Decolonize Justice! A perspective on the role of international development policies and citizens' experience of justice institutions

AFRICAN FUTURES LAB

01

Executive summary

This article aims to shed light on how Western legal and judicial institutions have been maintained despite their inadequacy in African countries, as well as how this continuity inflicts violence on African populations. The modernization paradigm at the heart of the colonial process which explains the establishment of Western court systems in African society has not only been maintained, it has been buttressed by international development institutions whose policies are reproducing Western visions of law and judicial institutions, at least in part, to promote economic growth and ensure the security of foreign investors. This article shows how the inadequacies of these policies have led to multiple forms of violence perpetrated against African populations deprived of their access to justice

Introduction

In 2020 at a mobile criminal hearing of the District Court in the Western province of Burkina Faso, two defendants were accused of stealing a billboard belonging to a private company from the side of the road. A neighbor called the police - shortly after the incident, they were arrested. They have been in custody for 3 months. The defendants lived in a rural area and were daily wageworkers who earned very little income. They had never appeared before a State court. At the hearing, the defendants did not seem to understand how the proceedings worked, especially the adversarial principle of State justice institutions. In addition, the hearing was held in French, a language the defendants had no command of, and only received a translation for the questions they were asked (but not during the questioning of witnesses, nor the prosecution's arguments).

When the defendants, who pled not guilty, were given the floor, they did not defend their stance or present any arguments. They only told the President that they trusted him and God to make the best decision for them. They did not defend themselves, instead appearing to seek the Court's understanding without putting forward any arguments. This non-confrontational and conciliatory strategy may have been appropriate within local justice mechanisms, but it seemed to have little effect in these criminal proceedings.[1] In fact, in this case, it would have been more appropriate to proactively challenge the prosecutor's argument and adopt a more defensive approach.

The hearing above demonstrates the central argument of this article: State judicial systems inherited from colonization in contemporary African societies and many other formerly colonized countries not only deny citizens access to the public justice system, but they also deprive these societies of institutions central to their functioning. In fact, as they currently stand, justice institutions in contemporary African societies are a public service whose design and functioning are based on Western legal culture and subsequently alienate their users. We argue that if international development policies do not wish to amplify the injustices they seek to address in terms of access to justice and rule of law policies, they must stop using Western legal and judicial culture as a benchmark against which justice sector reforms must achieve.

The Black Lives Matter protests that took place in more than 60 countries in 2020 denounced the persistence of racial injustices in both the Global North and the Global South.[2] The protests called out the lack of justice for physical violence perpetrated against populations during the colonial period and its contemporary consequences, including the extractive economic and commercial practices of Northern states against the populations of the South, the looting of art, and the destruction of natural environments, among many other forms of racialized violence. One of the areas where the persistence of colonization's historical injustices can be observed, and which has not been the object of criticism, however, is the judicial system. In fact, it is well known that the judicial systems currently in use throughout Africa were established by colonial administrations along with a parallel institutionalization of customary mechanisms (E. Le Roy, 2004; Merry, 1991; Rouland, 1990). After independence, the new African states carried out meagre reforms but, to this day, no meaningful decolonization process has taken place. Rather, the jurisdiction of Western State justice institutions in the new countries was extended to the entire African population (instead of being limited to a specific portion of the population, as had been the case during colonization) and their functioning and operation (language, legal norms, procedural standards, etc.) remained in place.[3]

The continuation of State judicial institutions established during colonial times in contemporary African societies is at the origin of many obstacles in populations' access to justice. This situation is highly problematic in the sense that it not only prolongs the injustices of colonization (application of norms and procedures adopted with the goal of imposing Western cultures and values on African societies), but because it also deprives African citizens of access to mechanisms and institutions that are truly capable of protecting their rights.

