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Judicial corruption in Africa:
Senegal and Madagascar in
comparative perspective

Corrupção judicial na África:
Senegal e Madagascar em
perspectiva comparativa Título em
outro idioma

Santiago Basabe-Serrano

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INTERDISCIPLINARY APPROACHES TO BUSINESS &
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YEARS FROM THE UNGPs

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Judicial corruption in Africa: Senegal and Madagascar in comparative perspective*

Corrupção judicial na África: Senegal e Madagascar em perspectiva comparativa Título em outro idioma

Santiago Basabe-Serrano**

Abstract

This article examines the factors that led Senegal and Madagascar, two African countries with similar levels of judicial corruption at a specific historical period, into different trajectories in terms of this social phenomenon. While Senegal reduced cases of judicial corruption, Madagascar increased them. The article argues Senegal, unlike Madagascar, developed institutional stability, which allowed for the consolidation of the democratic regime. Senegal also built an independent public policy to combat corruption with the participation of international organizations, while in Madagascar, attempts at reform were quickly co-opted by political actors. In addition, just in Senegal judicial proceedings were held to prosecute corruption cases, which helped develop changes in the judiciary which were beneficial for the judges themselves. In sum, greater democratic stability, anti-corruption policies led by actors external to the government, and positive signals of change within the judiciary are the factors that contribute to a country reducing its levels of judicial corruption.

Keywords: judicial corruption; Senegal; Madagascar; judicial politics; judicial reforms.

Resumo

Este artigo examina os fatores que levaram Senegal e Madagascar, dois países africanos com níveis semelhantes de corrupção judicial em um determinado período histórico, a seguirem trajetórias diferentes em relação a esse fenômeno social. Enquanto Senegal conseguiu reduzir os casos de corrupção judicial, Madagascar viu um aumento nesse tipo de prática. O artigo argumenta que, ao contrário de Madagascar, Senegal desenvolveu uma estabilidade institucional que permitiu a consolidação do regime democrático. Além disso, Senegal implementou uma política pública independente de combate à corrupção, com a participação de organizações internacionais, enquanto, em Madagascar, as tentativas de reforma foram rapidamente cooptadas por atores políticos. Ademais, somente em Senegal foram realizados processos judiciais para julgar casos de corrupção, o que ajudou a promover mudanças no judiciário que beneficiaram os próprios juizes. Em suma, maior estabilidade democrática, políticas anticorrupção conduzidas por atores

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externos ao governo e sinais positivos de mudança dentro do judiciário são os fatores que contribuem para a redução dos níveis de corrupção judicial em um país.

Palavras-chave: corrupção judicial; Senegal; Madagascar; política judicial; reformas judiciais.

1 Introduction

Why do some countries succeed in reducing judicial corruption and others fail to do so? This is one of the most important research questions in judicial politics studies. Few answers are available to this question. Studies on judicial corruption tend to focus on (i) describing the actors and interactions involved in this type of behavior, (ii) identifying the effects of judicial corruption on other political, economic, or social variables, or (iii) pointing out the variables that explain why some countries have more corrupt judiciaries than others. At this last level, the assessment of causal factors tends to be synchronic, which ignores the extent to which certain variables have influenced some countries over time to reduce the number of cases of judicial corruption while others have seen their situation worsen with respect to this social phenomenon.

Precisely, this article seeks to answer the above research question arguing that the greater stability of the democratic regime, combined with anti-corruption policies led by external actors, such as the UN, and high-profile trials that send strong signals to members of the judiciary that change is a real possibility, would contribute to reducing levels of judicial corruption. To this end, in the first part I review the writings from various fields on judicial corruption. In the second part, I identify the different courses that judicial corruption can take over time. In the third part, I propose a comparative study of Senegal and Madagascar, two countries that, despite having maintained similar levels of judicial corruption about a decade ago, have taken different paths. Conclusions are drawn in the fourth part.

2 Judicial Corruption: An Evaluation

The approaches to the study of judicial corruption include those that describe the actors involved in this social phenomenon, those concerned with the interac-

tions between them and, finally, those interested in the type of exchanges. Related papers are found on Perú¹, Ecuador² or Colombia³. Other studies describe the dynamics under which corruption operates, but these are usually works that deal with the phenomenon in general, without reference to the judicial sphere⁴. In this respect, there are classic works from the perspective of historical sociology or in the field of economic sociology⁵.

¹ BARAYBAR, Viviana; GONZÁLEZ-OCANTOS, Ezequiel A. Prosecutorial Agency, Backlash and Resistance in the peruvian chapter of Lava Jato. In: BOTERO, Sandra; BRINKS, Daniel; GÓNZALEZ-OCANTOS, Ezequiel A. (ed.). *The limits of judicialization: from progress to backlash in Latin America*. Cambridge: Cambridge University Press, 2022. p. 314-340. GONZÁLEZ-OCANTOS, Ezequiel A.; BARAYBAR, Viviana. Lava Jato beyond borders the uneven performance of anticorruption judicial efforts in Latin America. *Taiwan Journal of Democracy*, [S. l.], v. 5, n. 1, p. 63-89, 2019. MUJICA, Jaris. Actores y escenarios de los sistemas de microcorrupción en el Palacio de Justicia del centro de Lima, Perú. *Relaciones: estudios de Historia y Sociedad*, [S. l.], v. 32, n. 126, p. 87-117, 2011.; POOLE, Deborah. Los dos cuerpos del juez: Comunidad, justicia y corrupción en el Perú de los neoliberales. In: UGARCHETE, Oscar (ed.). *Vicios públicos: poder y corrupción*. Cidade do México: Fondo de Cultura Económica, 2005.

² BASABE-SERRANO, Santiago. La corrupción judicial en América Latina: Ecuador en perspectiva comparada. *Perfiles Latinoamericanos*, [S. l.], v. 32, n. 63, p. 1-26, 2023. BASABE-SERRANO, Santiago. Judicial corruption: the Constitutional Court of Ecuador in comparative perspective. In: BOTERO, Sandra; BRINKS, Daniel; GÓNZALEZ-OCANTOS, Ezequiel A. (ed.). *The limits of judicialization: from progress to backlash in Latin America*. Cambridge: Cambridge University Press, 2022. p. 217-241. BASABE-SERRANO, Santiago. Corrupción judicial: concepto, actores y dinámicas. *Andamios, Revista de Investigación Social*, [S. l.], v. 21, n. 56, p. 377-405, 2024.

