and history,<sup>30</sup> infrastructural inequality, and institutional design shape what knowledge is available, to whom, and how it is mobilized. Markets in postcolonial Africa are not spaces of abstract choice but arenas of historically sedimented constraint. Recognizing this not only expands the analytic scope of bounded rationality but also opens space for policy interventions that prioritize justice, equity, and historical repair.

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<sup>30</sup> Alami, “Rebuilding the Ladder?”

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## PART II

# **Law, Modernity, and Progress in Post-Independence Africa**



## CHAPTER 6

# Rethinking Justice for Development: Africa's Need for Judicial Independence and Legal Reform

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## Introduction

Africa's socio-economic triumph or its setback will be determined by the existence of or the lack of independent judiciaries in safeguarding the rule of law, preserving public trust, strengthening democratic governance through the separation of powers, and protecting human rights.

In his famed letter to Attorney General Edmund Randolph in 1789, George Washington expressed his conviction that the “due administration of justice is the firmest pillar of good government.” But judicial independence does not happen all by itself. It is hard to create, and it is easier than most people imagine to damage or destroy.<sup>1</sup>

Without judicial independence, abuse of power and human rights violations will persist, as is common in many African states where courts serve the governors, not the governed—at least that is how I see it.

This essay argues that rethinking justice in contemporary Africa requires moving beyond legal formalism to investigate the meaning of justice itself, assess the true independence of the judiciary, and explore pathways for repurposing the rule of law to support inclusive development.

Drawing on comparative case studies, the analysis will demonstrate that genuine judicial independence and the meaningful transformation of legal systems are essential for achieving people-centered justice in contemporary African societies.<sup>2</sup>

Despite decades of constitutional reforms, judicial institutions often remain vulnerable to political interference, and the laws themselves frequently fail to align with the needs, values, and aspirations of post-independence African societies<sup>3</sup> as the following sections in this essay clearly demonstrate.

1 Hammargren, “The Importance of an Independent Judiciary.”

2 Organisation for Economic Co-operation and Development, *OECD Framework and Good Practice Principles*.

3 Gayoye, “Transformative Constitutionalism.”

## Historical Context of Judicial Independence in Africa

The colonial era marked a profound rupture in African legal traditions. European powers—Britain, France, Portugal, and Belgium—imposed their own legal systems, often dismissing indigenous mechanisms of dispute resolution as “primitive” or “backward.” Colonial legal frameworks prioritized punitive justice, individual property rights, and hierarchical decision-making, directly clashing with African traditions of restorative justice, communal land ownership, and consensus governance.<sup>4</sup>

This imposition not only delegitimized traditional authorities but also facilitated the extraction of resources and the enforcement of colonial policies. As Mohamed Sesay notes,<sup>5</sup> “These transplanted legal frameworks have perpetuated disparities and hindered the realization of justice, social equity, and economic progress in postcolonial Africa.” In the immediate postcolonial period, most African states quickly abandoned the separation of powers, with one-party or military regimes dominating the political landscape. Courts became deferential to political elites, and judges who resisted were often dismissed or worse.<sup>6</sup>

This legacy of executive dominance over the judiciary has undermined the rule of law and eroded public confidence in courts as arbiters of justice.<sup>7</sup> Over time, especially from the late 1980s and 1990s, there has been a renewed push for judicial reforms, with some leaders and judges such as Tanzania’s Chief Justice Francis Nyalali actively working to secure greater independence and public trust in the judiciary.<sup>8</sup> However, formal constitutional guarantees have not always translated into practical autonomy, as courts remain vulnerable to political interference and manipulation.<sup>9</sup> For instance, in 2024, Judge Thomas Masuku was removed from office in Eswatini because of language used in a judgment. In the same year, Zambia’s President Hakainde Hichilema sacked three top judges after they ruled in favor of his political rival. These acts by the executive constitute undue pressure and interference with judicial independence and are a violation of key human rights standards.

The trajectory of judicial independence in postcolonial Africa has been uneven. Ghana’s experience illustrates the volatility of judicial autonomy in the face of political upheaval. After independence in 1957, the judiciary was initially empowered, but successive coups led to the suspension and reconstitution of the Supreme Court, with periods of both judicial review and executive dominance.<sup>10</sup> This pattern where judicial independence advances during democratic interludes and recedes under authoritarian regimes has been mirrored across the continent.

The evolution of judicial independence in Africa is deeply intertwined with the continent’s colonial past and the enduring legacy of imported legal systems. While formal guarantees of autonomy and impartiality exist in many constitutions, the practical reality often falls short, as courts remain vulnerable to political capture and manipulation. Understanding this historical context is essential for any effort to repurpose

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<sup>4</sup> Gabagambi, “A Comparative Analysis of Restorative Justice Practices in Africa.”

<sup>5</sup> Sesay, *Domination Through Law*.

<sup>6</sup> Prempeh, “African Judges, in Their Own Cause.”

<sup>7</sup> Joireman, “Inherited Legal Systems and Effective Rule of Law,” 113; Sesay, *Domination Through Law*.

<sup>8</sup> Prempeh.

<sup>9</sup> Omeni, “Africa’s Judicial System: Opportunities and Challenges.”

<sup>10</sup> Luna, *Judicial Independence in an African State*.

African legal systems to serve justice in a democratic, people-centered way. Having examined the colonial legacy, we now turn to understanding the theoretical framework of justice and contemporary case studies of legal reforms in Africa.

## Justice and Judicial Independence in Contemporary Africa

Judicial independence is fundamental for democracy and the rule of law, acting as a safeguard against authoritarianism and political abuse. An independent judiciary ensures that laws are applied fairly, protects citizens' rights, and holds those in power accountable. Without it, justice is compromised, leading to erosion of public trust, perpetuation of inequality, and weakened democratic institutions. As noted by Adewale Oladipo, an independent judiciary is not just a foundation of but the ultimate shield of democracy.<sup>11</sup>

The lack of judicial independence in Africa affects a broad spectrum of society, from the citizens, to civil society, political opposition, and the private sector. According to Justice Dingake, the greatest threat to the independence of the judiciary in Africa and globally is the chronic temptation by political power to control judges.<sup>12</sup> Executive branches often manipulate judicial appointments, removals, and disciplinary actions to ensure that courts serve ruling party interests rather than act as impartial arbiters.<sup>13</sup>

The other issues undermining judicial independence in Africa include lack of financial autonomy, corruption, lack of enforcement, and weak legal frameworks. Many African countries lack robust legal frameworks and effective enforcement mechanisms to safeguard judicial independence.<sup>14</sup> Yet, there are repercussions for failing to prioritize judicial independence, which is mainly the erosion of the rule of law and human rights. As Grace Mwejje notes, "A compromised judiciary is a country vulnerable to lawlessness."<sup>15</sup>

When courts are unable to hold leaders accountable, democratic processes are subverted and authoritarian tendencies are reinforced.<sup>16</sup> This undermines the legitimacy of elections, facilitates constitutional manipulation, and enables the consolidation of power by dominant parties or leaders.

Public perception of the judiciary as corrupt or beholden to political interests erodes trust in the entire justice system.<sup>17</sup> This distrust can drive citizens toward informal or extrajudicial dispute resolution mechanisms, increasing the risk of vigilante justice and social instability.

In addition, a weak and politicized judiciary undermines contract enforcement and property rights, deterring investment and impeding economic growth.<sup>18</sup> Investors require predictable and impartial legal systems to resolve disputes and protect assets.

If judicial independence is not prioritized and established across Africa in the coming years and decades, several negative trends are likely to intensify, including the entrenchment of authoritarianism, escalation of human rights abuses, instability, weakened social trust, and lost economic opportunities.

<sup>11</sup> Muhammed, "Judicial Independence: The Guardrails of African Democracy."

<sup>12</sup> Dingake, "Justice Oagile Bethuel Key Dingake on Judicial Selection."

<sup>13</sup> Africa Judges and Jurists Forum, "Report on the State of Judicial Independence in West Africa."

<sup>14</sup> Bosire, *Judicial Financial Independence in Africa*.

<sup>15</sup> Muhammed, "Judicial Independence."

<sup>16</sup> Prempeh.

<sup>17</sup> Jaw et al, "Access to Justice in Gambia."

<sup>18</sup> "Kenya's Courts Were under Political Pressure."

# Comparative Case Study: Evolution of Judicial Independence Reforms in Kenya, South Africa, Nigeria, and Uganda

Governments across the continent have constitutions that formalize judicial independence but the realization of justice is at varying levels across African states. This comparative analysis examines Kenya, Nigeria, South Africa, and Uganda, tracing the evolution of judicial independence through reform, resistance, and the interplay of legal and political forces. This analysis highlights how each country's unique context shapes the current state of the judiciary's autonomy and effectiveness.

## Kenya: Judicial Activism and the 2010 Constitution

The 2010 Kenya amendment bill is a trendsetter of judicial reform in Africa by transforming the East African nation's judicial process. The judiciary was removed from under the leadership of the attorney general, an executive branch official, making the separation between the judiciary and the executive official and robust.<sup>19</sup>

The president's prerogative to appoint judges was removed. Instead, the Judicial Service Commission (JSC), an independent constitutional body, was established to oversee judicial appointments, promotions, and disciplinary matters.

The JSC was reconstituted to ensure its independence and to represent a broader spectrum of legal professionals and public interests. Its composition now includes judges from various courts, representatives from the Bar, and other stakeholders, reducing executive influence. The structure of the judiciary was reorganized, and the authority of the Chief Justice was diluted to prevent concentration of power.<sup>20</sup>

The judiciary was granted financial autonomy through a special fund, reducing its dependence on the executive for budgetary allocations. Judges' salaries and benefits were constitutionally protected, ensuring they cannot be varied to the disadvantage of a judge during their tenure or lifetime, which shields them from political or financial pressure.

Other issues like selection, vetting, and removal of sitting judges and magistrates were also addressed. In addition, the constitution imposed mandatory timelines for resolving electoral disputes: courts must settle such disputes within six months and rule on presidential election petitions within fourteen days, ensuring timely justice.<sup>21</sup>

Since 2010, Kenyan courts have asserted themselves as political actors, most notably by the nullification of the 2017 presidential election, a landmark act of judicial activism in the continent. This ruling boosted public perceptions of the judiciary as a check on executive power, at least temporarily, and demonstrated the courts' willingness to interpret the constitution progressively and intervene in high-stakes political disputes. However, the judiciary's assertiveness has not been without controversy; accusations of "legislating from the bench" reflect ongoing tensions between activism and judicial restraint.<sup>22</sup>

It is noteworthy that Kenya's story of judicial activism has had its fair share of unintended consequences. The assertiveness of the judiciary has sometimes led to politi-

<sup>19</sup> "Kenya's Courts Were under Political Pressure."

<sup>20</sup> "Kenya's Courts Were under Political Pressure."

<sup>21</sup> "Kenya's Courts Were under Political Pressure."

<sup>22</sup> Cheruiyot, "Judicial Activism, Judicial Restraint and Constitutional Interpretation in Kenya."

cal standoffs, with the executive and legislature seeking to reassert dominance, thus threatening the fragile balance of power. This dynamic is an example of how reforms intended to empower the judiciary can inadvertently trigger efforts to roll back independence, especially when courts are perceived as obstacles to political agendas.