This article aims to shed light on how Western legal and judicial institutions have been maintained despite their inadequacy in African countries, as well as how this continuity inflicts violence on African populations. The modernization paradigm at the heart of the colonial process which explains the establishment of Western court systems in African society has not only been maintained, it has been buttressed by international development institutions whose policies are reproducing Western visions of law and judicial institutions, at least in part, to promote economic growth and ensure the security of foreign investors (Pahuja, 2013).

This article shows how the inadequacies of these policies have led to multiple forms of violence perpetrated against African populations deprived of their access to justice.

The results presented in this article are based on qualitative data collected during fieldwork conducted by the authors along their professional and research experience. Over the last 10 years, we have been conducting, supervising and evaluating projects aiming at understanding and reinforcing populations' access to justice and/or support justice reform policies in Algeria, Burkina Faso, Burundi, CAR, Chad, DRC, Ivory Coast, Madagascar, Mali, Myanmar, Niger.[4] Although this data was collected as part of other research projects, we felt it was important to bring it together here to address a persistent issue, namely the inadequacy of State judicial institutions due to their operating model, which was put in place by colonial administrations and has not been changed since.

The first part of this article explains how colonial justice institutions have been maintained and how international development policies have supported these institutions regardless of the needs of the concerned populations. The second part of the article demonstrates the contemporary violence inflicted upon populations as a result of the constant application of Western justice systems. We conclude by making preliminary recommendations addressed to international development actors and state institutions.

02

Colonial justice institutions are reinforced in the name of legal modernity and to protect foreign investment

The persistence of Western justice institutions in Africa from independence to current times has been a paradox for the authors of this paper. We have been puzzled by the faith and commitment shown, in Francophone countries especially, by both international development actors and some domestic elites to the reinforcement of Western State justice institution models.

In most of our fieldwork, African citizens repeatedly expressed the inadequacy of State justice institutions. We heard numerous critiques, ranging from inaccessibility in terms of language and cultural distance from the legal procedure, to the ways in which legal actors in those institutions speak, dress, and resolve conflicts. As a result, for the last 15 years that we have spent working in the field of access to justice, we have struggled with the following paradox: Why would so many international development institutions spend so much energy and resources on "developing" institutions that contradict their mission of responding to the needs of the populations that they are meant to serve? Why do they want to build and support institutions that deprive citizens of their fundamental rights to access to a public service?

This first section aims at elucidating this paradox by bringing to light the ways in which Western justice institutions adopted during colonialism (A) not only remained intact, but have been reinforced by international development actors, despite the fact that (B) they are depriving African citizens of their access to institutions that protect them and deliver justice. Using the case of the World Bank, which became a central player in shaping rule-of-law policies at the turn of the 1990s, we demonstrate that this preference for State judicial institutions expands a Western legal and judicial culture that seeks to ensure the protection of foreign investors.

Western State justice institutions and the absence of decolonization

An extensive body of literature has highlighted the central role played by law and judicial institutions during the colonial enterprise in Africa (Roberts & Mann, 1991). In order to rule and transform African societies, the colonial enterprise entailed imposing legal instruments and judicial institutions that affected the socio-political organization, economy, and family relations in these societies. The implementation of these laws and institutions led to a dual legal system: one for the colonized populations and one for the colonizers (Merry, 1991). The distinction between these two types of institutions was based more on nationality than subject matter. Of course, many authors have emphasized the variations between colonial processes and the ways in which they dealt with conflicts among colonized populations (Roberts & Mann, 1991). In some colonies, indigenous populations could sometimes access colonial judicial systems but under different conditions. It is also important to note that the customary law implemented in "native courts" was not "a relic of a timeless precolonial past but instead an historical construct of the colonial period" (Durand, 2001; John-Nambo, 2002; Merry, 1991). Overall, some local forms of justice mechanisms were replaced or modified by the colonial administrations while others stayed untouched (Le Roy, 2010; Schmidhauser, 1992; Snyder, 1981).

