

Judicial Independence and Preservation of the Rule of Law in Africa: The Case of South Africa

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Abstract : Upon their independence, most African countries adopted constitutions that proclaim respect for the rule of law. The decision to constitutionalise the rule of law is basically informed by the countries' experience during the colonial era which was characterised by discrimination on various grounds including race, gender and religion. Despite the promise to be bound by and adhere to the rule of law, disrespect for the rule of law has become a norm in the African continent. This is evident from the reported incidence of abuse of power, failure to perform obligations imposed by law and flagrant disregard of the law by the Executive including the heads of states in the continent. In some African countries including South Africa, the courts of law have been approached to rule on the legality of the decisions of the executives, taken contrary to the precepts of the law. South African Courts have laid down a number of decisions wherein they found that the conduct of the executive contravenes the rule of law. Consequently decisions of the executive have been declared invalid by courts. In this regard courts have become a safety net in preserving the rule of law in. Accordingly, this paper discusses the role of the courts in preserving the rule of law in Africa. This it does by explaining the notion of judicial independence and the doctrine of the rule of law. The explanation on the notion of judicial independence is relevant because only an independent judiciary can effectively review and set aside the decision of the executive including the president of a country. Furthermore, a comparative overview of the enforcement of the rule of law in African countries is done. The methods used for this research is literature review, and study of legislation and case law in selected African countries relating to the independence of the judiciary and the rule of law. Finally, a conclusion is drawn on the role of the independent judiciary to preserve the rule of law in Africa.

Keywords : Africa, constitutions, independence, judiciary

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