## **Nigeria: Corruption, Federalism, and Executive Interference**

Nigeria's judiciary is constitutionally independent, with oversight from the National Judicial Council (NJC). However, the reality has often diverged from this ideal due to entrenched corruption and executive interference.<sup>23</sup>

The judiciary has been plagued by bribery, political manipulation, and case delays, undermining public trust and the rule of law. Surveys by the Economic and Financial Crimes Commission (EFCC) and the National Bureau of Statistics have highlighted the judiciary as a major recipient of bribes.<sup>24</sup>

The executive branch frequently disregards court orders unfavorable to it, and the fusion of the roles of attorney general and minister of justice creates conflicts of interest that facilitate political meddling. Efforts such as Executive Order No. 10 (2020) sought to guarantee financial autonomy for state judiciaries, but implementation remains incomplete.

The reality in Nigeria's case is that federalism has not shielded the judiciary from political interference, despite constitutional safeguards. This is why Nigeria's judiciary continues to struggle with systemic corruption and executive overreach. Nevertheless, reform efforts are ongoing but face significant resistance from entrenched interests.<sup>25</sup>

The unintended consequence here is that the lack of genuine judicial autonomy has eroded public confidence in the judiciary, driving citizens toward informal or traditional dispute resolution mechanisms, which may not always align with constitutional protections of human rights standards.

## **South Africa: Constitutional Supremacy and Customary Law**

South Africa exemplifies a dynamic, pluralistic legal system where the judiciary ensures that customary law evolves to meet constitutional standards. South Africa's post-apartheid legal system is characterized by a hybrid structure that recognizes both constitutional supremacy and customary law. The 1996 Constitution asserts that any law or conduct inconsistent with constitutional principles is invalid.<sup>26</sup>

Furthermore, South African courts have actively scrutinized customary law to ensure alignment with constitutional rights, especially regarding gender equality and children's rights. Landmark cases like *Bhe v. Magistrate, Khayelitsha and Shilubana and Others v. Nwamitwa* have invalidated discriminatory customary practices and mandated their evolution in line with constitutional values and laws such as the Recognition of Customary Marriages Act and the Children's Act, which have been enacted to harmonize customary practices with constitutional mandates.<sup>27</sup>

While the judiciary has been instrumental in promoting constitutional supremacy, there is sometimes reluctance to fully develop customary law, leading to the invalida-

<sup>23</sup> Dasola, "The Fragile Balance."

<sup>24</sup> Department of History and International Studies, "Corruption in the Nigerian Judicial System."

<sup>25</sup> Dasola.

<sup>26</sup> South Africa, *The Constitution of the Republic of South Africa*.

<sup>27</sup> Calvino, "Balancing Customary Practices with Constitutional Principles."

tion of practices without providing clear alternatives. This reflects the ongoing tension between respecting cultural traditions and upholding fundamental rights.

While South Africa's hybrid federal structure means that judicial independence is constitutionally guaranteed, the judiciary is challenged institutionally by administrative fragmentation and political dependencies. However, among its African counterparts, South Africa's judicial independence is robust, but the challenge lies in consistently applying constitutional principles across diverse cultural contexts. Regardless, public confidence in the judiciary in the country is above average. According to Afrobarometer, around 56% of South Africans trust their courts "somewhat" or "a lot," which is close to the average for African countries in the Afrobarometer survey.

The unintended consequences of the South African pluralist method is that the gap between the apex and lower courts in upholding constitutional norms can undermine the uniform application of rights and justice. Therefore, this stratification risks creating a two-tiered system where transformative jurisprudence is not fully internalized across the judiciary. An uneven system implies that some people get strong protection of their rights, while others don't, depending on which court handles their case.

## **Uganda: Judicial Capture and Political Repression**

Uganda's judiciary exemplifies judicial capture where courts become instruments of the ruling regime rather than independent arbiters of the law. Despite constitutional reform in 1995, the judiciary of the East African nation has faced increasing executive pressure, with judges reportedly subjected to intimidation, politically motivated appointments, and interference in high-profile cases. This has eroded public confidence and reduced the courts' capacity to act as a check on government power. Reforms have been largely superficial, consolidating executive power and eroding judicial credibility.

The politicization of the judiciary has facilitated human rights abuses, the suppression of dissent, and the erosion of constitutional governance. Judicial capture in Uganda demonstrates the dangers of politicized courts. Without genuine reform, the judiciary cannot fulfill its role as a guardian of rights and the rule of law.

The summary of this comparative analysis is that the evolution of judicial independence in Africa is shaped by each country's political history, legal traditions, and reform trajectories. Kenya and South Africa are examples of the potential of constitutional reform and judicial activism to foster independent courts, despite challenges and possible backlash.

While Kenya, Nigeria, and Uganda haven't completely ignored customary law, as it is still used in family, land, and local disputes, they largely relegate it to a subordinate, often rural, space. They have not mainstreamed it into constitutional jurisprudence, nor treated it as a living source of national law in politically salient cases. South Africa stands virtually alone in doing so systematically and under constitutional supervision.

Nigeria's experience underscores the limits of formal safeguards in the face of entrenched corruption and executive interference. Uganda serves as a cautionary tale of judicial capture, highlighting the perils of politicized courts.

Reforms will falter in any government where the executive has control over judicial appointments and tenure. Rethinking justice for Africa's development requires not only legal and institutional reform but also a political culture that values and protects judi-

cial autonomy, because where courts are empowered and independent, they can serve as vital guardians of constitutional democracy and the rule of law.<sup>28</sup>

Having examined and analyzed the broader challenges undermining judicial independence across Africa, we now turn to a set of targeted recommendations aimed at addressing these issues and strengthening the judiciary's autonomy.

## **Recommendations for Repurposing Law for Justice and Development**

The struggle for judicial independence in Africa is central to the continent's democratic and developmental future. Without robust, impartial courts, the rule of law will remain fragile, and the prospects for accountable governance, human rights, and sustainable development will be severely constrained. Despite the challenges, however, there are pathways forward.

### **Institutional Reforms**

Merit-based appointments, adequate funding, transparent oversight, and regional co-operation, such as through the African Union and African Court on Human and Peoples' Rights, can help insulate courts from political interference and foster a culture of judicial independence.<sup>29</sup>

Judicial reforms that do not account for the political context, such as entrenched executive dominance or one-party rule, are unlikely to succeed. Africa needs to increase access to justice through legal literacy programs, simplified procedures, and community-based legal aid. Such reforms can empower marginalized populations and build public support for the judiciary. In addition, to secure meaningful change, African governments should prioritize legal and institutional reforms that guarantee the judiciary's financial and administrative autonomy, protect judges from political pressure, and ensure transparent, merit-based appointments.

### **Integration of Customary and Formal Justice Systems**

On the other hand, there is the risk of eliminating customary practices that most people perceive as legitimate. Discarding indigenous justice systems in favor of purely Western models risks alienating communities while perpetuating the marginalization of African values.<sup>30</sup> Integrating and reforming customary practices is more likely to yield sustainable results as is reforming customary law for the advancement of gender equality and human rights, as traditional practices often conflict with constitutional protections and international norms. Efforts to harmonize customary law with human rights standards can address discrimination, especially against women, and improve justice outcomes.

### **Community Engagement and Participation**

Building public support through legal literacy campaigns and engaging civil society are also critical for sustaining reforms.<sup>31</sup> It is essential to involve communities in law-making so as to enhance its legitimacy, ensuring that laws reflect local realities while fos-

<sup>28</sup> Africa Judges and Jurists Forum, "Report on the State of Judicial Independence in West Africa"; Prempeh.

<sup>29</sup> Adjolohoun, "Judges Guarding Judges."

<sup>30</sup> GlobalLex, "A Comparative Analysis of Restorative Justice Practices in Africa."

<sup>31</sup> Prempeh.

tering ownership of legal reforms. Civil society must play a watchdog role, advocating for judicial accountability and supporting legal literacy initiatives to empower citizens.

## **Regional and Continental Cooperation**

Regional bodies like the African Union can strengthen peer review mechanisms, offer technical assistance, and promote adherence to continental standards on judicial independence.

## **Technological and Youth-Driven Innovations**

The rise of digital justice platforms such as online court systems and e-filing can expand access to justice, increase transparency, and reduce opportunities for corruption. The growing involvement of youth in judicial activism and legal reform movements signals a generational shift that could drive greater accountability and innovation within African legal systems.

## **Conclusion**

In conclusion, Africa's path to justice and development cannot be separated from the strength and independence of its judicial institutions. As noted from the outset, the presence or absence of an independent judiciary will shape whether the continent moves toward socio-economic transformation or remains trapped in cycles of authoritarianism, injustice, and underdevelopment.

This analysis has shown that despite constitutional advances and reform efforts in countries like Kenya and South Africa, persistent challenges such as executive interference, corruption, and weak enforcement continue to undermine judicial autonomy and public trust. To secure meaningful change, African governments should prioritize legal and institutional reforms that guarantee the judiciary's financial and administrative autonomy, protect judges from political pressure, and ensure transparent, merit-based appointments.

Civil society must play a watchdog role, advocating for judicial accountability and supporting legal literacy initiatives to empower citizens. Regional bodies like the African Union can strengthen peer review mechanisms, offer technical assistance, and promote adherence to continental standards on judicial independence.

Refocusing the law to support development and justice is essential in contemporary Africa. This requires reforming legal frameworks so that they prioritize social justice, economic development, and human rights, rather than preserving colonial-era structures that often perpetuate inequality and exclusion.<sup>32</sup>

Achieving this goal also depends on involving communities directly in the law-making process to enhance the legitimacy of legislation and ensure that laws reflect local realities. Judicial reformers have consistently recommended this participatory approach as a way to build broad-based support for the rule of law<sup>33</sup> because such participation fosters a sense of ownership over legal reforms.

Looking ahead, emerging trends offer new opportunities and challenges. The rise of digital justice platforms such as online court systems and e-filing can expand access

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<sup>32</sup> Milej and Ogada; Prempeh.

<sup>33</sup> Prempeh.

to justice, increase transparency, and reduce opportunities for corruption. At the same time, the growing involvement of youth in judicial activism and legal reform movements signals a generational shift that could drive greater accountability and innovation within African legal systems. Ultimately, Africa's future hinges on the creation of legal systems that meet African needs.

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## CHAPTER 7

# The Pretense of Modernity and Justice in Africa

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## Introduction

A country is as modern as its laws, yet law is not the sole determiner of modernity. To investigate the connection between modernity and law in Africa is to try to understand how the imposition of foreign standards of justice and morality dislocated Indigenous African values, and how this dislocation created a legacy of elite power grab that has “othered” and continues to exclude several demographics of Africans from equitable justice. The process of modernizing is, in part, the process of improving laws—forming new judicial cultures—to meet changing social realities. But then, modernity, as a condition, is an unending process that can only be subjectively determined. It becomes a problem when imagined as a “standard” or relegated to a few individuals’ ideals. Unfortunately, the quest for modernity in Africa has evolved into a pursuit of (often foreign) standards and an imposition of the political elite’s ideals. Africa’s political leaders have turned to law as an integral instrument in facilitating this pursuit of modernity by manipulating bodies of law (constitutions, criminal codes, etc.). In this context, the purpose of law shifts away from Ronald Dworkin’s proposal that law’s eventual aim is integrity, i.e., guaranteeing justice and fairness before a defined set of principles.<sup>1</sup> Rather, it begins to conform with Duncan Kennedy’s view that orientation about law tends to reproduce hierarchies of exclusion and oppression.<sup>2</sup> Therefore, the reality of law as a “modernizing” tool in Africa is that it has produced exclusionary and oppressive calamities for Africans and less equitable justice. But how did we get here?