Despite the importance of judicial institutions in regulating societies, African leaders did not invest much energy and resources into transforming the judiciary when their States achieved independence. Rather, they focused on building national integration and establishing strong governments and legislative instruments to ensure order (Mingst, 1988). Schmidhauser (1992) demonstrates that 74% of former colonies in the world adopted the legal system of their former colonizer.

For instance, in the specific case of Burkina Faso, State courts have remained, to this day, the only dispute resolution mechanism recognized by law (Paré, 2019). The existence and general functions of traditional chiefs are not even acknowledged by the State. During the Sankara revolution (1983-85), the power of chiefs was largely ignored and even contested by State authorities. Subsequently, although Blaise Compaoré's government (which came to power following the assassination of Thomas Sankara) relied on traditional chiefs, it never legally recognized nor organized their functions. Thus, despite the official rhetoric of national authorities and development aid agents' promises, successive judicial reforms have not considered local legal culture: "While asserting the need to promote these community cultures of (re)conciliation, the judicial reforms undertaken in Burkina have never fully recognized these mechanisms that are capable of expressing and achieving a sense of justice on the part of local populations" (Fofana, 2018).[5]

However, since the mid-nineties there has been a growing call to decolonize State justice institutions in many African countries. This objection to the justice systems' colonial heritage has originated from countries that were experiencing gross human rights violations and were interested in finding ways to rebuild the social fabric and appease tensions. This was particularly true in countries such as South Africa, Rwanda, Uganda, and many others, where non-Western forms of conflict resolution were explored in order to address the limitations of State justice institutions (Umubyeyi, 2015). In the name of decolonization or of moving away from Western concepts of justice, local practices and concepts of conflict resolution such as Ubuntu or Gacaca were explored and temporarily established to deal with gross human rights violations (Umubyeyi, 2015).

Despite these few examples in support of local forms of justice, most contemporary national and international justice system reforms over the last 60 years of independence have not only upheld the operation of Western State justice institutions, but they have also reformed them. In the next section, we explore the ways in which these Western State justice institutions have been sustained by international development actors even though they do not address the needs and practices of African populations.

Reinforcing the Western State justice model in the name of modernization and the "security" of foreign investors

For several years now, a number of studies have highlighted the fact that citizens of various African countries avoid State judicial institutions, preferring to use local conflict resolution mechanisms (Albrecht & Kyed, 2010; Golub, 2003; Moriceau et al., 2021; Swenson, 2018). This avoidance has been explained in various ways, highlighting obstacles linked to the cultural, linguistic, and geographical proximity of these mechanisms to the populations.

Despite the use of local mechanisms that has been demonstrated over the years, an analysis of various international development institutions' programs reveals major support for Western State justice institutions, with only 5% to 10% of their budget being allocated to local forms of justice (Denney & Domingo, 2023). Whether it be the United Nations, the European Union or major development agencies such as USAID, we find, despite discourse promoting locally adapted and context-specific solutions, the same programs focusing mainly on strengthening State justice institutions inherited from colonization without any regard for the fact that most of the population prefers to turn to local conflict resolution mechanisms.

The case of the World Bank (WB), a key institution in the setting of development policy agendas, clearly demonstrates this strong inclination towards Western models of justice and the logic behind this preference (Pahuja 2013). The WB has been considered the mastermind of what has been called the "legal turn" in development policies and the emergence of the rule of law orthodoxy (Krever, 2011). In fact, until the late nineties, law and legal institutions were rarely viewed as levers to promote the economic development of countries in the Global South.

The interest of development actors such as the WB in law and judicial institutions has been triggered by a convergence of factors. These factors include the adoption by the Bretton Woods institutions of New Economic Institutions theory, which asserts that the State has an important role to play in a market economy by providing the necessary institutions and legal infrastructure to protect property rights (Krever 2011, Pahuja 2013). The growing influence of this school of thought can be illustrated by the fact that the WB was involved in almost 2,500 justice reform activities in 2009 (Krever, 2011).

