IJSES
International Journal of Scientific Engineering and Science
Volume 10, Issue 11, pp. 6-13, November 2026.
ISSN (Online): 2456-7361

From Political Capture to Community Justice Defection: Corruption as a Vector of Penal Pluralism Recomposition in Madagascar

RAVELOSON Murielle Sabrina[1], RANOROHARISON Felantsoa Bertrand[2]
[1]Doctoral candidate in law, Catholic University of Madagascar (UCM), Part-time lecturer in law at the EATP of Mahajanga University
[2]Doctoral candidate in public law and political science, Doctoral School Governance and Society in Change (GOUVSOMU), University of Fianarantsoa – Madagascar
Email address: ravelosonsabrina@gmail.com, felantsoabertrand@gmail.com

Abstract*—The Malagasy criminal justice chain is undergoing a structural crisis that goes beyond mere technical dysfunction. This article examines how the political capture of judicial institutions, aggravated by systemic corruption, triggers a rational defection of litigants towards community-based legal orders. The study adopts a qualitative approach based on documentary analysis of secondary institutional data (World Justice Project, Transparency International, United Nations Development Programme, Afrobarometer) combined with a semi-structured interview guide used as an analytical framework. The findings demonstrate that corruption is not a peripheral anomaly but a tipping point: it transforms institutional paralysis into an active transfer of normative authority towards the dina and the fokonolona. This dynamic reshapes criminal legal pluralism from a historical fact into a normative survival strategy for populations excluded from the formal system. The article concludes on the necessity of a controlled articulation between formal law and traditional regulations, an indispensable condition for any refoundation of access to justice.*

***Keywords*—** *Malagasy criminal justice chain, legal pluralism, corruption, political capture, community justice.*

I. INTRODUCTION

The Malagasy criminal justice system is experiencing a crisis that goes far beyond mere technical dysfunction. It stems from a historical accumulation of problems: a procedural model inherited from French colonization, never truly reappropriated by post-independence elites, coexists with informal social regulations that written law ignores or marginalizes (Randriamahefarilala, 2023). Adding to this normative divide are repeated political shifts that have, each time, weakened the independence of the judiciary. The crises of 2002, 2009, and 2018 each produced their share of politically motivated appointments, budget freezes, and judicial paralysis. The World Justice Project currently ranks Madagascar 112th out of 143 countries, with an overall score of 0.43 out of 1 (World Justice Project, 2024). The Corruption Perceptions Index published by Transparency International gives the country a score of 25 out of 100, ranking it 148th out of 182 assessed countries (Transparency International, 2024). These figures are not mere statistics. They reflect a daily reality for thousands of people facing interminable pretrial detention and legal proceedings with seemingly negotiable outcomes.

Academic literature offers several frameworks for understanding this situation. Bourdieu demonstrated that the legal field functions as an arena of struggles for the monopoly of legitimate symbolic violence, where judges, lawyers, and customary chiefs vie for the authority to interpret the law (Bourdieu, 1986). Griffiths proposed legal pluralism as the coexistence of multiple normative systems within a single society, which contradicts the idea of state monism (Griffiths, 1986). Le Roy extended this reflection by analyzing the dynamics of local reappropriation of imported law (Le Roy, 1999). Furthermore, the political economy of justice, inspired by Bayart, sheds light on the logics of economic survival that underlie corrupt practices within African state apparatuses (Bayart, 1989). North demonstrated that informal institutions can supplant formal rules when the latter are not effectively enforced (North, 1990). Ostrom, for her part, established that local communities develop autonomous governance mechanisms in response to the failures of the central state (Ostrom, 1990). Cappelletti and Garth further emphasized that access to justice is a major indicator of the democratic quality of a legal system (Cappelletti & Garth, 1978). However, no large-scale study has attempted to articulate these three dimensions—structural, socio-political, and normative—specifically within the Malagasy criminal justice system.

From this perspective, the crisis in the criminal justice system is not independent of the fundamental question of the legitimacy of the State. When a republican institution can no longer guarantee equality before the law and the impartiality of decisions, the difficulties are no longer limited to the functioning of the justice system. They directly affect the relationship of trust between the governed and the governing, because the justice system reveals the true nature of State authority beyond the texts that establish it.

It is therefore necessary to distinguish between legality and legitimacy. Legality is based on respect for existing legal norms, while legitimacy rests on the well-founded recognition of the authority exercised. Furthermore, an institution can be legally competent without having the trust of its citizens, which is why the latter resort to community dispute resolution mechanisms.