From the arrival of Islamic scholars in the eleventh century until the arrival of Europeans in the fifteenth century, travelers and anthropologists writing about Sub-Saharan Africa generally imagined that Indigenous laws and customs in that region were not complex and stable enough to warrant calling them civilized. From Al-Muqaddasī in the tenth century to Ibn Battuta in the fourteenth century, Arab clerics and observers often exhibit a paternalistic gaze by treating African norms as primitive in the eyes of the Sharia. Muslim African chiefs from the Kingdom of Mali in West Africa to the Sultanate of Kilwa along the coast of East Africa employed some of these clerics as *qāḍī* (judges) and subsumed preexisting African laws under Sharia. Equally, when Europeans began to form colonies in Africa in the fifteenth century, African laws were subsumed under European laws.

Europeans outright declared African laws invalid in some places, often to fatal ends. For example, thousands of Africans were murdered between the mid-nineteenth and

<sup>1</sup> Dworkin, *Law’s Empire*.

<sup>2</sup> Kennedy, “Legal Education and the Reproduction of Hierarchy.”

early twentieth centuries in punitive wars waged by European officials to subdue so-called witchcraft practices that they believed formed the basis of justice in African communities they desired to colonize. Some anthropologists writing as late as the nineteenth century did not even believe that this region of Africa had structures worthy of being described as legal systems. However, scholars engaged in Africa's *longue-durée* history have demonstrated that the evolution of laws in Africa before Islam's growth in the fifteenth century was complex and evolved to meet the new needs of the ruling class and the public. In other words, African judicial traditions were not static but changed according to a community's priorities. If Jürgen Habermas's conclusion is that modernity is both an unfinished project and a process, then the changing nature of judicial transitions in Africa before the arrival of Islam and European colonization indicates an ongoing African modernity.

## The Hypocrisy of Modernity

Problems start to arise in our understanding of modernity, as Aníbal Quijano notes, when the idea of modernity becomes "inseparable from coloniality."<sup>3</sup> That is, the domination of one tradition's idea of the modern upon another so that the latter loses its sense of self-worth, which in Africa's case draws from entanglements with both Islamic and European traditions. Ergo, when scholars of politics like Anthony Giddens inferred that "modernity refers to modes of social life or organization which emerged in Europe from about the seventeenth century onwards and which subsequently became more or less worldwide in their influence," the idea of modernity then becomes a completely hegemonic condition.<sup>4</sup> It projects a patrimonial gaze in disregard of African self-worth. Meanwhile, Giddens's submission hints at a centuries-long attempt by outsiders to define modernity for Africa. Instead, assessing modernity in Africa, or anywhere else, needs to be subjective because different societies appropriate and reconfigure the institutions and normative frameworks of modernity in ways that reflect their distinct historical trajectories, cultural logics, and socio-political contexts; Shmuel Eisenstadt puts it rightly, submitting that "there are multiple modernities."<sup>5</sup>

It is nonetheless pertinent to recognize that such cultural specificity does not mean divorcing Africa from the cultural values it has since adopted from both Islam and Europe. Homi Bhabha reminds us that modernity is a hybrid process.<sup>6</sup> Africa's modernity then is intrinsically hybrid, shaped by the interplay of cultural traditions, epistemologies, and practices in contact. It manifests not as a uniform trajectory but as localized articulations where global currents are refracted through Indigenous African norms, histories, and power relations, revealing multiple modernities born of cross-cultural and transnational encounters.

To colonize Africans was to first modernize those Africans. Both the Islamic and European drives to modernize Africans by modernizing legal systems were part of their respective agenda to facilitate the subjectivity of Africans. Francis Synder posits that the reality of colonial legal systems is that they upheld a dual structure—formal equality for colonizers; customary or discriminatory law for the colonized.<sup>7</sup> Meanwhile, well before Africans started encountering both Islam and Europeans, the thousands of distinct language communities that comprise the continent had equally distinct legal

<sup>3</sup> Quijano, "Coloniality and Modernity/Rationality."

<sup>4</sup> Giddens, *The Consequences of Modernity*.

<sup>5</sup> Eisenstadt, "Multiple Modernities."

<sup>6</sup> Bhabha, *The Location of Culture*.

<sup>7</sup> Snyder, "Colonialism and Legal Form."

cultures. Neither Islam nor European colonization is responsible for the institution of legal modernities in Africa. If qualities akin to the rule of law, checks and balances, constitutionalism, and independence of the judiciary all equated modernity, then African legal systems were modern before the propagation of the Sharia and European colonialism. Indeed, until the nineteenth century, several communities in West Africa practiced ordeal trials, human sacrifice as punishment, and other acts that might qualify as immoral in today's consciousness. But so did Europeans who executed so-called witches until the eighteenth century and persons accused of blasphemy and heresy in the nineteenth century. In Saudi Arabia, the spiritual home of Islam, executions are still performed in public to conform with the Sharia. Not long ago, in 2011, Saudi authorities beheaded a woman on a witchcraft accusation and another man in 2012.<sup>8</sup> Between January 2024 and June 2025 alone, that country executed about 520 people, several of whom were convicted of apostasy and blasphemy against Islam.

The point here is that if European societies exhibited questionable legal practices around the same time that they forced their idea of legal modernity down the throats of Africans, and Arabian societies still exhibit similar questionable practices today, then their attempt at modernizing laws in Africa is hypocritical. That is, in the context of Africa's experience, the rhetoric of "modernization" served to justify exploitation, exposing morality as a calculated mechanism of domination rather than a neutral ethical ideal. The transplantation of Islamic and European legal regimes into Africa under colonial domination fractured Indigenous African jurisprudence, undermined local authority, and corroded cultural continuity. The Sharia rendered African laws uncivilized and unholy. Likewise, colonial courts, armed with devices like the repugnancy clause, subordinated living customary systems to alien norms, stripping them of their fluid, adaptive essence. Responsive traditions—rooted in communal ethics and environmental balance—were recast into rigid, state-controlled codes, alien to the very societies they purported to serve.

## Modernity and Law as Exclusionary

For most countries on the continent, independence from colonial rule in the mid-twentieth century came with the expectation that Indigenous rule would herald a resuscitation of those African legal values discarded by Europeans. Most of the political elites who took over from Europeans upon independence had little to no appetite to pursue such reforms. The colonial legal system left in its wake systems that put educated elites at the forefront of power. Local, provincial, and supreme courts were in the hands of these elites on the eve of independence, and they have since held on to them at the exclusion of other actors. Pierre Bourdieu cautioned about such choices among political elites amid their drive to reproduce dominance through the accumulation and transmission of cultural and social capital, which only complements economic capital in sustaining inequality.<sup>9</sup> This Bourdieuian reflection has turned out to be calamitous for Africans.

Among the calamities that bewilder Africans today is the retention of those alien, foreign legal frameworks as the bedrock of jurisprudence. This problem is most prevalent in Sub-Saharan Africa, where current legal systems are carbon copies of Western models. Looking elsewhere for what has worked is not the problem, but the need for context-specific innovations over wholesale replication is what proves to be elusive. For

<sup>8</sup> "Saudi Arabia: Beheading for 'Sorcery' Shocking"; "Saudi Man Executed for 'Witchcraft and Sorcery.'"

<sup>9</sup> Bourdieu, *The State Nobility: Elite Schools in the Field of Power*; Bourdieu, *Distinction: A Social Critique of the Judgment of Taste*.

example, African politicians and legislators treat the United States' judicial system as the gold standard while giving less consideration to the fact that the latter's system is a framework carved out of several wars, unique social upheavals, and distinct cultural evolution. Therefore, it is not ideal for an African country to, for example, model its supreme court system after the US model without contextualizing the different conditions that engendered that court's evolution in terms of purpose and outlook since its emergence in 1789. The same consideration applies to the formation of other law-oriented institutions, like the senate and police. To put it differently, transplanting a foreign judicial model without thinking about adaptation is counterproductive because legal systems should reflect distinct histories, cultures, and political economies. It is not to Africa's benefit to operate under legal systems that mirror foreign and colonial logics of control, which only cloaks exclusion and injustice in the language of progress. Having legal structures that do not reflect local realities and values only distorts the purpose of law and weakens public faith in that structure's legitimacy. The consequence is a vicious cycle where citizens disengage from the system, which almost always further empowers those who are strong enough to manipulate the system, i.e., political elites.

The legal systems presently obtainable across Africa are not designed to promote justice and equity. Instead, they are designed to protect and advance the powers of the elite class in such a way that it renders the interests of the masses irrelevant before the law. Paul Zeleza recently noted that "the formalistic interpretation of the rule of law in many African countries often prioritizes legality and order at the expense of justice and equity" and that the consequence of this wrong prioritization is that it has "exacerbated ethnic tensions, leading to prolonged instability and undermining the legitimacy of the legal system."<sup>10</sup> Zeleza is right because with the enforcement of laws that only emphasize procedural compliance over substantive justice, state institutions frequently entrench historical grievances and deepen divisions. This misalignment has fueled violent ethnic conflicts such as the Rwandan genocide of 1994, the Darfur crisis in Sudan, the ongoing Tigray conflict in Ethiopia, the 2007-2008 post-election violence in Kenya, and recurring clashes between Fulani herders and farming communities in Nigeria. In each case, the legal system's failure to equitably address the root causes of marginalization has not only intensified communal hostilities but also eroded public trust in state legitimacy, perpetuating cycles of violence and instability.

In this milieu, several Africans are left behind in more ways than Kennedy's reinforced hierarchies. Women and queer persons are two demographics of Africans at the bottom of that hierarchy. In many places on the continent, there are laws preventing women from inheriting real estate. For example, Uganda's customary inheritance laws dispossess widows and daughters of land, particularly in the Acholi region. Sudan and Mauritania restrict women's legal testimony and mobility, curtailing access to justice. Even in South Africa, constitutional protections are undermined by persistent gender-based violence. Across these cases, formal rights are consistently compromised by entrenched norms, exposing the persistent gap between legal guarantees and women's lived realities. It is not more than a decade ago when the World Economic Forum revealed that women in Cameroon, Chad, the Democratic Republic of the Congo, Gabon, Guinea, Mauritania, Niger, and Sudan needed their husbands' permission to get a job.<sup>11</sup> Equally in Cameroon, Chad, Equatorial Guinea, Guinea-Bissau, Niger, and several other countries

<sup>10</sup> Zeleza, "The Rule of Law in Africa: A Reappraisal."

<sup>11</sup> Thomson, "18 Countries Where Women Need their Husband's Permission to Work."

ers, laws prevent women from opening bank accounts without their husbands' approval.<sup>12</sup> Even in non-material contexts like access to legal divorce, women's interests are still secondary. What then is the pursuit of modernity if the rights and interests of half of the continent are relegated to the peripheries of governing bodies of law? Indeed, "law sees and treats women the way men see and treat women."<sup>13</sup> However, to assume that the condition African women find themselves in before the law is gender-driven is to miss the point. The same paternalistic and elite-oriented legal structures that fail to see these problems and how they affect the lives of women are the same systems that do not seem to care about the rights of queer persons.