³ BADEL, Martha. *La corrupción judicial en Colombia: una aproximación al mapa de riesgos*. Bogotá: Auros, 2008.

⁴ HUBER, Ludwing. *Romper la mano: una interpretación cultural de la corrupción*. Lima: Instituto de Estudios Peruanos, 2008; MUJICA, Jaris. Estrategias de corrupción: poder, autoridad y redes de corrupción en espacios locales. In: UGARCHETE, Oscar (ed.). *Vicios públicos: poder y corrupción*. Cidade do México: Fondo de Cultura Económica, 2005. p. 165-224; VARGAS-HAYA, Héctor. *Perú: 184 años de corrupción e impunidad*. Lima: Rocío, 2005. GUPTA, Sanjeev. *Corruption and military spending*. Washington: IMF, 2001. GUPTA, Sanjeev. *Corruption and the provision of health care and education services*. Washington: IMF, 2000.; HIBOU, B.; TOZY, M. Une lecture d'anthropologie politique de la corruption au Maroc. *Revue Tiers Monde*, [S. l.], v. 41, n. 161, p. 23-47, 2000. MEDARD, Jean. Clientélisme politique et corruption. *Revue Tiers Monde*, [S. l.], v. 41, n. 161, p. 75-87, 2000. QUIROZ, Alfonso. Historia de la corrupción en el Perú: ¿es factible su estudio??. In: FONDO EDITORIAL DE LA UNIVERSIDAD CATÓLICA. *Homenaje a Félix Denegri Luna*. Lima: Fondo Editorial de la Universidad Católica, 2000. p. 684-690.; KLAIBER, Jeffrey. Ética, abusos del poder y corrupción en el Perú: una perspectiva histórica. In: KLAIBER, Jeffrey (ed.). *Violencia y crisis de valores en el Perú*. Lima: Fondo Editorial de la Universidad Católica, 1998. p. 95-14.

⁵ HOBBSBAWN, Eric. *Rebeldes primitivos*. Buenos Aires: Crítica,

Some researchers refer to the proliferation of corruption cases from the private sector or the usefulness of new legal technologies to combat the lack of transparency⁶. Other scholars analyze the relationship between corruption and the protection of Human Rights⁷, or criticizes the composition of transnational indicators on environmental corruption⁸.

Research that describes judicial corruption from a legal perspective takes up the most space in the limited existing literature. In this field, discussions are essentially about legal norms and their possible reforms to reduce cases of judicial corruption⁹. Unfortunately, most of these works lack empirical evidence, although there are case studies with systematically collected information. To understand this, the main idea is that judicial corruption has various interacting causes of which the most studied are those of an economic nature¹⁰. Although there is contradictory empirical evidence, the specialized literature suggests that the unvarying salaries of judges, which are generally low, together with the progressive increase in the workload, encourage judicial corruption¹¹.

At the political level, the fundamental premise is that as political power gets distributed among fewer actors, the likelihood of judicial corruption increases¹². In relation to institutional variables, the main factor influencing the increase in judicial corruption is the higher transaction costs involved in obtaining a judicial decision¹³. Finally, judicial corruption can also be explained as a reflection of the social context in which judges and prosecutors operate. In this regard, Luhmann's theory¹⁴ suggests that judicial corruption results from communications considered illegitimate – based on the binary construction of the autopoietic code of the legitimate/illegitimate – that are self-reproduced in the legal subsystem.

From a somewhat different perspective, other research on judicial corruption indicates that the factors

2000. GAMBETTA, Diego. *La mafia siciliana: el negocio de la protección privada*. Cidade do México: Fondo de Cultura Económica, 1993.

⁶ CASTRO, José Miguel Camacho. El papel de las instituciones de control financiero sobre los derechos humanos en el contexto latinoamericano. *Revista de Direito Internacional*, Brasília, v. 13, n. 1, p. 156-168, 2016. ARAUJO, Felipe Dantas de. Corrupção e novas concepções de direito punitivo: rumo a um direito de intervenção anticorrupção?. *Revista de Direito Internacional*, Brasília, v. 8, n. 2, p. 205-253, 2011.

⁷ VIERA, Gabriela Alves Mendes; VARELLA, Marcello Dias. A conexão entre a corrupção e os direitos humanos. *Revista de Direito Internacional*, Brasília, v. 12, n. 2, p. 476-494, 2014.

⁸ STAFFEN, Márcio Ricardo. Indicadores transnacionais de corrupção ambiental: a opacidade na transparência internacional. *Revista de Direito Internacional*, Brasília, v. 17, n. 2, p. 351-363, 2020.

⁹ PEÑA, Saul. *Psicoanálisis de la corrupción: política y ética en el Perú contemporáneo*. Lima: Peisa, 2005. PORTOCARRERO, Gonzalo. *Rostros criollos del mal. Cultura y transgresión en la sociedad peruana*. Lima: Red para el Desarrollo de las Ciencias Sociales en el Perú, 2004. OLIVERA, Mario. *Sociología de la corrupción: una base científica para emprender reales políticas anticorrupción*. [S. l.]: CECDS, 2002.

¹⁰ ROSE-ACKERMAN, Susan; LUCE, Henry. *International handbook on the economics of corruption*. Tallinn: Edward Elgar, 2006. BUSCAGLIA, Edgardo; DAKOLIAS, María. *An analysis of the causes of corruption in the judiciary*. Washington: The World Bank, 1999. WANG, Yuhua. Court funding and judicial corruption in China. *The China Journal*, [S. l.], v. 69, p. 43-63, 2013. BARRET, Kathleen. *Corrupted courts: a cross-national perceptual analysis of judicial corruption*. 2005. Dissertation (Master of Arts) - Georgia State University, Atlanta, 2005.

¹¹ SÁNCHEZ-URIBARRI, Raúl. Characteristics of the judiciary vs. corruption perception. *Sistemas Judiciales*, [S. l.], v. 13, p. 88-99,

2008. YANG, Vincent; EHRICHS, Linda. The professionalism of judges: education, salaries and career structure in Asia. *Global Corruption Report 2007*, Cambridge, p. 48-55, 2007. VOIGT, Stefan. When are judges likely to be corrupt?. *Global Corruption Report 2007*, Cambridge, p. 296-301, 2007.