As demonstrated by Sundhya Pahuja, this interest in law and legal institutions is supported by a conception of law and legal institutions grounded in Western legal culture. This legal culture is, in turn, associated with legal modernity and constitutes a model towards which its proponents believe other forms of law and legal institutions should strive. Pahuja shows how the WB clearly situates the origins of rule of law in twelfth-and thirteenth-century English laws that limit the power of monarchs (Pahuja, 2013). Citing one document from the General Counsel to the Bank, the author also demonstrates that the General Counsel does not consider local legal culture to be law because of his original understanding of law through the Western lens. The WB General Counsel writes:

> "Informal rules of custom and usage play an important role but these informal rules are not law. And even where informal rules receive greater compliance in practice than formal law, there is no space for the possibility that these informal rules might be that society's system of law."([Senior General counsel at the World Bank, cited in Pahuja, 2013)

At the World Bank, as in other development institutions working in the justice sector, the standards and procedures used in local conflict resolution mechanisms are systematically referred to as "informal," on the grounds that they do not correspond to the law governing State institutions. This informalization of elements that may otherwise be formal in nature effectively dismisses their value. Land rights is a relevant example in that regard, as the World Bank has played a crucial role in declaring local rules to be informal and imposed the need to transform and formalize them in order to comply with the Western conception of property rights (Upham, 2018).

The conception of law conveyed by WB documents reveals a vision of law that is valid only because it corresponds to

the Western conception of law and the way the legal and judicial system has been constructed in Western countries. The different visions and practices of law and legal and judicial institutions are perceived as not having reached an advanced stage of development and must be, from this point of view, transformed in order to reach the Western conception of law and legal institutions.

In addition, many authors argue that the WB has a particular vision of law and legal institutions that serves its agenda of advancing economic growth in countries targeted by its policies. Rule of law instruments and institutions serve to protect private property and ensure that contracts are predictably enforced, judicial enforcement is reliable and that they create an "incentive structure to which economic agents respond and facilitate the functioning of the private sector" (Krever, 2011; Pahuja, 2013; Upham, 2018). For instance, in a 2004 report written jointly by the World Bank and the International Monetary Fund on the assessment of policies and actions implementing the Millennium Development Goals, the law and legal institutions are, according to Pahuja's analysis, continually understood solely in terms of their ability create an environment that enables economic growth. The same report establishes that deficiencies in property rights and law-based governance create a deficient environment for domestic and international investors (Pahuja, 2013).

The main argument here is thus to highlight the way in which the World Bank's preoccupation with the interests of investors and economic growth is leading this institution to adopt a Western-centric conception of law and judicial institutions, to the detriment of the needs of local populations. If this conception of law and legal institutions has been criticized for being too narrow and harming societies where WB policies and programs are being implemented, little has been written on the consequences of these perspectives on the everyday lives of people who must navigate legal mechanisms imposed on them by international development actors.[6] The next section will explore this aspect in more depth.

03

A violent colonial legacy: The experience of justice seekers

The potential violence of law and justice institutions outside of colonial and postcolonial contexts has been extensively studied and demonstrated. Karl Marx, for example, spoke of the use of law as an instrument of political and economic domination by a social class over the people (Bensaid, 2007). Writing on and from the North, a number of scholars have demonstrated how justice seekers can sometimes experience the institutions of law as a form of persecution and submission (Ewick & Silbey, 1998; Galanter, 1974). This is particularly true for people accused in a criminal case, who are constantly constrained by the criminal system, and incur extremely restrictive sentences that deprive them of liberty and in particular marginalized populations (Gustafson, 2009).

In this section, we would like to focus on contexts where the violence of colonial legacies exacerbates the oftentimes violent nature of legal and justice institutions. By focusing on cases of everyday justice, such as "minor" civil or criminal cases, we address the consequences of using the Western model of justice institutions imposed by colonial administrations and sustained by post-independence States. We demonstrate that the whole population, and not only those individuals prosecuted for crimes, experience cumulative violence resulting from the State justice system and the law's colonial character. We show that a large majority of the population in the regions where we conducted our fieldwork prefer to use local justice mechanisms for daily disputes as they fear Western State justice institutions and view them as oppressive. They regard State institutions as confrontational, view their rules and procedures as brutally clashing with social values and threatening social cohesion. They also consider decisions to be largely unpredictable and to challenge individual and collective survival (Gustafson, 2009).