There is hardly a more contested issue relating to the conversation about modernity in today's Africa than the toleration of homosexuality. Historians demonstrate that Africans had elaborate sexual identities and relations before colonial rule, which dismisses as a farce the suggestions of a strictly heterosexual precolonial Africa. With colonial rule came the punitive culture that criminalized so-called "unnatural offenses," facilitating the othering of Africans whose sexuality did not conform to European parameters of "natural." Enforcing this policy was tantamount to instituting colonial modernity in Africa. Whatever colonialism did not understand, it moved to regulate and often dismantled through regimes of oppression. African political elites who took over after independence preserved these rules and added greater expansions.

One could argue that the decision to retain these colonial-era laws effectively preserved colonialism's skewed idea of modernity. African leaders who have championed this cause today, including Évariste Ndayishimiye (Burundi) and Yoweri Museveni (Uganda), have instead argued that they are in fact demonstrating and preserving the boundaries of their conception of "African modernity," which is different from what is obtainable in the West. The victims of the conundrum over sexuality's modernity are innocent queer (and often non-queer) Africans, who find themselves at the mercy of an elite class that seems poised to demonstrate power by victimizing the marginalized and weak. Gerald O. West and others put it aptly in their observation that "sexuality has become a new site of struggle and the 'old' theology does not fit, for it is founded on heteropatriarchy."<sup>14</sup> Persecuting queer persons violates fundamental human rights, contravening equality and dignity principles in the Universal Declaration of Human Rights (1948). In fact, the African Commission on Human and Peoples' Rights—Resolution 275 (2014) affirms that violence and discrimination based on sexual orientation violate the African Charter. By subordinating autonomy to politicized moralism, these measures perpetuate exclusion, incite violence, and erode the universality of justice.

There are reasons to be hopeful nonetheless. Since the late 2000s, the number of civil society organizations on the continent fighting for the needs of women has steadily increased. The 2010s brought with it similar interests in advocating for public policy reforms to protect the rights of queer persons. Although the majority of these organizations rely on the benevolence of foreign (mostly Western) donors, without whom they cannot function, their work has brought women and queer persons towards a freer existence more than any time since the mid-twentieth century.

12 "Women, Business, and the Law 2022."

13 Mackinnon, *Toward a Feminist Theory of the State*.

14 West et al., "When Faith Does Violence."

## Conclusion

The modernity of a legal system significantly hinges on the expectation that everyone is equal before the law. Elite usurping of power in Africa is a process of many calamities for the masses—so much so that Roberto Unger’s 1983 reflection that law is indeterminate and reflects the interests of the powerful seems to evoke the true nature of law’s applicability on the continent.<sup>15</sup> When one class assumes greater benefits from the constitution to the detriment of another class, the notion of equality before the law becomes alien. In postcolonial Africa, the rule of law—ostensibly anchored in equality—often serves as a refined instrument of elite domination. By retaining colonial legal frameworks, states entrench structural hierarchies, legitimize authority, and suppress dissent, thereby masking deep inequities in justice, resources, and political participation. Or, as Makau Mutua reminds us, the principle of the rule of law in Africa—purporting to guarantee equality—has frequently functioned as a veil for systems of domination.<sup>16</sup> The results of this elite domination are coups, ethnic violence, civil unrest, criminalization of sexuality, and disregard for women’s rights.

The enduring nature of these systemic inequities highlights the imperative for legal reforms that are attuned to Africa’s specific sociohistorical and cultural contexts, privileging substantive justice over formalistic adherence. African states must transcend the uncritical adoption of exogenous legal frameworks, instead fostering institutions that are responsive to indigenous histories, normative traditions, and social realities. By institutionalizing principles of equity, inclusivity, and accountability within the legal architecture, African societies can disrupt patterns of elite domination, safeguard marginalized populations, and actualize the emancipatory potential of a genuinely modern and contextually grounded legal order.

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<sup>16</sup> Mutua, “Africa and the Rule of Law.”

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## CHAPTER 8

# Justice, Judicial Independence, and Repurposing Law in Africa: The Case for a Property-Rights-Centered African Legal Order

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## Introduction

The African continent is projected to have jurisdictions within it that will grow at a faster rate than many global ones economically.<sup>1</sup> Nearly half of Africa's population live in countries that grew at an average of 4.2% since 2000.<sup>2</sup> The full economic picture for Africa at present is not as rosy as the projected one. Sub-Saharan Africa, which is the focus of our paper, still enjoys a GDP per capita that is far lower than regions such as China and the Middle East.<sup>3</sup>

Within this context of high projected growth and low or suppressed growth in the present, one ought to investigate the reasons behind this suppressed growth in the past and present while also identifying what is needed to achieve or even surpass the projected growth of the future. A strong foundation in the institution that makes trade and thus capital creation and accumulation possible—property rights—is the solution.

Property rights have been shown to be foundational to the prosperity and failure of nations.<sup>4</sup> These rights, coupled with the freedom of individuals to trade, are the basis upon which poverty can be tackled and eliminated.<sup>5</sup> Sub-Saharan African is home to 60% of the world's poverty-stricken individuals.<sup>6</sup> Therefore, there is a need for an investigation into how best to eliminate and solve the social problem of poverty, with a legal order premised on property rights being the answer.

## Property Rights Definition/Theoretical Framework

<sup>1</sup> African Development Bank, "New Report Highlights Africa's Strengthening Economic Growth."

<sup>2</sup> Signé et al., "Leveraging Africa's Inner Strength to Realize its Full Economic Potential."

<sup>3</sup> Signé et al., 16.

<sup>4</sup> Acemoglu, *Why Nations Fail*, 78, 147-149, 183-185.

<sup>5</sup> Fraser Institute, *Economic Freedom of the World: 2024 Annual Report*.

<sup>6</sup> Narayan et al., "The Poverty Reduction Challenge in Africa."

Property rights are, in essence, the delineation of who has the exclusive rights over natural resources, emanating from the combination of those natural resources with their actions/labor.<sup>7</sup> The right to own other things which we combine our labor with emanates from the right to own ourselves, the autonomy we have over our own bodies.<sup>8</sup>

This concept of rights and the individual is not widely held. Yet the investigation of the truth of such a concept of rights and property relations is beyond the scope of this paper. For more on the issue, see the works of Kinsella and others<sup>9</sup> for the Rothbardian aspects and the works of Jarret and others for the Lockean aspects.<sup>10</sup>

From this self-autonomy or self-ownership, we can deduce that what we act upon on the earth, which has not been acted upon by others who have self-autonomy like we do, we become entitled to, exclusively so. This acting upon the earth is “homesteading,” with homesteading being the combination of natural resources with your own labor, for purposes of delineating exclusive ownership.<sup>11</sup>

Communal/collective property for the purposes of this essay will be any property which is said to be owned either in part or wholly by any collective entity immediately outside of the familial unit. Usually commonly referred to as public property, this is property that does not vest in private individuals or families. Instead, it is property owned by a government for a public purpose, irrespective of the size of the state or its authority.

In the essay, communal/collective property will be synonymous to public property as understood in the modern day.

At their core, property rights are meant to show who owns what. That is their purpose, the identification of exclusive ownership, and thereby use, over scarce natural resources. This phenomenon of exclusive use of resources is found in every prosperous society across the world.<sup>12</sup> Stable property rights encourage domestic and international investment in the economy because those who do invest their time, labor, or capital, will be secure in knowing that their investment will still be exclusively theirs in the future.

A disregard of institutions or principles like the exclusive use of certain scarce resources, from land to the crops grown thereon, is the reason I would argue Sub-Saharan Africa is still battling with poverty as much as it is.<sup>13</sup>

## **The Misnomer of African Communal Property Rights**

Some scholars claim that property rights, the exclusive use of resources by someone or some entity, are not common in African cultures or societies, or they are “communal.”<sup>14</sup> The argument goes that the emphasis on ownership over property as seen in Western societies is not prevalent among African societies but rather property relations are kinship based, with the obligations one has to another being the basis of property rights.

The definition of property rights offered in this chapter is applicable and present, even

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<sup>7</sup> Locke, *Second Treatise of Government*.

<sup>8</sup> Rothbard, *The Ethics of Liberty*.

<sup>9</sup> Kinsella, “On the Core Principles of Libertarian Property Rights,” 405–429.

<sup>10</sup> Jarrett, “The Lockean Law of Restitution,” 197–224; Otsuka, *Libertarianism Without Inequality*, especially 1–54 (self ownership foundation) and 55–90 (justice of acquisition).

<sup>11</sup> Rothbard, 49.

<sup>12</sup> North, *Institutions, Institutional Change and Economic Performance*, 6.

<sup>13</sup> North, 54.

<sup>14</sup> Du Plessis, *African Indigenous Land Rights in a Private Ownership Paradigm*, 48–49; Bruce, *Customary Land Tenure*, 41–51; Burton, “African Underdevelopment,” 18–35, especially 20.

in the African context.<sup>15</sup> Even though the form of these exclusive rights over scarce resources is different in, say, modern-day Kwa-Zulu Nata as compared with the Highveld area of South Africa,<sup>16</sup> they still exist.

There still was delineation over the exclusive rights certain families and by logical extension, using methodological individualism, certain individuals within those families had. The prevalence of varying levels of cattle ownership or the mere fact of having cattle that belongs to person A and not person B already implies the logic of property rights. Traditional African societies still had what belonged to families/individuals exclusively, which other members of the community could not claim.

The position of scholars<sup>17</sup> like du Plessis that property rights were of a different nature, that is, they were communal rather than individual, ignores the reality of not only African society but normal human life. Groups or collectives cannot have rights, thus cannot own something. In law this is understood perfectly in that groups do not have rights as a group but rather they have rights insofar as the individuals within that group have rights.<sup>18</sup>

For example, in a sectional title scheme, the trust is the one that actually owns the property whilst the residents who buy units within it, lease it from the trust.<sup>19</sup> Yet substantively, the residents are the owners even though in form they are not because they have the power, through their individual votes, to transfer the property or do whatever they deem fit to it. The trust cannot act without the actions of the individuals who make it up.

This is what is meant by groups having no rights, but rather those rights, in real and substantive terms, resting in the individual.

The exercise of the real rights over what is termed communal land is usually reserved for the individual monarch or leader, who decides to use and even transfer the property should they deem fit. This shows the methodological individualist argument which posits that communal property in real terms is just individual property.<sup>20</sup>

Therefore, by arguing for communal property rights, which are a contradiction in terms, these scholars<sup>21</sup> argue for the centralization of the rights to property in certain individuals who, when acting, impute their actions to every other person in their community.<sup>22</sup>

This emanates from the skewed conception of personhood certain scholars<sup>23</sup> hold, which also denies the very notion of individualism in African societies. Scholars like Menkiti in his work *Person and Community in Traditional African Thought* put forth this communitarian conception of personhood.<sup>24</sup>

15 Ayittey, *Indigenous African Institutions*, 52; du Plessis, 48.

16 Du Plessis, 48-49.

17 Du Plessis, Bruce, and Burton are the scholars who argue that there is a collective conception of property rights.

18 Dworkin, *Taking Rights Seriously*, 100-130; Finnis, *Natural Law and Natural Rights*, 45-100; Hart, *The Concept of Law*, 83-84; Hohfeld, *Fundamental Legal Conceptions*, 32-45.

19 Van der Merwe, *Sectional Titles, Share Blocks and Time Sharing*; Ti, "Comparative Lessons in Sectional Title Laws," 1012-1039; Schoeman Louw, "Sectional Title Scheme."