¹² RIOS-FIGUEROA, Julio. Justice system institutions and corruption control: evidence from America Latina. *The Justice System Journal*, [S. l.], v. 2, n. 33, p. 195-214, 2012.; HAMMERGREN, Linn. Fighting judicial corruption: a comparative perspective from Latin America. *Global Corruption Report 2007*, Cambridge, p. 138-146, 2007. MELGAR-PEÑA, Carlos. Judicial corruption and the military legacy in Guatemala. *Global Corruption Report 2007*, Cambridge, p. 35-39, 2007.; BEGOVIC, Boris; MIJATOVIC, Bosko; HIBER Dragor. *Corruption in Judiciary*. [S. l.]: Center for Liberal Democratic Studies, 2004. MONTINOLA, Gabriella; JACKMAN, Robert. Sources of corruption: a cross-country study. *British Journal of Political Science*, [S. l.], v. 32, n. 4, p. 147-170, 2002.

¹³ MUJICA, Jaris. *Micropolíticas de la corrupción: redes de poder y corrupción en el Palacio de Justicia*. Lima: Asamblea Nacional de Rectores, 2011.; CARBONELL, Miguel. *El régimen constitucional de la transparencia*. Cidade do México: UNAM, 2008.; CARBONELL, Miguel. Judicial corruption and impunity in Mexico. *Global Corruption Report 2007*, Cambridge, p. 225-228, 2007.; HARASIC, David. Chile's partial success. *Global Corruption Report 2007*, Cambridge, p. 187-189, 2007.; ROSE-ACKERMAN, Susan. Judicial Independence and Corruption. *Global Corruption Report 2007*, Cambridge, p. 15-24, 2007.; PEPYS, Noel. Corruption within the judiciary: causes and remedies. *Global Corruption Report 2007*, Cambridge, p. 3-11, 2007.; BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. *International Review of Law and Economics*, [S. l.], v. 2, n. 21, p. 233-249, 2001.; BUSCAGLIA, Edgardo. *Judicial corruption in developing countries: its causes and economic consequences*. Berkeley: Berkeley Program in Law and Economics, 1999.; NORTH, Douglas. *Instituciones, cambio institucional y desempeño económico*. Cidade do México: Fondo de Cultura Económica, 1999. GLOPPEN, Siri. Courts, corruption and judicial independence. In: SOREIDE, Tina; WILLIAMS, Aled (ed.). *Corruption, grabbing and development: real world challenges*. Tallinn: Edward Elgar, 2014. p. 68-80.

¹⁴ LUHMANN, Niklas. *Sociología del Derecho*. Bogotá: Universidad Libre, 2012.

in the social environment that could influence acts of judicial corruption include the public's tolerance and even legitimization of unethical conduct. In other words, in those countries where the culture of illegality is more deeply rooted in society, cases of judicial corruption would be but a reflection of what happens throughout the social environment¹⁵. This relationship has been documented for several Latin American cases such as Paraguay, Ecuador, Argentina, or Venezuela¹⁶. Along the same line related to the influence of the social environment, the specialized literature mentions that the presence of irregular armed groups would favor the sedimentation of illegitimate behaviors within the judiciary¹⁷.

As both descriptive and explanatory studies of judicial corruption show, there is a relative absence of studies that analyze this phenomenon over time and essentially capture the variations observed. Indeed, there are countries where judicial corruption has increased and others where it has decreased. In other cases, variations are minimal. To discuss the different courses taken by judicial corruption, the following is a description of the three main patterns of behavior of this variable that can be observed empirically.

3 Three stories on judicial corruption

The evolution of judicial corruption has different stories, to which I have assigned three analytical categories

in this article. In the first, called “downward judicial corruption,” even if the social phenomenon is present, over time it tends to decline due to normative reforms or changes in the actors' behavior. In the second story, called “upward judicial corruption,” the opposite is true, judicial corruption increases in quantitative and/or qualitative terms. With or without institutional or other reforms, in this scenario judicial corruption is on the rise. The third story, defined as “static judicial corruption,” is characterized by the absence of change. Here there are three subtypes. Some countries have high levels of judicial corruption and remain so over time. Other countries face minor problems with respect to judicial corruption and stay there. A third group has moderate judicial corruption problems and does not leave that dynamic over time.

Conversely, in countries where judicial corruption has been on the rise, in some cases the decline in transparency in the provision of judicial service has been steeper. Indeed, the intensity of the variation in judicial corruption, whether upward or downward, depends on the country's initial situation in this regard. So, in countries where judicial corruption has gained substantial ground, any improvement will be noticeable. From another perspective, if judicial corruption is not a serious social problem, any positive change will be less evident.

With that said, in what follows I set out the strategy used to identify when judicial corruption declines or rises “noticeably” over time. Given that the data I use contains ten values for each country, one per year between 2012 and 2021, the simplest way to measure this is to compare the initial year (2012) with the final year (2021) and then look at the differences. By the nature of the interval used in the World Justice Project surveys, which are the ones I use, I assume that an improvement or deterioration of “0.10” or more accounts for a country in which the course of judicial corruption has changed “notoriously.” Of course, not all countries have a linear course of decreasing or increasing judicial corruption over the analyzed ten years. In fact, in some countries where judicial corruption is on the decline, there may be some years of a slight decline and then resume the original trend. The same could happen in the opposite direction, countries with an increase in judicial corruption but with a slight decrease in certain years that serves as a prelude to a return to the initial trend.

¹⁵ LÓPEZ, Diego. La cultura de la legalidad como discurso académico y como práctica política: un reporte desde América Latina. In: WENCES, I; CONDE, R.; BONILLA, Adrián (ed.). *Cultura de la legalidad en Iberoamérica: desafíos y experiencias*. Lima: Flacso Ecuador, 2014. p. 47-82.