In the Malagasy context, improving procedures or strengthening institutional resources while simultaneously

http://ijses.com/
All rights reserved

examining the underlying conditions does not simply resolve the problem of justice. It requires a re-examination of the conditions under which public authorities acquire and maintain citizens' trust. Therefore, restoring the legitimacy of the state demands a political will that fosters judicial independence, the integrity of public officials, and the accessibility of judicial services. It also implies taking into account citizen participation and legitimate local mechanisms of social regulation. It is within this framework that a reform of the judicial system, adapted to the realities of Madagascar, can be developed.

This article aims to fill this gap.

The research question is formulated as follows: to what extent does systemic corruption, as a product of the political capture of Malagasy judicial institutions, transfer normative authority to community legal orders, thereby de facto reshaping penal pluralism? The objective is to demonstrate that corruption is not an isolated individual act of deviance but an institutionalized phenomenon that produces differentiated justice based on the socio-economic status of the individual, thus precipitating a shift towards community mechanisms.

The corpus used comprises four categories of sources: international institutional reports (World Justice Project, Transparency International, United Nations Development Programme, Afrobarometer), the semi-structured interview guide developed for doctoral research, key legal texts (Constitution of the Fourth Republic, Code of Criminal Procedure), and scholarly literature on legal pluralism. The study adopts a qualitative approach based on documentary analysis of secondary data, combined with an analytical framework that integrates the sociology of the legal field, the theory of normative pluralism, and the political economy of justice. This methodological choice is justified by the exploratory nature of the subject and the scarcity of primary data available on the internal workings of the Malagasy criminal justice system (Bussiere, 2014).

The demonstration unfolds in three parts. The results will first outline the mechanisms of political capture and institutional paralysis, then the role of corruption as a tipping point, and finally the resulting reconfiguration of penal pluralism. The discussion will compare these findings with existing literature before assessing their scientific significance. The conclusion will formulate the conditions for a controlled articulation between formal law and traditional regulations.

II. METHODS

2.1. Nature of the study

As stated in the introduction, this research adopts a qualitative approach based on the documentary analysis of secondary data. More precisely, it is an interpretative-critical study that aims simultaneously to understand the meanings that actors attribute to their practices and to reveal the power relations that structure the judicial field (Bourdieu, 1986, p. 11). This dual objective necessitates combining several levels of analysis: formal legal texts, international institutional reports, data on citizen perceptions, and the interview framework. The goal is not to produce an exhaustive description of the Malagasy penal system. Rather, it is to identify the mechanisms by which political capture and corruption transform institutional paralysis into an active defection of litigants to community legal systems.

2.2. Corpus and selection criteria

The corpus used comprises four distinct categories of sources, selected according to criteria of institutional reliability, thematic relevance, and temporal availability. The first category includes international institutional reports produced between 2014 and 2024. The World Justice Project's Rule of Law Index, in its 2023 and 2024 editions, provides quantified indicators on judicial independence, the effectiveness of the criminal justice system, and access to justice (World Justice Project, 2024). Transparency International's Corruption Perceptions Index, whose latest edition ranks Madagascar 148th out of 182 countries with a score of 25 out of 100, offers a longitudinal measure of perceived corruption (Transparency International, 2024). The United Nations Development Programme's study on the dysfunctions of the Malagasy criminal justice system constitutes the only large-scale institutional analysis specifically devoted to this subject (Bussiere, 2014). Data from Afrobarometer, from the ninth round of surveys conducted in 2022 with 1200 respondents, allows us to assess citizens' trust in judicial institutions.

The second category comprises the semi-structured interview guide developed for doctoral research. This guide is structured around twenty-one questions organized into thematic sections: the impacts of political conflicts on judicial independence, the consequences for the management and effectiveness of the system, the effects of social conflicts on institutional functioning, and cross-cutting issues related to corruption. This guide was not administered as part of this study. However, it serves as an analytical framework for structuring the interpretation of the available secondary data.

The third category includes key legal texts: the 2010 Constitution of the Fourth Republic, particularly Title VIII concerning the judiciary; the Code of Criminal Procedure, established by Law No. 62-006 and its subsequent amendments; and the organic laws relating to the status of the judiciary. The fourth category draws on scholarly literature on legal pluralism and the sociology of the judiciary, notably the work of Griffiths on the definition of normative pluralism (Griffiths, 1986), Le Roy on the dynamics of legal orders (Le Roy, 1999), and Bourdieu on the symbolic power of law (Bourdieu, 1986).