20 Hayek, "Scientism and the Study of Society."

21 Du Plessis, Bruce, and Burton are the scholars who argue that there is a communal conception of property rights.

22 Hayek, *Individualism and Economic Order*, 6-7, 12-15. In this essay Hayek puts forth the theoretical basis of methodological individualism, which is the basis upon which I argue that vesting property rights in the "community" translates to vesting them in the individual who takes decisions on behalf of that community.

23 See du Plessis, Bruce, and Barton.

24 Menkiti, "Person and Community in Traditional African Thought," 171.

The conception of African personhood which takes into consideration the communal and individualistic aspects of African individuals does not preclude private property ownership.<sup>25</sup> The communal aspects of African culture are still premised in the individual and therefore, can and do give rise to a theoretical framework that supports individual property rights.<sup>26</sup> Therefore, using the communitarian aspects of African society to argue for collectivist property relations, be it at the communal level or national, is a misguided exercise.

## Modern Threats to Property Rights

The rights to property which ought to underpin the African legal order argued for in this chapter must vest in the individuals who combine their labor with the natural resources of the earth or those individuals who justly hold the rights to that property. Due to the mischaracterization of property rights rules African people had, most African governments in the modern day do not have good property rights protections.<sup>27</sup>

The prevailing communal understanding of property necessarily creates a feudal-like situation wherein important resources like land, which is said to vest in the “people,” is controlled by political elites. This situation was prevalent in Zimbabwe after their land reform policy, which expropriated land from white farmers and vested it in the state, a state which in turn distributed the land along patronage networks the leaders had.<sup>28</sup>

The African leaders who argue for more collectivist economic policies, do so from the premise of African culture also being like a collectivist economy.<sup>29</sup> This was seen immediately after liberation in many African countries. Countries like Tanzania, as an example, adopted a collectivist economic model, and the leaders cited African culture as the reason.<sup>30</sup>

As has been mentioned before, the collective—be it made up of Black people, or farmers, or those who live in area A or B—does not have rights. This means that the group itself as an entity cannot be said to own A or B; rather it is individuals who make up said group who have real rights over whatever is said to be owned by the group.

As the Zimbabwe example shows, collective ownership is a cover for the ownership exercised by political elites. This is done by vesting the real control over who can transfer property in a particular state official who becomes the *de facto* owner, even though in principle, they are merely supposed to be a custodian or administrator on behalf of the public.

Another example of this is found in the community of Xolobeni in the Eastern Cape Province of South Africa, where the state gave mining rights to a foreign company, although the community that lived around the future mine objected to it.<sup>31</sup> This matter was taken to court in South Africa and the court eventually found in favor of the community.<sup>32</sup>

The point to take away from both these examples is that property rights are essential to even prevent such situations from occurring. In Zimbabwe, it must be said that or-

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25 Mthembu, “African Conception of Personhood,” 59–60.

26 Mthembu.

27 Property Rights Alliance, *International Property Rights Index 2024*, 25. The index collates data on the protections afforded to property rights all over the world. Africa has the lowest score as per the index, indicating poor property rights protections when compared to other regions.

28 Scoones et al., “Zimbabwe’s Land Reform,” 8–9.

29 Nkrumah, “African Socialism Revisited,” 438–45; Austen, “African Socialism,” 1–23.

30 Nyerere, *Ujamaa: Essays on Socialism*.

31 *Baleni and Others v. Minister of Mineral Resources and Others*, 829 para 11.

32 *Baleni and Others*, para 84.

dinary people did get land through state redistribution.<sup>33</sup> If the process was premised on restitution and did not centralize all land ownership to the state, those who did get land through patronage would be heavily reduced, if there at all.

In the South African example, the Mineral and Petroleum Resources Development Act of 2002 is the legislation that empowered and still empowers the Minister of Mineral Resources and Energy in South Africa to give out mining licenses.<sup>34</sup>

It is a problem if the mineral resources, which rest on property owned and used by certain people, does not vest with those people. These rights must vest in these individuals and their families in real terms rather than the euphemistic “collective” ownership through a faraway state, as is the case currently in South Africa. If the current model of public property held by a state holds, then abuses of power will persist.

These are the problems currently faced in African jurisdictions by Africans who, in large part, seem to be accepting of the idea of collective or communal property even at the highest level of the state. Without a legal order premised on the property rights of individuals, these problems, which have severe consequences on the economic prospects of African people, will not be solved.

## The Consequences of Poor Property Protections

The consequences of the communal concept of property rights coupled with the results of this concept (abuse of power by real owners) are that the material prosperity for African people becomes continuously frustrated.<sup>35</sup> Property is the basis of all trade, whereas trade and economic activity are the best tools to eliminate poverty, which still plagues much of Sub-Saharan Africa.<sup>36</sup>

Therefore, when property and, by extension, free trade and enterprise are not protected or when they are undermined, the foundations of what will enable the elimination of poverty are also undermined.<sup>37</sup> Beyond the violation of natural rights, which collective property policies bring about, the consequences of those policies are also negative.

Businesses cannot operate in an environment of uncertainty about whether their earnings, which is their property or their capital, will be taken by the state for the “people” or not.<sup>38</sup> This situation is untenable for the stability needed to attract long-term capital-intensive investment, which many African nations need.

Multiple studies have been done in countries like Ghana, wherein it was shown that vesting property rights in individuals instead of in a collective creates the incentive for

<sup>33</sup> Scoones et al., “Zimbabwe’s Land Reform,” 15–16.

<sup>34</sup> Mineral and Petroleum Resources Development Act 28 of 2002.

<sup>35</sup> Fraser Institute, *Economic Freedom of the World: 2024 Annual Report*, 25. The index shows a clear correlation between better property protections and economic outcomes. Using the International Property Rights Index in conjunction with the Economic Freedom of the World Index, the picture becomes clear. The better the property protection, the better the economy and thus quality and standard of life for citizens.

<sup>36</sup> World Bank Group, *Poverty, Prosperity, and Planet: 2024 Annual Report*. According to this report, over 60% of the global poor are to be found in Sub-Saharan Africa. This means that of all the poor people in the world, Africa has over 60% of them, a comfortable majority. The standard for measuring these poverty levels is people living under \$2.15/day; Beegle and Christiaensen, *Accelerating Poverty Reduction in Africa*. This report, although a bit older, is still instructive in telling us that by the time of its release, 41% of the people in Sub-Saharan Africa were living in poverty.

<sup>37</sup> Pfeffermann, “Poverty Reduction in Developing Countries,” 6–9, 8; Norberg, In *Defense of Global Capitalism*, 45.

<sup>38</sup> Besley, “Property Rights and Investment Incentives,” 903–37. 904; Goldstein and Udry, *The Profits of Power: Land Rights and Agricultural Investment in Ghana*, 12; Byamugisha and Dubosse, “The Investment Case for Land Tenure Security in Sub-Saharan Africa,” Abstract.

more investment on the part of the property owner.<sup>39</sup> The evidence<sup>40</sup> is clear in showing that the absence of secure and strong property rights contributes to the high poverty levels experienced in Sub-Saharan Africa.

## Recommendations for a Property-Rights-Centered Legal Order

The case for a property-centered legal order is supported by Africa's high poverty levels, which are caused by the absence or weak recognition of key institutions like private property.

Therefore, the first recommendation is formal recognition of the right to property in all African jurisdictions. This recognition must be in the form of a constitution, one adopted through a constitutional assembly and ratified by referendum. The mechanism for the adoption of the constitution, being democratic, means that the people whom the law would be for are intimately aware of what it is they ought to be fighting to protect.

The recognition of the right itself would not be sufficient in solving the problem of a lack of productive activity, which emanates from past non-recognition of property rights. Therefore, tangibly, there must be an investment on the part of the state, in areas like the justice system (courts) and security sector (policing). Well-functioning criminal and civil justice systems enable property owners to be comfortable enough to invest time and other resources in productive activities, knowing that should conflict arise, there are mechanisms to address it.<sup>41</sup>

The justice system and security cluster needs to be independent and impartial. This is a problem most states globally struggle with, but corruption tends to be much worse in African jurisdictions.<sup>42</sup> The situation, although prevalent everywhere, can be improved in the African context. For the effects of property recognition to take effect, the situation must be improved.

Therefore, an independent criminal and civil justice system is imperative to enjoy the benefits of strong property rights.<sup>43</sup> This can be done by drafting and passing legislation that creates independence for institutions like the judiciary or policing. Having provisions that make the police force accountable to the legislature is one example. (The police is an executive function under a ministry of policing in many African jurisdictions.) Having legislation that mandates the enforcement of the decision of judges would also be another way of ensuring independence.<sup>44</sup>

Courts can be made independent through having lifetime appointments or having non-termination clauses in the employment contracts of judges in higher courts.<sup>45</sup> This would make it much harder for elites of any kind to exert pressure on them by firing them.

**There must be a clear Rule of Law**, meaning that the law must be applicable to everyone

39 Besley, 904; Goldstein and Udry, 12.

40 Huang and Singh, *Financial Deepening, Property Rights and Poverty*, 4; de Soto, *The Mystery of Capital*, 52-55.

41 Trindade, "Rule of Law and Judicial Independence," 213-38.

42 Warf, "Geographies of African Corruption," 20-38, 32.

43 Touchton and Tyburski, "Judging the Market," 12-26, Abstract, 23-24.

44 Touchton and Tyburski, 23.

45 Touchton and Tyburski, 15. The paper goes on to suggest that the decisions of judges must be enforceable, they must be seen to be enforced, beyond their being lifetime appointees. This combination of mechanisms like lifetime appointment and a strong enforcement culture of judges' decisions is needed to ensure independence of the judiciary and its effectiveness so that the people within said jurisdiction can enjoy the benefits of property rights protection.

equally, without favor.<sup>46</sup> The law must be reasonable in that it must be connected to its end and non-arbitrary, meaning it must be premised on an objective harm it seeks to solve.<sup>47</sup> This is instrumental in ensuring that African people have the certainty necessary to engage in long-term productive activity, with the knowledge that the law applies to even their rulers.

Another recommendation would be the improvement in the administration of existing property rights enforcement, how property is recognized and ownership recorded.

In jurisdictions where it is viable, having a digital register of deeds is an option. In general, the hiring of competent individuals who understand property law is necessary for the state to administrate property rights in an effective and efficient manner to avoid a situation wherein people have rights on paper but not in reality due to poor administration or recognition of those rights.

At a continental level, there needs to be a serious consideration for regional courts, whose decisions will have the force of law recognized in every member state through constitutional provision. The courts must be based on a firm and unshakeable recognition of the right to property enjoyed by every African individual, as outlined in member state constitutions.

## Conclusion

This chapter has shown how poverty has, as one of its contributing factors, a poor recognition of private property rights. It has shown how, through philosophical concepts which are translated to customary law, the communal idea of private property is perpetuated. It has shown how such false concepts undermine real private property rights for many African individuals. This chapter has also illustrated how private property rights recognition is foundational in eliminating poverty and improving the material conditions of people. It also offers general recommendations on how a legal order, which will recognize private property rights, can be brought about.

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<sup>46</sup> Van Staden, *The Rule of Law and the Constitution: An Introduction*, 36-40.

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## CHAPTER 9

# Identity Politics and the Challenge of Lawmaking in Nigeria

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## Introduction

In 1914, the British Colonial government amalgamated the Northern and Southern Protectorates to create an area now known as Nigeria.<sup>1</sup> In the process, the colonial government facilitated a marriage of convenience between ethnic groups that spoke different dialects and had distinct cultures and customs. The three regions coincide with the three major ethnic groups: the Hausa-Fulani in the north, the Yoruba in the west, and the Igbo in the east.