Brutal Procedures

Across West Africa, a majority of disputes are referred to local dispute resolution mechanisms, "in the belly" as Le Roy said, which means inside/within the local community, and not externally, through the mediation of an external institution, i.e. a Court (Le Roy, 2004). Being summoned to a hearing or examination by a State body (police, court) for a dispute is often experienced as a brutal shock by justice seekers (Paré, 2019).[7] It means that the dispute has been taken out of the community and brought to the attention of external institutions. This shock is twofold. Firstly, it means that a litigant took proactive actions to bring the case to external institutions, a move that is often perceived as a desire to exacerbate the dispute, and, by taking the dispute out of the community, to damage the relationship between the two litigants. Secondly, it also means that the facts and details of the dispute are discussed publicly during the hearings, and therefore made known to a greater number of people. It also entails a long, costly, uncertain process conducted by distrusted legal actors. The summons can therefore irreversibly damage relations between implicated parties. According to a prosecutor interviewed , the person summoned has the feeling of being treated like a stranger:

> *"When you summon someone to court, in this person's minds, it's as if you were totally denying the relationship between the judge and the person. It's a very violent act. It's as if it were a foreigner, a white man, summoning him."*[8]

In other words, the violence comes not only from the legal action initiated by the other litigant, but also by the external institution.

The way State courts operate and the language of justice are also reminiscent of colonial oppression. The language of State justice institutions is the former colonial language, a language that is often foreign to majority of the population.[9] Using a language that a large part of the population does not understand illustrates the way in which the population is viewed: not as users of a public service, but as objects of the public service. While translation systems ensure that proceedings are not impeded (the parties are officially "heard"), they do not enable litigants to understand how the hearing works, what is expected from them, or how to defend themselves properly.[10] Magistrates' robes are the attire of former colonial judges, and court buildings are sometimes still colonial justice buildings.[11] According to some judges we met, justice seekers perceived them as successors of colonial judges, and therefore distrust them and, for this reason, prefer to avoid State courts.

In State court hearings, the principle of adversarial proceedings is intended to ensure that each litigant can speak and defend themselves. This defense is carried out through speeches and consists in putting forward arguments to convince the judges and posing questions regarding the other party's arguments. This adversarial approach causes tension with the posture adopted by justice seekers accustomed to local justice actors who are much more conciliatory and less offensive: "Our societies do not discern justice through contradiction, in the Western way, but rather through consensus" (Konde et al., 2002). Legal anthropologists have analyzed the consensus principle not as a spontaneous and informal practice used by pre-legal societies but rather a consensus building process with formal rules and procedures.[12] One of the aims of this process is to seek an acceptable solution for all parties, instead of simply punishing one of them. The correct strategy (the one that will lead to a favorable

decision) with local authorities often consists of justice seekers showing they are ready to find a trade-off, and that they are willing to listen to the other party and the local actor's point of view, rather than trying to prove that they are right.[13] As a result, the adversarial procedure is often misunderstood by justice seekers (Bierbrauer, 1994).[14] Many justice seekers do not understand the logic of the State court's procedure, which is implemented in a violent form by twisting justice seekers' values to impose a system made of external rules. It contributes to making justice seekers strangers in their own country, convincing them that their social values, and their sense of fairness and equity are inferior to the outside, foreign rules imposed on them. This legacy of colonial rule in State court justice is acknowledged by some justice actors, as a prosecutor said:

> *"My place is, originally, the place of a white man. The first judicial judges here were white. The judicial institution was set up by the colonists. […] The people brought before the white judges were those who didn't pay taxes, those who didn't submit to forced labor… They were the ones who didn't submit to colonial power. When a black man was summoned by a white man, it was a serious matter, a matter of insubordination. The feeling [of oppression] remains, even now."*[15]