¹⁶ BASABE-SERRANO, Santiago. Informal institutions and judicial independence in Paraguay, 1954–2011. *Law and Policy*, [S. l.], v. 37, n. 4, p. 350-378, 2015.; LLANOS, Mariana. Acción estratégica y cultura de la informalidad: la reforma judicial en Argentina. In: WENCES, I; CONDE, R.; BONILLA, Adrián (ed.). *Cultura de la legalidad en Iberoamérica: desafíos y experiencias*. Quito: Flacso Ecuador, 2014. p. 77-298; SÁNCHEZ-URIBARRI, Raúl. Courts between democracy and hybrid authoritarianism: evidence from the Venezuelan Supreme Court. *Law & Social Inquiry*, [S. l.], v. 36, n. 4, p. 854-884, 2011.

¹⁷ LLANOS, Mariana; TIBI, Cordula; HEYL, Charlotte; STROH, Alexander. Informal interference in the judiciary in new democracies: a comparison of six African and Latin American cases. *Democratization*, [S. l.], v. 23, n. 7, p. 1236-1253, 2016.; BASABE-SERRANO, Santiago. ¿Cuáles países han ganado la batalla a la corrupción judicial y cuáles no?: una perspectiva a nivel mundial. *Brazilian Journal of Empirical Legal Studies*, [S. l.], v. 11, p. 1-31, 2024.

To keep homogeneity among the studied units of analysis, I excluded those countries that lack the complete 2012-2021 time series from the analysis, making a total of ninety-seven (97) countries. Table 1 shows the countries where judicial corruption has decreased, in accordance with the above-mentioned methodological decisions. This shows that only twenty-one countries in the world register a considerable reduction in judicial corruption over time. Within this subset, which represents only 21.64% of the ninety-seven analyzed countries, those with the most noticeable progress are Moldova, Belarus, Kazakhstan, Kyrgyzstan, Senegal, and Uzbekistan.

Table 1 - Downward judicial corruption (2012-2021)

Country	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Range
Moldavia	0.17	0.17	0.24	0.20	0.25	0.36	0.36	0.35	0.39	0.41	24
Belarusia	0.47	0.47	0.56	0.61	0.60	0.74	0.74	0.70	0.73	0.71	24
Kazakhstan	0.36	0.36	0.40	0.39	0.41	0.48	0.48	0.53	0.57	0.58	22
Kyrgyzstan	0.17	0.17	0.22	0.32	0.30	0.33	0.33	0.37	0.39	0.35	18
Senegal	0.46	0.46	0.43	0.52	0.54	0.56	0.56	0.60	0.60	0.62	16
Uzbekistan	0.29	0.29	0.40	0.42	0.36	0.32	0.32	0.40	0.44	0.45	16
Guatemala	0.28	0.28	0.39	0.36	0.37	0.44	0.44	0.48	0.45	0.43	15
Japan	0.84	0.84	0.82	0.92	0.96	0.97	0.97	0.97	0.97	0.98	14
China	0.40	0.40	0.34	0.40	0.51	0.58	0.58	0.57	0.55	0.53	13
Jamaica	0.70	0.70	0.60	0.63	0.71	0.81	0.81	0.83	0.81	0.82	12
Thailand	0.58	0.58	0.61	0.61	0.61	0.71	0.71	0.67	0.71	0.70	12
Russia	0.42	0.42	0.41	0.46	0.45	0.54	0.54	0.57	0.55	0.54	12
Macedonia	0.40	0.40	0.43	0.42	0.40	0.55	0.55	0.53	0.49	0.51	11
Bulgaria	0.47	0.47	0.46	0.47	0.50	0.57	0.57	0.57	0.58	0.58	11
Uruguay	0.81	0.81	0.78	0.83	0.86	0.91	0.91	0.92	0.91	0.91	10
Arab Emirates	0.78	0.78	0.79	0.83	0.86	0.77	0.77	0.87	0.88	0.88	10
Ukraine	0.38	0.38	0.41	0.37	0.37	0.43	0.43	0.46	0.49	0.48	10
Greece	0.71	0.71	0.64	0.73	0.76	0.81	0.81	0.81	0.80	0.81	10
Portugal	0.77	0.77	0.73	0.81	0.83	0.88	0.88	0.88	0.88	0.87	10
Bangladesh	0.25	0.25	0.29	0.30	0.32	0.30	0.30	0.33	0.35	0.35	10
Malaysia	0.66	0.66	0.66	0.68	0.67	0.76	0.76	0.74	0.76	0.76	10

Source: World Justice Project.¹⁸

¹⁸ WORLD JUSTICE PROJECT. *Measuring the rule of law*. 2019. Available at: <https://worldjusticeproject.org/>. 23 July 2024.

Senegal is a remarkable case as it is the only country in Africa that belongs to the set of those where judicial corruption has decreased. It would have been useful to establish a comparison of Senegal with other African countries that have followed a similar trajectory in the fight against judicial corruption, but unfortunately, this is not possible.

Table 2 presents the countries where judicial corruption has increased during the analyzed decade. Fortunately, there are few cases around the world that fall into this analytical category. In fact, only 11.34% of the total number of analyzed countries are currently in a worse situation with respect to judicial corruption than they were a decade ago. Madagascar, Hungary, Liberia, Egypt, Malawi, and Uganda are in this situation. Except for Hungary, all the countries in this group are African. This characteristic allows for a comparison of Madagascar with other countries in its continent where judicial corruption has increased. Specifically, patterns of behavior could be established between Madagascar, Uganda, and Malawi, as the population sizes of these three countries are relatively similar, unlike Egypt and Liberia. In the following section I will compare the cases of Senegal and Madagascar to establish the variables that may have contributed to the decline in judicial corruption in Senegal and the clear opposite trend in Madagascar.