More than a century later, the ethnic divisions created by colonial amalgamation have resurfaced in both the quest for independence and the postcolonial period. For decades after independence, Nigeria experienced a series of coups and counter-coups, some of which were strongly influenced by ethnic loyalties and rivalries.<sup>2</sup>

A generation after Nigeria's return to democracy, the longest since independence in 1960, ethnic and religious affiliations have continued to shape politics, appointments and legislative behaviour. These affiliations often act as roadblocks to the passage of progressive laws, as lawmakers align their positions with ethnic or religious blocs rather than with the national interest.

## Identity Politics in Nigeria

Identity politics refers to the tendency of people sharing a particular identity, such as ethnicity, religion, region, or language, to form exclusive political alliances and make political claims based on that identity, often to the detriment of national unity or civic-based politics.<sup>3</sup>

In Nigeria, identity politics is deeply entrenched due to the country's multi-ethnic, multi-religious, and multi-linguistic composition, and is one of the major fault lines affecting national cohesion and governance. Ethnic and religious identities often supersede national identity in political decision-making, public service appointments, voting behavior, and party affiliation.

Nigeria is primarily shaped by ethno-regional and religious affiliations due to the coun-

<sup>1</sup> Falola and Heaton, *A History of Nigeria*.

<sup>2</sup> Siollun, *Oil, Politics and Violence: Nigeria's Military Coup Culture*.

<sup>3</sup> Fukuyama, *Identity: The Demand for Dignity and the Politics of Resentment*.

try's colonial history and post-independence political structure. Amalgamation of the Northern and Southern protectorates in 1914 grouped over 250 ethnicities under a single political entity without creating a unified national identity. As a result, ethnic affiliations became the primary political mobilization tool, a pattern that persists today.

This has manifested in ethnic-based competition and conflict, often triggered by real or perceived marginalization in resource distribution, access to power, and representation. The federal character principle, intended to promote inclusiveness, is sometimes used to entrench ethnic considerations in governance.<sup>4</sup>

As a result, Nigerian politics has been dominated by primordial loyalties rather than ideological affiliations, leading to a political system fragmented along ethnic fault lines where state power is seen as a means of ethnic domination or survival.<sup>5</sup>

The study of identity politics in Nigeria intersects with broader discussions on ethnic pluralism, state-building, and democratic consolidation in postcolonial states. Scholars such as Horowitz<sup>6</sup> and Osaghae<sup>7</sup> have long argued that ethnic affiliations in divided societies often take precedence over civic nationalism, thereby undermining democratic institutions. Nigeria, with over 250 ethnic groups, exemplifies this pattern, where identity serves as both a mobilizing and polarizing force.

Lijphart's<sup>8</sup> theory of consociational democracy provides a framework for understanding identity-based power-sharing arrangements such as zoning and the federal character principle. While intended to promote inclusivity, such mechanisms in Nigeria have been critiqued for institutionalizing ethnicity in governance,<sup>9</sup> leading to what some describe as "institutionalized factionalism" rather than merit-based governance.

Recent studies like Aderayo and Olawunmi<sup>10</sup> emphasize how identity continues to shape the structure and functioning of political parties in the Fourth Republic. Eboigbe and Ajisebiyawo also demonstrate that ethno-religious considerations were primary determinants of voting behavior in the 2023 elections, eclipsing ideology or competence.<sup>11</sup> These insights align with broader findings by Mustapha<sup>12</sup> and Ibeau<sup>13</sup> that identity politics impedes policy development and national cohesion in Nigeria due to an unhealthy focus on ethnic identity at the expense of merit.

Despite this growing body of work, there remains a need for focused analysis of how identity politics specifically distorts lawmaking processes, which this chapter seeks to address.

This chapter adopts a qualitative, interpretive approach grounded in secondary data analysis. It draws on a mix of academic literature, legislative records, official government documents, media reports, and policy briefs to examine the interplay between identity politics and legislative performance in Nigeria. The goal is to present a context-sensitive analysis that captures the complexity of identity politics in Nigerian legislative affairs.

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4 Osaghae and Suberu, *A History of Identities, Violence, and Stability in Nigeria*.

5 Mustapha, "Ethnic Structure, Inequality and Governance of the Public Sector in Nigeria."

6 Horowitz, *Ethnic Groups in Conflict*.

7 Osaghae, *Crippled Giant: Nigeria Since Independence*.

8 Lijphart, *Democracy in Plural Societies*.

9 Suberu, *Federalism and Ethnic Conflict in Nigeria*.

10 Aderayo and Olawunmi, "Ethnic Politics and National Integration in Nigeria's Fourth Republic."

11 Eboigbe and Ajisebiyawo, "Identity Politics and the 2023 Presidential Elections in Nigeria."

12 Mustapha, "Ethnic Structure, Inequality and Governance of the Public Sector in Nigeria."

13 Ibeau, "Democracy and the Dialectics of Political Instability in Nigeria."

## Problems of Identity Politics in Nation Building

This form of politics presents significant challenges to the nation's lawmaking and democratic integrity. The persistent feature of ethnic affiliations profoundly shapes political engagement and lawmaking processes, complicating governance and leading to polarizing effects across various social strata. Ethnic identity influences electoral dynamics, as evidenced by the behaviors of political actors seeking to harness ethnic affiliations for electoral gains, thereby compromising principles of inclusivity and representation essential for a functioning democracy.<sup>14</sup>

The struggle for power among Nigeria's diverse ethnic groups also affects legislative priorities and policy implementations. Political leaders often prioritize the interests of their ethnic groups, which undermines the overarching goal of national unity and equitable governance. This pattern of governance hinges on the notion of "one of our own" ascending to power, with substantial implications for the inclusivity of democratic processes.<sup>15</sup> Such identities can exacerbate tensions and structural violence among political elites and within local communities, as grievances over representation and resource distribution become central to community mobilizations.<sup>16</sup>

Since Nigeria transitioned to democracy in 1999, political parties have often operated through regional and ethnic coalitions, reinforcing identity politics through arrangements such as the zoning of elective positions, rather than promoting merit-based selection or ideological alignment.<sup>17</sup> In fact, the first sets of political parties in Nigeria were regional, and the trend has continued through the First Republic (1963-1966), Second Republic (1979-1983), Third Republic (1992-1993) into the Fourth Republic that began in 1999, currently the longest uninterrupted democratic rule the country has enjoyed in over sixty years of independence.

Empirical data from post-1999 politics shows that major parties act as ethnic coalitions. Aderayo et al. highlight how dominant ethnic groups control party structures, resources, and public goods, sidelining minorities.<sup>18</sup>

This played out again clearly in the last general elections held in 2023. In their analysis of the 2023 presidential election, Eboigbe and Ajisebiyawo assert that ethnicity, religious affiliation, and regional loyalty were "major determinants of voter choice," frequently overriding considerations like candidate competence or manifestos. They caution that identity appeals have reached the point where "competent candidates" will be voted out based on "religious and ethnic sentiments."<sup>19</sup>

One of the consequences of identity politics on the Nigerian electoral system is the polarization of the country along ethnic and religious lines. Another is the systematic upholding of ethnicity over meritocracy in Nigerian society.

One of the implications of identity politics on the Nigerian electoral system is the polarization of the country along ethnic and religious lines. Another is the systematic upholding of ethnicity over meritocracy in Nigerian society.

<sup>14</sup> Alabi et al., "Identity Politics and Its Implication on the Nigerian Electoral Process."

<sup>15</sup> Kalagbor and Harry, "Ethnic Diversity and Democratic Governance in Nigeria."

<sup>16</sup> Eze, "Political Violence, Ethno-Religious Conflict and the Crisis of Democracy in Nigeria."

<sup>17</sup> Akinyetun, "Identity Politics and National Integration in Nigeria."

<sup>18</sup> Aderayo et al., "Ethnic Politics and National Integration in Nigeria's Fourth Republic."

<sup>19</sup> Eboigbe and Ajisebiyawo.

# Identity Politics in Lawmaking and Policy Implementation

Unfortunately, identity in Nigeria pervades beyond politicking and spreads through lawmaking and the debates on the passage of bills that eventually become law.

Lawmaking in Nigeria refers to the process of enacting, amending, or repealing laws through the country's bicameral National Assembly, which consists of the Senate and the House of Representatives at the federal level, and State Houses of Assembly at the subnational level. The National Assembly derives its powers from Chapter V of the 1999 Constitution of the Federal Republic of Nigeria (as amended).<sup>20</sup> It is intended to be representative, reflecting the will and interest of the people.

However, in practice, it is often shaped by political negotiations influenced by identity affiliations, such as regional interests, ethnicity, and religious sentiments. Lawmaking in the National Assembly is frequently influenced by geopolitical zoning arrangements and ethno-religious calculations. Legislative leadership positions, including the Senate President and Speaker of the House of Representatives, are negotiated to reflect regional balance, often at the expense of legislative effectiveness.

Legislative processes are frequently entangled in ethnic and regional calculations, which can distort policy outcomes and undermine national objectives. Identity politics influences which bills get passed, the content of legislation, and the distribution of development projects.<sup>21</sup>

Nigeria's bicameral National Assembly reflects the country's ethnic diversity, but rather than encouraging cross-ethnic coalitions, fragmentation is the norm. Legislators often align with ethnic or regional blocs on controversial bills, especially those affecting federal revenue allocation, state creation, or judicial appointments, impeding consensus.<sup>22</sup>

## Case Studies

For instance, the debate over the Petroleum Industry Bill (PIB),<sup>23</sup> meant to deregulate and restructure the petroleum sector, lasted nearly two decades, largely due to disagreements over issues such as host community benefits, revenue allocation, and control of oil resources.<sup>24</sup>

The bill, first introduced in 2008, was intended to overhaul Nigeria's petroleum sector by streamlining regulatory agencies, promoting transparency, attracting investment, and ensuring fairer revenue sharing.

However, its legislative journey crawled for over thirteen years, ending in August 2021, with the bill undergoing multiple revisions, fragmentations, and re-introductions in the National Assembly.

The delay in passing the PIB was not due to lack of technical consensus but rather entrenched identity-based disagreements, particularly between lawmakers from oil-pro-

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<sup>20</sup> Federal Republic of Nigeria, *Constitution of the Federal Republic of Nigeria, 1999*.

<sup>21</sup> Oni and Preston, "The Legislative Process and Identity Politics in Nigeria."

<sup>22</sup> Orji, "Reforming the Nigerian Polity: Unpacking the Challenges and Possible Solutions."

<sup>23</sup> Iledare, "The Petroleum Industry Bill 2020."

<sup>24</sup> Oloruntoba, "The Political Economy of Oil Governance in Nigeria."

ducing Niger Delta states and their northern counterparts. These tensions were rooted in Nigeria's historical contestation over natural resource control, regional development disparities, and fears of economic marginalization.

One of the most controversial components of the bill was the percentage of oil company revenue to be allocated to host communities,<sup>25</sup> that is, the communities directly affected by oil exploration and production. Niger Delta legislators demanded a 10% equity stake for host communities, arguing that these communities bore the brunt of environmental degradation, loss of livelihoods, and underdevelopment. Northern legislators and some federal policymakers opposed this, citing concerns over excessive regional favoritism, and eventually negotiated it down to 3% in the final version of the bill passed in 2021.<sup>26</sup>

As the legislative argument drags on, Nigeria Extractive Industries Transparency Initiative (NEITI) said revenue losses as a result of non-passage of the bill averaged US\$15 billion annually.<sup>27</sup>

Another instance is the National Grazing Reserve (Establishment) Bill, which sought to create federally controlled grazing zones across Nigeria to reduce farmer-herder conflicts. First introduced in 2016, it was met with immediate backlash from southern and Middle Belt lawmakers, who viewed it as a state-sponsored land grab for the benefit of northern Fulani herders. The same backlash followed the Rural Grazing Area (RUGA) policy introduced in 2019.