Fear of State justice institutions' decisions

Beyond the lack of understanding of procedures, the judicial system represents a violent experience for its users in that it is not predictable. Contrary to the sacrosanct principle of legal certainty so dear to many Western legal systems, here, users are less able to predict the outcome of cases, as they have less of an understanding of what is at stake. But above all, unlike local forms of justice, the material and financial consequences are far more significant; for example, there is no imprisonment in local conflict resolution methods. Many justice seekers met mentioned that they were afraid when a case was handled by State courts due to great uncertainty regarding the stages of the procedure, its timing, and the potential solutions:

> *"We wait for the judgment so we can be relieved. We tell ourselves that when the judgment comes down, everyone will be able to [come back home peacefully]. As we don't master the nuts and bolts of trials, we can't know whether we'll have a positive or negative judgment."* [16]

The very high cost of proceedings makes this uncertainty a major risk to individual and family survival. These include the direct costs of the case, but also possible fines, as well as indirect costs (i.e. travel costs associated with the many steps undertaken at each stage of the procedure). [17]

In criminal cases, misunderstandings about procedure may influence decisions and have dramatic consequences on the lives of the accused and their families. During hearings, the behavior that the accused thinks is expected from them (docility, cooperation) is not necessarily the best behavior to adopt in order to defend themselves in a State court. There is "a kind of gap between the behavior of the accused, and the attitude demanded by the State court" (Fofana, 2018). If the accused adopts a docile attitude without challenging the plaintiff or the prosecutor's arguments, they will be more likely to receive an unfavorable decision because they have not used the "tools" that the procedure has made available to them to defend themselves, unlike the prosecutor, as illustrated in the hearing observation in the introduction.

Resistance practices from local justice actors and need for change

Existing scholarship has examined populations' resistance to State justice mechanisms, namely through avoidance strategies, such as justice seekers resorting to local, even unofficially recognized, mechanisms (Chauveau et al., 2001; Le Roy, 2004). Yet, there is little knowledge of local actors' resistance practices. To analyze these practices, we will focus on local chiefs, also called customary chiefs or customary judges, who are traditional leaders who exert certain authority according to the custom, including the power to handle disputes, on a village, neighborhood, or a larger entity. In many African rural areas, local chiefs are the most solicited actor to handle disputes (Moriceau & al, 2019, Robin, 2022). After being neglected by academics and policy actors, there has been a revival of interest in local chiefs, especially within the peace building sector, since the 2000s (Ubink, 2008). However, most of state building and peace studies recent literature considers local chiefs as subsidiary actors in the state building process (Swenson, 2018) and overlook their resistance practices At first glance, one can indeed observe respect and acknowledgement of state justice authorities from local actors. However, local chiefs' resistance practices do exist when it comes to the concrete implementation of some rules of State law.

Firstly, in some contexts, the mere action of adopting local justice mechanisms to resolve disputes could in itself be read as an act of resistance from local actors. Indeed, in the DRC and Burkina Faso, not only are local justice mechanisms not recognized, but they are sometimes considered illegal. In the DRC, public prosecutors have already sued local justice actors for "illegally dispensing justice" (Moriceau & al, 2021). Secondly, local actors may refuse to abide by state law, when the latter is contrary to the custom or to their social values. This may put them at the risk of placing themselves in an illegal situation. For example, in rural Burkina Faso, most chiefs refuse the commodification of rural land, as the sale of rural land is allowed and encouraged through State law but forbidden by custom. [18] This prohibition is a key element of local justice cultures, as rural land is mostly collective property inherited from the ancestors, and should be kept

within the family and the community (village or ethnic community). The chiefs' resistance leads to a major clash of values between local customs and State law. For the chiefs we met, this resistance is part of a broader struggle to maintain moral and social values, and to guarantee the cohesion and survival of communities threatened by land commodification. The chiefs see themselves as guardians of these values, emphasizing their obligation to remain disinterested in personal enrichment and opposed to neo-liberal land policies.