Table 2 - Upward judicial corruption (2012-2021)

Country	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Range
Madagascar	0.43	0.43	0.36	0.27	0.28	0.31	0.31	0.26	0.28	0.25	18
Hungry	0.82	0.82	0.69	0.65	0.71	0.68	0.68	0.69	0.71	0.67	15
Liberia	0.45	0.45	0.44	0.28	0.27	0.32	0.32	0.30	0.33	0.31	14
Egypt	0.58	0.58	0.50	0.59	0.62	0.47	0.47	0.47	0.46	0.44	14
Malawi	0.65	0.65	0.57	0.49	0.53	0.52	0.52	0.54	0.53	0.54	11
Uganda	0.43	0.43	0.42	0.39	0.39	0.34	0.34	0.35	0.33	0.33	10

Source: World Justice Project.¹⁹

4 Senegal and Madagascar: similar origins with different results

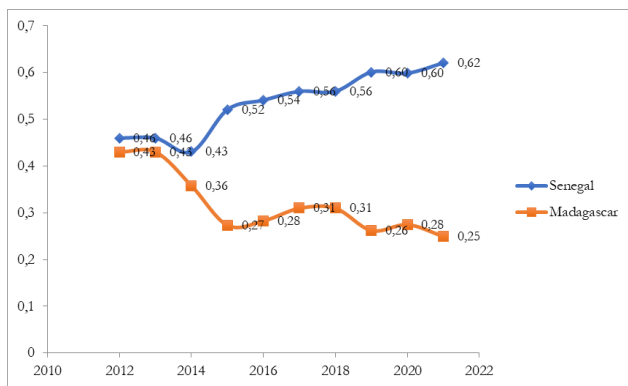
According to the data used in this article, Senegal and Madagascar are two African countries that in 2012 showed a similar value for judicial corruption. Although

¹⁹ WORLD JUSTICE PROJECT. *Measuring the rule of law*. 2019. Available at: <https://worldjusticeproject.org/>. 23 July 2024.

the former was better placed (0.46) than the latter (0.43), the difference was minimal. In this context, corruption, broadly and systemically considered, also showed similar results for 2012 in Senegal and Madagascar. According to Transparency International and its annual corruption perception index, in 2012 Senegal had a score of 36/100 while Madagascar registered 32/100. Senegal ranked ninety-fourth and Madagascar one hundred eighteenth out of one hundred seventy-six countries examined. The previous description would intuitively lead one to think that judicial corruption in both countries would tread similar paths in the immediate future.

However, over time, the course taken by Senegal and Madagascar took such different directions that, by 2021, the first country is one of the benchmarks of noticeable improvement in terms of transparency in the performance of its courts of justice (0.46 to 0.62) while the second is also a typical case, albeit in terms of exponential increase in judicial corruption (0.42 to 0.25). From the above, the research question that arises relates to the factors or variables that would have played a role in the fact that two countries with similar characteristics and, above all, with a very similar position in terms of judicial corruption at a specific historical moment, find themselves in such different situations after a decade. As Figure 1 shows, the trends in judicial corruption in Senegal and Madagascar are clearly different over the analyzed decade.

Figure 1 - Judicial corruption in Senegal and Madagascar, 2012-2021.



Source: World Justice Project.²⁰

At the methodological level, the following analysis refers to two units of analysis - Senegal and Madagascar - which, despite presenting similar values in a se-

ries of factors, have very different results in terms of the dependent variable - judicial corruption. As Figure 1 shows, both countries start in 2012 from a very similar position in terms of the degree of transparency in the performance of their courts of justice; however, over time each country takes on very different paths. My interests here is to investigate the factors that, over a decade, have led judicial corruption to take on such different values in each country. The selection of cases is not random and is made precisely because, after ten years, the paths of Senegal and Madagascar are markedly different in terms of transparency in the provision of judicial services.

Given the type of research proposed, I am interested in tracing the political processes that took place in both Senegal and Madagascar, which could be the cause of different results in terms of the current state of judicial corruption. To this end, I describe the different events that mark the evolution of both countries and that would have a direct relationship with the behavior of the courts of justice and, specifically, with transparency in the management and services they offer. In this task, I identify those critical junctures that would lead to a change in the course followed by judicial corruption in one country and in the other, and which, viewed as a whole, account for historical phenomena that mark the subsequent trajectory of the countries in a specific dimension of reality²¹.

For the account of events in both countries, I resort to historical narratives in which I note a series of discrete social and essentially political events that, together, shed light on the reasons why, over a similar period and under similar initial conditions, judicial corruption declined significantly in Senegal while in Madagascar it grew considerably worse. To capture information on the two countries under analysis, I resorted to different sources. First, I accessed academic papers on Senegal and Madagascar. At the same time, I considered various reports from international institutions that have

²⁰ WORLD JUSTICE PROJECT. *Measuring the rule of law*. 2019. Available at: <https://worldjusticeproject.org/>. 23 July 2024.

²¹ HOGAN, John. The critical juncture concept's evolving capacity to explain policy change. *European Policy Analysis*, [S. l.], v. 5, n. 2, p. 170-189, 2019; CAPOCCIA, Giovanni; KELEMEN, Daniel. The study of critical junctures: theory, narrative, and counterfactuals in historical institutionalism. *World Politics*, [S. l.], v. 59, n. 3, p. 341-369, 2007. GREIF, Avner; LAITIN, David. A theory of endogenous institutional change. *American Political Science Review*, [S. l.], v. 98, n. 4, p. 633-652, 2004. THELEN, Kathy. Historical institutionalism in comparative politics. *Annual Review of Political Science*, [S. l.], v. 2, n. 1, p. 369-404, 1999.

assessed the situation of both countries at different historical moments. These included documents from the United Nations, the International Criminal Court, and the African Union. I also considered information from the media and non-governmental agencies that focus their work on Africa. This group includes organizations such as Transparency International, Freedom House or the BBC news website. Finally, I gathered data on the behavior of the main socioeconomic variables of both countries from the websites of international financial organizations, mainly the World Bank.

Senegal and Madagascar are two relatively small African countries in terms of population and moderate in terms of population density, which became independent republics in the early 1960s. Both share the historical legacy of being part of the French colonies in Africa, which is reflected not only at the cultural level but also in the similarities found in the institutional structure of their respective political systems. In fact, Senegal and Madagascar adopt presidentialism as a form of government and, although the former has a unicameral legislature compared to the Malagasy double chamber, both have a president and a prime minister. These countries, hence, share responsibilities both within the executive branch and with the National Assembly and the Senate, in the case of Madagascar. In terms of political representation, the party system in both countries has several organizations registered in their respective electoral offices, so there are competitive features.

Regarding the judiciary, the Supreme Court, consisting of thirteen magistrates, including its president, is at the apex of the Senegalese administration of justice. The judges of the intermediate and lower courts report to this court in hierarchical and administrative terms. In terms of competencies, the Supreme Court essentially focuses on the resolution of cassation and review appeals, following the French tradition of judicial organization. In addition, Senegal has a Constitutional Council made up of seven judges, whose main task is to monitor compliance with the Constitution and respect for citizens' rights and guarantees. As for the appointment mechanisms, the supreme judges are proposed by the president on the recommendation of the Superior Council of the Judiciary, while five of the seven judges of the Constitutional Council are appointed by the president and the other two are appointed by the legislature.