Critics argued the bill violated principles of federalism by attempting to override land rights vested in state governments under the Land Use Act of 1978.<sup>28</sup> Though the argument was about legality, it was also deeply identity-based. Southern and Christian lawmakers opposed it on the grounds of religious and ethnic imbalance, while northern and Muslim legislators defended it as necessary for peace and economic development.<sup>29</sup> The farmer-herder clashes, which the National Grazing Reserve Bill and RUGA policy were meant to address, have continued unabated,<sup>30</sup> with numerous casualties<sup>31</sup> amid increasing food insecurity in the country.

As with earlier cases like the PIB and the grazing laws, the Tax Reform Bills,<sup>32</sup> introduced to the National Assembly in October 2024 and aimed at overhauling Nigeria's tax structure, became entangled in identity politics, heavily dividing lawmakers along ethnic and regional lines.

One of the proposed bills, the most contentious, introduced a shift in the Value Added Tax (VAT) sharing formula. It increases the "derivation" component from 20% to 60%, while population-based distribution dropped to 20%, with equal sharing reduced accordingly.

However, critics, mostly from northern states, argued this change would disproportionately benefit economically stronger, predominantly southern states like Lagos and Rivers, further disadvantaging the more populous but less industrialized north.<sup>33</sup>

<sup>25</sup> Uwaezuoke and Ogbuagu, "Host Community Trust Fund and the Quest for Sustainable Development."

<sup>26</sup> Ojekunle, "EXPLAINER: Is 3% for Host Communities in PIB."

<sup>27</sup> Nigeria Extractive Industries Transparency Initiative, "The Urgency of a New Petroleum Sector Law."

<sup>28</sup> Onele, "The Grazing Bill and the Right to Property in Nigeria."

<sup>29</sup> Ejiofor, "The Fear of Ethnic Domination."

<sup>30</sup> Pilling, "Nigeria's Spiralling Rural Violence Heaps Pressure on President."

<sup>31</sup> Burke, "Forty-Two People Killed in Central Nigeria in Attacks Blamed on Herders."

<sup>32</sup> PLAC Legist, "Understanding the Tax Reform Bills."

<sup>33</sup> Yakubu et al., "Tax Reform: Northern Elders, Gov Maintain Opposition as Senators Lobby."

Eventually, the bills were finally passed with a revised formula where states retain 30% of the VAT they generate, 50% is shared equally among all states, and 20% is allocated based on population.<sup>34</sup>

However, the debate that surrounded the bill underscored the persistent ethnic and regional fault line in policy debates.

Meanwhile, the failure of the PIB and grazing laws highlights how ethno-religious fault lines can block legislation with national intent, especially when identity groups perceive unequal benefit. For instance, the deregulation of Nigeria's oil sector, which began in 2021 after the passage of the PIA, could've started years ago if the debate on derivation hadn't dragged on for so long.

Also, the RUGA Policy and the National Grazing Reserve, which offer policy solutions to persistent farmers-herders clashes, were never tested, and the problem has continued, leaving a trail of casualties.

Beyond policy debates, identity politics also shapes budgetary appropriations, whereby lawmakers push for "constituency projects" aligned with ethnic or regional loyalties, often reinforcing clientelism rather than addressing national development needs.<sup>35</sup>

## Conclusion and Recommendation

With one of the youngest populations in the world, the largest population in Africa, an abundant reserve of mineral resources, and a rapidly expanding consumer market, Nigeria has immense developmental potential.

Yet, this promise is continually hampered by institutional bottlenecks in lawmaking and governance. The delayed passage of the Petroleum Industry Bill (PIB), which lingered in the legislature for nearly two decades, and the failure of the National Grazing Reserve Bill, due to identity-based opposition, exemplify how identity politics in the legislature undermines both economic growth and national cohesion.

To address these challenges and unlock Nigeria's full potential, the following policy reforms are recommended:

- 1. Institutionalize True Federalism:** Nigeria's current federal arrangement is highly centralized, undermining the full financial and administrative autonomy of states and local governments. A genuine federal structure that allows sub-national units to legislate, administer resources, and implement development priorities independently will reduce the pressure on national institutions and devolve identity-based disputes to more appropriate local contexts. This would empower state legislatures to frame context-sensitive laws, particularly around land use, policing, and economic policy.
- 2. Promote Identity-Conscious Citizenship:** Nigeria must embrace pluralism and layered belonging. Through sustained civic education programs, especially via institutions like the National Orientation Agency (NOA), citizens should be encouraged to develop dual identities for both their ethnic or religious affiliations and to embrace a broader Nigerian identity. This can cultivate a citizenry that resists

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34 Yakubu, "Tax Reform: Reps Approve New VAT Sharing Formula for States."

35 Demarest, "Elite Clientelism in Nigeria."

politicized ethnic appeals and fosters a shared national purpose.<sup>36</sup>

3. **Discourage Ethnic Mobilization in Political Campaigns:** Electoral reforms must go beyond technical improvements and tackle the content of political messaging. Campaign regulations should explicitly prohibit ethnicity- or religion-based appeals, which often deepen societal cleavages and distract from issue-based politics. As Eboigbe and Ajisebiyawo argue in their analysis of the 2023 elections, identity-based campaigning routinely overrides merit, excluding competent candidates and reinforcing ethnic patronage networks. The Independent National Electoral Commission (INEC) and the National Broadcasting Commission (NBC) must play stronger roles in monitoring and sanctioning divisive political rhetoric.<sup>37</sup>

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<sup>36</sup> Akinyetun, "Identity and Identity Politics in Nigeria."

<sup>37</sup> Eboigbe and Ajisebiyawo, "Identity Politics and the 2023 Presidential Elections in Nigeria."

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## CHAPTER 10

# Post-Independence Modernities and Human Progress in Contemporary Africa: Education, Technology, and the Redefinition of Prosperity

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## Introduction

The discourse around modernity in post-independence Africa remains complex, intricately shaped by colonial legacies, global power dynamics, and internal aspirations for prosperity. Six decades after achieving political independence, the question persists: Has Africa articulated a uniquely African trajectory of modernity, or is it still substantially influenced by external paradigms? Engaging with the philosophical insights of scholars like Achille Mbembe and Mahmood Mamdani, this essay posits that a redefinition of prosperity and inclusive progress necessitates critical engagement with education and technological innovation grounded in African epistemologies, identities, and values.

## Redefining Prosperity

Prosperity is conventionally defined through economic metrics such as Gross Domestic Productivity (GDP) of the country, often neglecting deeper human dimensions that significantly contribute to genuine human flourishing. Renowned economist Amartya Sen advocates a broader conception of prosperity, emphasizing capabilities, freedoms, and holistic well-being. Sen argues that true prosperity extends beyond mere economic wealth, encapsulating the ability of individuals and communities to pursue and realize valued opportunities, goals, and lifestyles.<sup>1</sup> Applying Sen's framework to Africa invites a critical reflection on how traditional measures might obscure rather than illuminate the true quality of life experienced by people.

In the African context, redefining prosperity necessitates the incorporation of several critical dimensions frequently omitted from standard economic analyses. One such dimension is community resilience, which includes the capacity of societies

<sup>1</sup> Sen, *Development as Freedom*.

to respond to and recover from social, economic, or environmental shocks. African communities have historically demonstrated considerable resilience through localized strategies for resource sharing, collaborative problem-solving, and mutual support systems. For example, the informal cooperative systems known as *Harambee* in Kenya and *Esusu* (meaning to put together from different sources and in small quantities) in Nigeria exemplify how collective effort and communal financial contributions enhance social cohesion and collective welfare.

Ecological sustainability also emerges as a pivotal aspect of prosperity redefinition, particularly pertinent given Africa's extensive biodiversity and natural resources. Prosperity, viewed through an ecological lens, emphasizes maintaining a healthy relationship with the natural environment, recognizing that long-term economic stability depends significantly on preserving ecological balance. Initiatives like Ethiopia's ambitious reforestation program, aiming to plant billions of trees, demonstrate practical applications of this ecological perspective in policy-making.

Furthermore, cultural vitality and heritage preservation represent essential components of prosperity often overshadowed by purely economic considerations. This cultural aspect of prosperity includes the flourishing of diverse cultural expressions and traditions that provide communities with a sense of identity, continuity, and pride. The vibrant art scenes in cities like Lagos and Dakar, alongside festivals such as South Africa's Cape Town International Jazz Festival or Nigeria's Osun-Osogbo Festival, highlight how cultural prosperity significantly contributes to national identity and collective self-esteem.

Intergenerational equity is another critical dimension integral to redefining prosperity, requiring current developmental practices to ensure resources and opportunities remain available for future generations. This principle, inherent in indigenous philosophies across the continent, aligns closely with the African ethical framework of *Ubuntu*, emphasizing communal interdependence, collective responsibility, and holistic flourishing. *Ubuntu* captures the profound understanding that individual well-being is deeply intertwined with communal welfare, asserting that genuine prosperity cannot be measured solely by individual accumulation but by shared progress and mutual upliftment.

Yet, despite these insights, when African policymakers deliberate on development, entrenched economic paradigms rooted in neoliberal ideologies continue to dominate. These paradigms predominantly measure prosperity in GDP growth rates, infrastructural developments, and foreign direct investments, thus neglecting nuanced social, psychological, and ecological dimensions essential for comprehensive human advancement. The over-reliance on such narrow metrics often results in policy decisions disconnected from the lived realities of local populations.

Scholars such as Ali Mazrui have articulated the necessity of confronting and critically evaluating these external definitions of prosperity. Mazrui emphasizes the urgent need to realign developmental metrics and strategies with authentic African contexts, traditions, and values, arguing that true prosperity involves fostering conditions that enhance communal well-being, interconnectedness, and collective flourishing. His arguments align closely with African indigenous

knowledge systems, which prioritize sustainable living, community solidarity, and the preservation of cultural identity woven into and in alignment with the identity of the individual.

Therefore, redefining prosperity within contemporary Africa requires a deliberate shift from conventional, economically centric measures towards a more holistic, culturally resonant, and ecologically sustainable paradigm. By embracing this expanded conception, policymakers and communities can cultivate a vision of progress that truly reflects and nurtures African values, traditions, and aspirations, fostering sustainable and inclusive growth for present and future generations.

## **Education: Colonial Legacies and Indigenous Epistemologies**

Education in post-independence Africa largely mirrors colonial legacies, privileging Western epistemologies while marginalizing indigenous knowledge systems. Ngũgĩ wa Thiong'o, in his seminal work *Decolonising the Mind* (1986), articulates the detrimental effects of education systems divorced from African linguistic and cultural contexts, calling instead for education as an instrument of liberation rooted in African philosophies, histories, and languages. According to Ngũgĩ, genuine education must empower individuals and communities by affirming their identity, fostering self-esteem, and enabling critical engagement with their historical, social, and cultural realities.