Despite the efforts of national policy and international aid actors to "bring justice closer to the people," i.e. through legal aid services, justice seekers met during our fieldwork still widely expressed their rejection of State courts. In DRC, we observed a strong feeling of fear against State justice institutions. This fear is related to a lack of trust in state institutions overall, which is also reflected in many studies on the perception of justice institutions by the Congolese population (Moriceau et al., 2019; Vinck & Pham, 2015). According to these studies, most justice seekers do not consider state tribunals as justice for them, and do not feel that these institutions can respond to their needs. Justice seekers with previous experiences with State tribunals still feel mistrust, often even more so than before the experience. A recent impact evaluation study conducted in Burundi showed that legal aid services effectively increased justice seekers' use of State courts, but had no effect on the level of trust in these courts (Chaara et al., 2022). In other words, justice seekers who are encouraged to go to State courts and supported during the process still have a large feeling of mistrust, and a majority of them will not use State courts in the future. This point of view is shared by all litigants: those who 'lost' their case, those who 'won' it and those who had not yet received a decision.

One hypothesis to explain this generalized mistrust could be that it is a reaction to the susceptibility of state institutions to neo-liberal private economic reforms and political interest. How can citizens trust institutions that were built by colonizers and imposed by the elites, and then reformed to favor the interests of private economic – and often foreign – actors? In the majority of decolonized contexts, justice seekers have never experienced State justice courts that are accountable to the population and work in support of their needs. Local mechanisms, even though not perfect, may offer more visible accountability and may be seen to be run by actors who are part of the community and defend their interests.

04

Conclusion

This article aimed to retrace the way in which Western judicial systems were imposed over different periods of time by colonial administrations, continued after independence and were reinforced by public development policies. We sought to highlight the contemporary consequences of the continuation of these colonial institutions on African populations and other formerly colonized countries by insisting on the violence that is inflicted in spaces where citizens should instead be entitled to protection from the State. To put it another way, this article reveals the way in which public justice policies prolong the violence of colonial domination and amplify it in the name of legal modernity and for the security of foreign investors, two key principles in the international development arena.

Most justice reforms supported by international donors call for "bringing justice closer to justice seekers." In reality, most reforms' approaches are the opposite: they attempt to bring justice seekers (and local actors) closer to the State justice system. Concretely, and despite development discourses calling for 'tailor-made' and 'context-specific' solutions, most activities aim at change local actors and justice seekers' practices or to oversee local mechanisms to make them congruent with Western State courts' procedures.[19] The limited positive impact of most rule of law and access to justice programs reflects populations' low level of support for State justice institutions. Justice seekers, local actors, as well as some judicial actors we met are calling for a change of paradigm in justice reforms. What form might these changes take? One justice seeker advocates, for instance, for State courts to introduce local justice culture into their procedure:

> *"[State court's] justice needs to be improved by bringing tradition into it. Why are they worried about it?"* [20]

It is important to note that the emphasis on State courts' adversarial procedures, which is imposed in Africa, hardly corresponds to recent legal developments in Western countries. Rather, recent judicial reforms in the West encourage a certain flexibility and the development of alternative dispute resolutions (ADR) in common law countries and even civil law countries, which have historically been less accustomed to ADR (Cadiet & Clay, 2017).

As one of the continuities between colonial rule and the public justice policies of independent States, the concept of legal "modernization" should additionally be interrogated. Given what we know of local justice mechanisms ability to respond better to current and future global challenges than State courts in Africa, should we be, in 2023, seeking legal "modernity" in a bureaucratic, standardized, unitary and utilitarian model, or should we, rather, be investigating the role of flexible, adaptable, pluralistic, and community-grounded mechanisms?