In Madagascar, the Supreme Court, made up of eleven members, primarily fulfills administrative and control functions. A higher court, of similar hierarchical rank, performs jurisdictional functions, especially in the field of prosecution of crimes committed by high-level public officials. Like Senegal, Madagascar has both a Constitutional Court, with the power to interpret the supreme law and made up of nine members, and a Council of Magistrates. As for the rest of the Judiciary's organization, Madagascar follows the French tradition, also adopted by Senegal, of having intermediate or appellate courts above the courts of first instance. The President of Madagascar has direct influence over the appointment of supreme and constitutional judges. The dual legislative chamber and the Council of Magistrates also have a share of influence over the appointment. In general, both countries have a similar institutional matrix for the appointment of judicial positions.

Economically, the performance of Senegal and Madagascar throughout the first decade of the 21st century was relatively similar. For example, according to World Bank data, Senegal's inflation rate in 2008 was 7.34, while Madagascar's was 9.29. In terms of gross domestic product (GDP), during the same year, Senegal recorded \$16.85 billion and Madagascar \$11.57 billion. Since the former's economy has historically been stronger, the differences in terms of GDP figures are not large. In terms of foreign direct investment, expressed as a percentage of GDP, the figure for Senegal in 2008 was 2.70 while for Madagascar it stood at 10.57. As shown in this last macroeconomic indicator, Madagascar's position was better than that of Senegal. Finally, the balance of trade in goods and services as a percentage of GDP was also relatively similar in both countries in 2008, albeit with negative values. In Senegal this indicator was -21.06 while in Madagascar it was -18.94²².

In summary, and despite the similarities between Senegal and Madagascar at the cultural, institutional, and economic levels, since 2012 the political history of the two countries has taken different directions. On the one hand, Madagascar fell into virulent political confrontation, attempts to destabilize governments, and social confrontation. On the other hand, Senegal opted for political institutionalization and the possibility of

²² Rice production in Madagascar is vast. In fact, the main economic activities of about eighty percent of the population are concentrated around rice production and marketing.

consolidating the democratic regime in the midst of its difficulties. In fact, in 2012 Senegal appointed Macky Sall as its president, after twelve years of hegemony of Abdoulaye Wade, elected in 2000 and reelected in 2007, whose real intentions were to run for a third presidential term amid doubts about the legality of such a decision. After months of internal disputes, Sall's government finally managed to hold on and thus alternate political power and a moderately fair competition between party groupings took hold. This was a decisive event for the political future of Senegal.

On this last point, it should be noted that the Socialist Party had governed Senegal uninterruptedly since its independence in 1960 and for forty years²³. In this context, the fact that Wade, representative of the "Alternative" movement, became president in 2000 was the first sign that a comprehensive democratization process could begin for the country. In 2007, Wade was re-elected with a large legislative majority voted in 2001, and in the midst of a recent process of constitutional reforms aimed at strengthening the presidential form of government. However, when his term came to an end in 2012, criticism of the long stay in power that Wade himself had raised with respect to the Socialist Party became a thing of the past as he sought the means to remain in government for an additional term, based on the popularity he still maintained.

Therefore, a change in the government's political orientation in 2012 was a key factor. The arrival of Sall is thus a critical juncture that shows a country that, without the changeover, could revert to the recent past of concentrated power. In terms of causal analysis of a counterfactual nature, the event described above might suggest that, if Sall had not won the election, the course of Senegal's institutionalization process would eventually have changed to one marked by upheaval and chaos. Judging by Senegal's political and social past, one could doubt whether if certain stability would have been achieved in the decades that followed, if Wade had held on to power. In any case, since this is an analysis based on what did not happen or under the "what

if" reasoning, there is room for speculation as to the importance of Sall's electoral victory on the course of the democratic regime and judicial corruption. In any case, there seems to be enough theoretical arguments to show that this event was sufficiently relevant for what will happen in the following years.

It should be added that during Sall's government two critical processes contributed both to the stability of the democratic regime and to a decrease in judicial corruption. Firstly, the implementation of a sustained economic development program oriented to the energy and agricultural sectors and infrastructure provision. As a result, Senegal's macroeconomic indices improved and support from various international organizations, both in terms of economic resources and technical support, also grew considerably. In addition, the democratic regime was consolidated and support for the government increased rapidly²⁴. In fact, with the legislature dominated by the ruling "Benno Bokk Yakaara" party by nearly seventy percent, Sall was re-elected with 58% of the vote for a second and final five-year term in the 2019 presidential elections.

As for the decline of judicial corruption, the Sall government tackled the problem through several decisions. On the one hand, it created the "National Office Against Fraud and Corruption;" on the other hand, it proposed a specialized criminal court called the "Court for the Repression of Illicit Enrichment," in charge of prosecuting crimes related to public resources mismanagement. Since that institutional reform, two relevant legal processes underpinned the government and together they account for another critical juncture key to understanding the decline in the levels of judicial corruption in Senegal. First is the criminal trial against Karim Wade, son of former President Wade, known as "Mr. 15%". Second is the court case brought against the mayor of Dakar, Khalifa Sall. Both cases involved criminal proceedings for corruption scandals and abuse of public resources, which, after several years of legal wrangling, resulted in convictions.

In 2015, Wade was sentenced to six years in prison for illicit enrichment and ordered to pay two hundred and forty-one million dollars as a pecuniary penalty. In 2019, Khalifa Sall received a five-year prison sentence

²³ During the forty years of the Senegalese Socialist Party's hegemony, only in 1978 was a party system with three political groupings formed. This is the legacy of Leopold Sedar Senghor, ruler between 1960 and 1981. Between 1981 and 2000, former Prime Minister Abdou Diouf took over the presidency. As mentioned above, the Socialist Party's hegemony was altered in 2000 with the arrival of Wade to power.