Historically, education in colonial Africa was structured explicitly to produce obedient subjects who could facilitate colonial administration and exploitation. Missionary schools, colonial government educational policies, and European language dominance all contributed to this model, systematically marginalizing indigenous knowledge and epistemologies. This historical context led to the creation of educational institutions and systems that viewed African cultures as inferior, something to be suppressed or replaced. The legacies of this system endure today, visible in curricula and pedagogy that prioritize Western histories and knowledge systems, often at the expense of indigenous perspectives and contexts. For example, school syllabi across the continent still predominantly feature European and American history, literature, and science, while indigenous histories, languages, and ecological knowledge remain significantly underrepresented.

The resilience of colonial paradigms in African education underscores the ongoing epistemological colonization that limits Africa's potential for authentic modernity. Epistemological colonization refers to the continued imposition and internalization of Western modes of knowledge production and validation, which often disregard or delegitimize indigenous ways of knowing. This colonization manifests in standardized tests, language policies prioritizing colonial languages, and educational frameworks modeled after Western educational paradigms. These practices perpetuate a hierarchy that privileges Western intellectual traditions over local ones, thereby alienating students from their cultural heritage and diminishing their capacity for critical and independent thinking within their own cultural contexts.

Alternative epistemologies, notably Ubuntu, present powerful avenues for educational reform. Ubuntu, an indigenous philosophy prominent in southern African cultures, emphasizes humanity's interconnectedness, compassion, collective well-being, and

mutual responsibility. It advocates for education that nurtures empathy, cooperation, communal solidarity, and respect for human dignity, radically shifting educational objectives from individualistic competition and economic instrumentalism towards holistic human flourishing. Educational systems grounded in Ubuntu principles would prioritize collaborative learning, community service, and problem-solving approaches sensitive to local contexts and realities, significantly enriching students' intellectual and emotional development.

Integrating Ubuntu into formal education would fundamentally transform educational institutions from mere economic conduits into vibrant spaces nurturing comprehensive human flourishing. Such integration could manifest in pedagogies that value community-centered learning, indigenous language instruction, and curricular content that reflects local history, culture, and ecological knowledge. However, embedding such epistemologies authentically poses a significant philosophical and practical challenge. There is a risk of dilution or superficial implementation in a globalized educational landscape dominated by Western standards and market-driven educational objectives. Therefore, genuine reform necessitates careful and deliberate strategies that balance authenticity and global relevance.

Efforts to decolonize education require a rigorous reassessment and restructuring of curricular frameworks, teacher training, and educational policies to align them with African indigenous epistemologies. These initiatives must also critically engage with globalization's educational norms, resisting the simplistic adaptation of Western models in favor of contextually relevant and culturally affirming approaches. Successful examples include Tanzania's use of Kiswahili as a medium of instruction and South Africa's ongoing curricular reforms aimed at integrating indigenous knowledge systems. Such efforts illustrate the feasibility and benefits of a more inclusive educational paradigm, capable of fostering deeper intellectual independence, cultural pride, and holistic development among students. Clare Mwiinga and Nanyangwe Nizah find evidence of improved learning outcomes in Zambia when indigenous languages were used as the language of instruction.<sup>2</sup>

Ultimately, embracing indigenous epistemologies within African educational contexts demands sustained philosophical inquiry, innovative pedagogical practices, and committed policy advocacy. This transformative approach could empower generations of Africans to contribute meaningfully and confidently to their societies, fostering a form of modernity that genuinely reflects and respects African cultural identities and aspirations.

## **Technology and Inequality: The Paradox of Advancement**

Technological advancement, typically equated with prosperity, paradoxically co-exists with persistent global inequalities. While global wealth stands at approximately \$450 trillion, stark disparities persist, underscored by the annual \$4.2 trillion gap identified by the United Nations Development Programme<sup>3</sup> necessary to achieve Sustainable Development Goals (SDGs). The coexistence of unprecedented technological progress with massive socio-economic deprivation across the globe raises fundamental questions about the purpose, direction, and beneficiaries of in-

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<sup>2</sup> Nizah and Mwiinga, *The Effects of Using Indigenous Languages*.

<sup>3</sup> United Nations Development Programme (UNDP), *Financing the Sustainable Development Goals*.

novation. This paradox demands deeper investigation into how technology is conceptualized, deployed, and governed.

Critically engaging Heidegger's philosophy of technology, which cautions against viewing technology merely as a neutral tool, it becomes evident that technology often embodies and reinforces prevailing power structures and inequalities. Heidegger argues that technology shapes human existence, shaping not just tools but modes of thinking and being, thereby subtly dictating societal values and priorities.<sup>4</sup> In this light, technological systems are not value-free; they reflect and amplify the ideologies and interests of those who control their development and dissemination. For Africa, indiscriminate adoption of global technologies risks exacerbating dependency, digital colonization, and economic marginalization, effectively entrenching Africa's position on the periphery of global innovation networks.

Technology should therefore not dictate societal transformation but rather reinforce and complement indigenous socio-cultural frameworks. Africa must assert agency in shaping its technological trajectory, aligning innovations with local needs, values, and development goals. The blind importation of Western technologies—whether in agriculture, health, or education—without adequate contextualization often results in systems misaligned with socio-cultural and infrastructural realities. Instead, indigenous innovation ecosystems must be fostered to cultivate locally relevant technologies capable of advancing inclusive development.

Artificial Intelligence (AI), particularly illustrative of these tensions, offers immense opportunities alongside profound ethical dilemmas. From predictive analytics in health to AI-powered agricultural systems, the potential benefits for Africa are vast. However, Africa's significant data poverty and limited control over data governance frameworks pose serious risks. Data harvested from African users often feeds AI models built and commercialized abroad, perpetuating extractive dynamics reminiscent of colonial resource exploitation. The asymmetry in data ownership and algorithmic transparency not only undermines digital sovereignty but also risks embedding cultural biases into decision-making systems.

Rather than blind adoption, African societies must develop robust ethical frameworks prioritizing human dignity, ecological sustainability, and collective societal welfare. These frameworks should be grounded in African philosophical traditions, such as Ubuntu, and aligned with long-term development visions. Regulatory bodies, civil society actors, and academic institutions all have a role in shaping inclusive AI strategies, ensuring technologies are accountable, equitable, and beneficial to African communities. Additionally, investments in homegrown tech talent, infrastructure, and research capacity are essential to foster technological sovereignty and innovation that truly reflects African realities and aspirations.

## **Innovation Grounded in African Values**

The prevailing global innovation paradigm predominantly emphasizes novelty, scalability, and economic efficiency. Contrastingly, innovation within African contexts should prioritize genuine community involvement, cultural authenticity, and ethical sensitivity. Such a value-driven approach views innovation not as a race for market dominance but as a tool for societal well-being and cultural expression. Kenya's pioneering mobile financial platforms, such as M-Pesa, illustrate

<sup>4</sup> Heidegger, *The Question Concerning Technology and Other Essays*.

technological innovation explicitly designed for social inclusion and community empowerment rather than mere profit maximization. By addressing specific socio-economic gaps, such as limited access to banking services, M-Pesa enabled financial inclusion at an unprecedented scale, reflecting a profound alignment of technology with local realities. Innovations like these exemplify how technology can be harnessed to advance social justice and inclusive development when rooted in a clear understanding of cultural contexts.

Namibia's emerging sustainable hydrogen economy further highlights innovative technology deployment that respects ecological boundaries and prioritizes environmental sustainability. Through green hydrogen initiatives, Namibia is leveraging its natural endowments to foster economic growth while adhering to principles of environmental stewardship, consistent with African ethical frameworks emphasizing harmonious coexistence with nature. These examples point toward a future where Africa can lead in ethical innovation that simultaneously addresses local needs and global challenges.

Yet, significant philosophical tensions remain in maintaining cultural authenticity amid global economic pressures and external funding dependencies. Development partnerships and investment flows often come with embedded expectations that may not align with African priorities. Authentic innovation requires sustained vigilance to avoid the instrumentalization of culture for economic ends, which risks hollowing out indigenous identities under the guise of development.

Ultimately, reclaiming innovation as a culturally rooted, ethically guided process necessitates deliberate engagement with the philosophical foundations underpinning technological advancement. This entails reimagining innovation systems that prioritize justice, dignity, and ecological harmony, thereby charting a uniquely African path to modernity that transcends material accumulation and embraces holistic human flourishing.

## **Towards a Redefined African Modernity**

The quest for authentic African modernity confronts profound structural, philosophical, and practical challenges. Entrenched educational paradigms resistant to reform, technological dependencies, and chronic underinvestment in local innovation continue to impede genuine autonomy. These constraints, often inherited from colonial legacies and perpetuated by global economic asymmetries, hinder Africa's capacity to shape its own modernity on its own terms. Achieving meaningful independence within globally interconnected systems demands critical philosophical reflections on whether autonomy necessitates resistance to global trends or nuanced engagement.

Philosopher Kwasi Wiredu suggests a critical synthesis approach, proposing that Africans selectively appropriate global modernities compatible with local values and ethical frameworks.<sup>5</sup> This strategy encourages discernment, allowing Africa to benefit from technological and intellectual advancements without surrendering cultural agency. Wiredu's approach insists on the importance of internal criteria for progress, rather than relying solely on Western benchmarks. By anchoring modern-

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<sup>5</sup> Wiredu, *Cultural Universals and Particulars*.

ization in indigenous rationalities and moral systems, African societies can cultivate a hybrid modernity that is both globally conversant and locally rooted.

This perspective aligns with philosopher Paulin Hountondji's emphasis on endogenous knowledge production, which advocates for the cultivation of autonomous African intellectual spaces capable of meaningful dialogue with global knowledge systems.<sup>6</sup> For Hountondji, knowledge sovereignty is a prerequisite for authentic development. African modernity must emerge from within—grounded in the lived realities, histories, and aspirations of its people. Endogenous knowledge systems, including oral traditions, ecological wisdom, and community-based problem-solving, offer fertile ground for innovation and development grounded in African experiences.

The redefinition of African modernity also necessitates a political and economic commitment to intellectual and cultural infrastructure. Investment in African research institutions, indigenous language publishing, and philosophical education are essential to strengthen the intellectual foundations of an authentic modernity. Additionally, African modernity should resist the mimicry of Euro-American models of progress, which often promote unsustainable growth, individualism, and cultural homogenization. Instead, it should champion sustainable development, communal values, and ethical responsibility. While the Sustainable Development Goals is an attempt at remedying this approach, there is still an Africanization of modernity that reflects the holistic well-being that Africa needs to pursue.

Ultimately, redefining African modernity is not merely a cultural or intellectual exercise; it is a political project of self-determination. It entails reclaiming the power to define what it means to live well, to prosper, and to advance—according to African realities and aspirations. This modernity should neither reject global integration nor succumb to cultural erasure. It should navigate the complex interplay of tradition and innovation, local autonomy and global engagement, forging a path that honors Africa's heritage while embracing its future.

## Conclusion

Africa's journey towards redefining modernity and prosperity through education and technology remains complex, profoundly philosophical, and ongoing. Integrating indigenous epistemologies and ethical frameworks offers promising pathways for inclusive, sustainable progress. However, articulating what constitutes a genuine African modernity, reconciling indigenous identities with global technological imperatives, and fostering genuine human advancement demands continuous critical engagement and societal introspection. This intellectual endeavor remains open-ended, recognizing that definitions of modernity and prosperity evolve, requiring perpetual re-examination and redefinition.

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<sup>6</sup> Hountondji, *African Philosophy: Myth and Reality*.

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