Endnotes

1 Observation by the authors of a mobile court hearing in the western province of Burkina Faso, 2020.

2 https://www.contiki.com/six-two/article/black-lives-matter-marches-around-the-world/

3 https://www.contiki.com/six-two/article/black-lives-matter-marches-around-the-world/

4 Specific local fieldworks has been conducted with local actors and justice seekers in Burkina Faso (Ouagadougou, Plateau Central), in Burundi (Ngozi, Bururi, Gitega, Ruyigi), in CAR (Bangui, Berberati, Bouar, Bambari), in DRC (Kongo Central, Equateur, Ituri, Kasaï, Kasaï Central, Tanganyika), in Niger (Niamey, Tillabry, Tahoua & Diffa). For safeguarding purpose, specific locations and dates has been changed in quotes.

5 Fofana, H. (2018).

6 For instance, this approach has been criticized Frank UPHAM who asserts that "not only does the formalist rule of law as advocated by the world bank does not exist in the developed world, but attempting to transplant a common template of institutions and legal rules into developing countries without attention to indigenous contexts harms preexisting mechanisms for dealing with issues such as property ownership and conflict resolution". See : Property and Development: Frank Upham challenges the long-held idea that developing countries require stable legal property rights for economic growth and social change, https://www.law.nyu.edu/news/ideas/Frank-Upham-great-property-fallacy-developing-countries-economics-growth.

7 Paré stated that :"Recourse to the judicial institution is perceived as a hardship, because it disrupts everyday life. Justice belongs to the unknown and private world of the Administration. As a result, citizens only turn to State justice in the worst-case scenario, i.e. when all other avenues of recourse have failed to offer the parties a suitable solution to their conflict."

8 Interview with a Prosecutor, Région Est, Burkina Faso, 2020.

9 According to Nikièma in 2000, 10% to 15 % of the Burkina Faso population understands French. in La traduction médicale du français vers le mooré et le bisa. Un cas de communication interculturelle au Burkina Faso, Lalbila Aristide Yoda, 2007.

10 In the DRC, no specific translation mechanism is institutionalized during hearings. Translations are usually carried out by court clerks, who are not trained to do so and have other duties at the hearing. In Burkina Faso, court translators are appointed for hearings. During the observations of hearings, clerks translated the questions asked to the litigants and their answers, but they did not translate other proceedings, such as the indictment, which prevents the litigants from understanding the hearing and defending themselves properly.

11 For instance, most of prisons in the CAR were built during colonial times.

12 Hoebbel and Lleyewin, in their legal anthropology classic the Cheyenne way, did consider that adversarial procedures typical of Western law systems does not have a monopoly on sophisticated juridical thought. They attributed this mode of thinking to the Cheyenne through their complex consensus building process during dispute resolutions (Hoebel & Llewellyn, 1946).

13 Being right without forgiveness is absolutely useless. More than that, it could destroy our social harmony. The reason should lie on the forgiveness's mat." local chief, Burkina Faso, 2022.

14 The preference for conciliatory processes rather than State court's adversarial process has been highlighted in Germany for people of non-Western cultures by Bierbrauer. For him, it "suggests that legal norms prevailing in Western societies may be inconsequential to people socialized in other culture."

15 Interview with a Prosecutor, Région Est, Burkina Faso, 2020.

16 Justice seeker, Focus Group discussion, Ituri province, DRC, 2022.)

17 See for instance the study conducted in the Matadi prison in the DRC which highlighted the commodification of accused people at each step of the procedure. (Ravet & Lobho, 2015) These authors highlighted a statement often made by observers of the prison system, according to which the prisoner was an economic asset."

18 The right for the owner to sell its property, as a part of the individual property right, is one of the most important and most protected right by Western law systems (Bensaid 2007).

19 Activities focusing on local justice consist of legal awareness programs, legal training for local chiefs, legal aid services, judicial recognition of local justice solutions, etc.

20 Justice seeker, Focus Group discussion, Ituri province, DRC, 2022.

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