²⁴ SAPPLETON, Shan. Is Senegal a consolidated democracy?: alternations, corruption and cultural relativism. *Afrika Focus*, [S. l.], v. 34, n. 1, p. 75-105, 2021.

for irregular use of public funds while serving as mayor. The social and judicial anti-corruption repercussions of both judicial decisions were notorious despite the fact that President Macky Sall subsequently granted pardons to both sentenced persons. This, together with increased freedom of press and society's opening to different forms of organization aimed at observing the Judiciary's behavior, show a scenario that favored making the provision of judges and prosecutors' services in Senegal more transparent. In addition, the Sall administration was wise to appoint Aminata Touré, a human rights and anti-corruption activist, first as Minister of Justice and then as Minister of Politics. Symbolic acts such as these, together with the previous actions, explain to a large extent why the Senegalese judicial system is still considered one of the most effective and transparent in sub-Saharan Africa ²⁵²¹.

As for Madagascar, it should be noted that, despite the abundance of natural resources and the vast possibilities for agricultural development, the permanent instability of governments has led not only to a deterioration in macroeconomic indicators but also in the performance of the main democratic institutions. In the case of justice, as we have seen, judicial corruption has increased exponentially over the last decade. Once again on the political level, it is necessary to point out that Madagascar's institutional weakness is not new. As early as 1972, the country's first president, Philibert Tsiranana, in office since 1960, was forced to relinquish power to the then Chief of Staff of the National Army, Gabriel Ramanantsoa. Indeed, after a wave of demonstrations and social protests, Ramanantsoa took over the country's leadership until 1975, when his Minister of Foreign Affairs, Didier Ratsiraka, came to power as leader of the Charter of the Socialist Revolution (CSR).

In 1976, Ratsiraka became constitutional president after the approval of Madagascar's socialist constitution, as it is called. Re-elected in 1982 and 1989, Ratsiraka faced two coup attempts - the first in 1989 and the second a year later in 1990. Although the President successfully escaped both attacks against the country's institutions, demands for structural reforms in view of the poor results of the proposed socialist model were on the rise. In fact, in 1990, opposition leader Arbert Zafy was elected leader of the "Fuerzas Vivas," a coalition of

opposition parties that advocated a new Constitution and an early call for presidential elections. The political and social pressure was such that by 1992 Madagascar had a new Constitution which, among other things, called for immediate elections. Ratsirak was unable to complete his third term in office and in 1993 Zafy became president amidst social turbulence and uncertainty about the country's political future.

The hopes raised among the population by the change in the country's economic orientation were soon dashed by the government's blunders. On top of this, there was a tense relationship with the legislature, which essentially resulted in President Zafy's decision that the Prime Minister should no longer be appointed by the legislature but by himself. Popular discontent, as evidenced by a considerable decrease in the president's popularity, together with political decline in the National Assembly, led to initiating and approving, in mid-1996, a legislative process to remove the head of state, known as a motion of impediment. The government was thus temporarily placed in the hands of the Vice President, Norbert Ratsirahonana. Faced with this new case of institutional instability, early elections were called, and Didier Ratsiraka returned to power, this time for the 1996-2002 term. Presidential elections were called in December 2001, with Ratsirak running for reelection and the young mayor of Antananarivo, the country's capital, Marc Ravalomanana, as his main opponent.

In a tense electoral process due to the minimal support differences between the two candidates, the High Constitutional Court issued an official statement on the results of the first round more than a month after election day. With this, the already existing doubts about the elections' transparency became more entrenched among the population. Although Ravalomanana (46.8%) had beaten President Ratsirak (41.9%), his share of the vote was not enough to win the presidency and a run-off election was required. However, Ravalomanana refused to accept the decision of the constitutional court of justice and called for demonstrations and strikes of different social sectors of the country. With that support and the fact that local electoral observers, as international organizations were not allowed to be present, agreed on the victory of the mayor of Antananarivo with 53% of the votes, Ravalomanana self-proclaimed himself president of Madagascar on February 22, 2002. In response, the Ratsirak Administration decreed a state

²⁵ SHIPLEY, Thomas; KANINDA, Samuel. *Country profile*. Senegal: overview of corruption and anti-corruption. 2018.

of national emergency and a few days later martial law came into force.

As a consequence of the above scenario, internal disputes became increasingly difficult to control to the point that Madagascar came close to civil war. In fact, in addition to armed clashes between civilian sides loyal to Ratsirak or Ravalomanana, there was the real threat of a conflict over ethnic issues. In the midst of the social upheaval and serious fractures within the Armed Forces, the economy took a considerable downturn, especially considering that international cooperation, which represented 40% of the state budget and 75% of the public investment program, was withdrawn in the face of the political instability observed. France, the United States, and the Organization of African Unity (OAU) tried to mediate in the conflict and after several negotiations, on April 18, 2002, they achieved a ceasefire and a mutual cessation of hostilities. The disputing parties agreed to accept a recount of votes by the High Constitutional Court, the presence of a transitional government and, if necessary, the holding of a second round of elections.

On April 29, 2002, the High Constitutional Court declared Ravalomanana President of Madagascar after he won 51.5% of the valid votes. However, Ratsirak refused to accept the Court's decision, labeled it biased, and prompted his loyalists to keep up the belligerent attitude. The confrontations continued for more than two months, and the agreements became more and more distant until, at the end of June, the United States Government, and immediately afterwards the French Government, officially declared that they recognized Ravalomanana's Government as legitimate. With the international support that followed, Ratsirak left the country and took refuge in France. The political conflict was thus settled; Ravalomanana tried to put the national economy in order and concluded his first term in office (2002-2006). However, in 2003 and 2006, there were further coup attempts, and the call for elections in December 2006 was again held amidst political tensions and institutional instability. At the same time, macroeconomic performance remained poor and corruption, especially judicial corruption, increased over time.

Despite the convulsive political scenario, Ravalomanana won reelection in a single round and achieved a legislative majority that gave him some leeway during the first months of his second presidential term. However,

in March 2009 and after two months of violence, looting and riots of various kinds, the mayor of Antananarivo, Andry Rajoelina, proclaimed himself the leader of the "transition's supreme authority." After accusing the Head of State of embezzlement of public resources and supported by a faction of the national army, Rajoelina took office even though he did not meet the minimum age requirement of forty years of age established by the Constitution of Madagascar. In part for political reasons, in part as a response to the closure of a Rajoelina media outlet in December 2008, ordered by Ravalomanana, the fact is that the institutional crisis and violence returned to Madagascar with equal or greater force than before.

In this context, in July 2009 Ravalomanana was sentenced to four years in prison for embezzlement of public funds and was also ordered to pay seventy million dollars as a pecuniary penalty. Other criminal proceedings were filed against the former president for the death of twenty-seven people at the hands of the police, during the social protests of February 2019. In spite of the above, the international resistance to recognize Rajoelina's government was generalized, not only the European Union, but also Western governments, the Southern African Development Community (SADC), and the Organization of African Unity (OAU) itself, which in March 2010 suspended Madagascar's membership. In September 2010, fifteen political parties and organizations close to both Rajoelina and former presidents Ravalomanana and Zafy agreed on a formula to return in some measure to democratic channels, through the SADC mediation, with the aim of finding a way out of the paralysis in which Madagascar found itself.

The consensual option was that Rajoelina would remain as transitional president until the December 2013 general elections, in which neither he nor Ravalomanana would run as candidates. In the meantime, a prime minister close to former President Zafy's movement was appointed. At the end of 2013, Hery Rajaonarimampianina, a member of Rajoelina's ministerial cabinet, won the presidency, thus completing the democratization process in Madagascar. Added to the above was the fact that in July and December 2015, both communal and Senate renewal elections were verified without major setbacks, respectively. However, in April 2018, the political conflict resurfaced after a package of electoral reforms proposed by Rajaonarimampianina and approved by the legislature that were not well regarded by the political

opposition. In fact, violence grew on the streets to levels seen only in 2013, when clashes broke out between Rajoelina and Ravalomanana supporters. The climax of the tensions was the petition for Rajaonarimampianina's resignation, filed by various opposition forces before the High Constitutional Court.

In May 2018, with the support of the army and by provision of the High Constitutional Court, new Prime Minister Christian Ntsay was appointed and formed a coalition cabinet in order to calm the heated times that were once again raging in Madagascar. Although Rajaonarimampianina remained as President, tensions eased with the call for general elections at the end of that year. There, in a run-off election, Andry Rajoelina returned to power, after defeating Ravalomanana, who contested the results through court actions. However, in January 2019 Rajoelina began his second presidential term, not without tensions and several revolts aimed at removing him from power. Moreover, in mid-July 2021, an assassination attempt against Rajoelina was reported. Within the judicial process brought against him, the presumed responsibility of French military personnel in passive service, Malagasy gendarmes, two executives of the "Madagascar Oil" company, the archbishop of Antananarivo, and a singer close to the president are currently being investigated. Preliminary investigations point to the link between this criminal act and a new coup attempt.²⁶

5 Conclusions

As described in this article, Madagascar, a country rich in natural resources such as coffee, vanilla, cloves, and sugar, and once one of the most prosperous in Africa, has been declining over time not only in terms of the quality of its economy but also in terms of the stability of its democratic institutions. As shown in Figure 1, judicial corruption has been on the rise and this phenomenon can be analyzed in terms of the above-mentioned context. In this regard, if the historical narratives of Senegal and Madagascar are compared, at least three elements or factors can be used to infer

a possible causal link with respect to the behavior of the judicial corruption variable. First, political stability. Second, the implementation of public policies to fight corruption. In third place, the presence of relevant events that are critical junctures that help alter the Judiciary's course of action.

In other words, the presence of institutional stability, public policies aimed at combating corruption, and the emergence of key political and judicial events would explain why Senegal has considerably reduced the levels of corruption in its courts over the last decade. Conversely, the absence of these three variables would have contributed to the fact that Madagascar, over a similar period and despite having started with initial conditions comparable to those of Senegal in 2012, has sharply increased judicial corruption levels to date. Of course, if the three variables mentioned above were not present in Senegal or were also present in Madagascar, and judicial corruption in both countries nevertheless took different paths, then the answer as to why such changes occurred must be sought in other factors.

In addition, two of the three variables mentioned as decisive for judicial corruption have to do with factors external to the courts of justice. I am referring specifically to the agreement among political actors to maintain institutional stability and to the presidential decision to promote a series of regulatory arrangements or public policies aimed at reducing judicial corruption. In the first case, Senegal's narrative shows a country that was able to resolve the existing political conflict in some way and, therefore, the government's continuity was not greatly altered by the opposition forces. Although this should by no means be taken to mean that Senegal is a benchmark for the stability of institutions in the world, the country's track record in terms of political hegemony of a single party grouping, the smooth presidential succession of the last decade is worth noting. As I have described, Madagascar is at the antipode, between the early exit of presidents and electoral process contestation.

As for the implementation of anti-corruption policies in Senegal, although there are several actors that surround the designed regulations, a decisive fact is that without the political decision of the head of state, this type of undertaking would hardly have come to fruition. As in most presidential forms of government, the impetus for public policies of this nature, and in general

²⁶ GÜNDEM Cumhurbaşkanı Erdoğan: Çanakkale'de bir kez daha görülmüştür ki hiçbir silah vatan sevgisine galip gelemez. *Anadolu Agency*, 2021. Available at: <https://www.aa.com.tr/>. Accessed on: 23 July 2024.

for initiatives for institutional change, comes from the head of the Executive. In this regard, the collaboration of international organizations, the symbolic effect of placing in key positions of power people historically recognized for their fight against corruption in general and judicial corruption in particular, were facts that show that what happened in Senegal is not only about creating institutions, courts of justice, and policies to fight corruption, but also that all this must be preceded by the political will to generate change. Therefore, the political decision added to other elements can shape changes that benefit the increase of transparency in the provision of judicial services.

Finally, the third variable identified as decisive in the decline of judicial corruption in Senegal is internal to the courts of justice. Unlike the two previous ones, in which actors outside the judiciary are the ones who carry them out, here it is the judges and prosecutors themselves who are responsible for them. In this regard, the third factor that would influence the decrease in judicial corruption would not be related to the environment of the courts of justice, but rather to the internal alteration of the dynamics governing the relationship between the operators of justice and between them and their clients. Some judicial decisions that can be seen as references - and that could be considered critical junctures - from which the judicial corruption course could have taken a different direction in Senegal, are the sentences of imprisonment and economic compensation in favor of the State and against the son of a former president or the mayor of the country's capital city. Such declarations by the judiciary not only had a positive effect on the population, but also on justice operators. These rulings, therefore, are "triggers" that have effects in different areas, mainly in the internal life of the Judiciary.

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