2.3. Analysis tools and data collection procedures

The data is cross-referenced using an analytical framework that integrates three complementary theoretical approaches. The sociology of the legal field allows us to examine the mechanisms of domination and the reproduction of inequalities within the judicial system (Bourdieu, 1986). The theory of legal pluralism provides the framework for interpreting the normative coexistence between formal state law and traditional regulations such as dina and fokonolona (Griffiths, 1986). The political economy of justice, inspired by Bayart's work on the politics of the belly, sheds light on the

http://ijses.com/
All rights reserved

logics of economic survival that underlie corrupt practices (Bayart, 1989). North demonstrated that informal institutions can supplant formal rules when the latter are not effectively enforced (North, 1990). Ostrom established that local communities develop autonomous governance mechanisms in response to the failures of the central state (Ostrom, 1990).

Secondary data were collected from online institutional databases between January and June 2025. Each data point was verified at the source and contextualized within its production period. The interview guide served as a framework for organizing the categories of analysis and formulating the interpretive questions addressed to the data. This procedure compensates for the lack of primary interviews while maintaining an analytical rigor comparable to that of fieldwork.

2.4. Methodological limitations

The study has several limitations that should be explicitly mentioned. The first lies in the absence of primary interviews conducted with Malagasy judicial actors. The interview guide is used here as an analytical framework and not as a tool for collecting original data. The second concerns the representativeness of the perception data. Transparency International's indices and Afrobarometer surveys measure perceptions rather than actual practices. They indicate a trend but do not allow for a precise quantification of the extent of corrupt practices within each link of the criminal justice system. The third relates to the uneven availability of national judicial statistics. Some data from the Ministry of Justice are not published regularly, making it difficult to accurately measure trial delays, the pre-trial detention rate, and the number of pending cases. These limitations do not invalidate the argument. They do, however, limit its scope and call for further research based on primary data.

III. RESULTS

3.1. Political capture and institutional paralysis of the formal criminal justice system

Analysis of available institutional data revealed that the Malagasy judiciary, during the period 2002-2024, operated according to a logic of structural dependence on the political calendar. This dependence was not manifested solely through ad hoc interventions. It was part of a systemic mechanism of institutional capture that simultaneously affected the resources, career paths, and procedural orientations of the judicial system.

The World Justice Project's indicators measured this reality with particular clarity. In its 2024 edition, the Rule of Law Index ranked Madagascar 112th out of 143 countries, with an overall score of 0.43 out of 1 (World Justice Project, 2024). This ranking placed the country among the twenty worst-performing nations in terms of the rule of law. The criminal justice dimension performed below the regional average for sub-Saharan Africa. A study by the United Nations Development Programme had already identified, as early as 2014, breakdowns in coordination and chronic procedural delays as the two major pathologies of the Malagasy criminal justice system (Bussiere, 2014). These findings remained largely unchanged a decade later.

The political crises of 2002, 2009, and 2018 were the moments when this institutional capture manifested itself most intensely. During the High Transitional Authority (2009–2013), the legal proceedings against political opponents were perceived by a significant portion of the population as settling of scores disguised as ordinary law. This perception was not merely journalistic speculation. It was based on the temporal concentration of the proceedings, their selective targeting, and their coincidence with the deadlines of the political calendar (Randriamahefarilala , 2023). The electoral disputes handled by the High Constitutional Court were, on several occasions, interpreted not as neutral arbitration but as anticipatory validations of the ruling power.

The mechanisms of this interference operated through three main channels. The first concerned the appointment and transfer of judges. The High Council of the Judiciary, although constitutionally mandated to guarantee the independence of the judiciary, was regularly circumvented or manipulated in its decisions. The principle of the irremovability of judges, enshrined in the 2010 Constitution of the Fourth Republic, remained in practice a formal guarantee rarely enforced against pressure from the executive branch. The second channel concerned the financing of the judicial system. Each major crisis resulted in a freeze or slowdown of the justice budget. The High Transitional Authority notably coincided with the suspension of international aid, a portion of which financed judicial strengthening programs (Bussiere, 2014). The third channel concerned the manipulation of the public prosecutor's office. The prosecutor's office, the linchpin of this dependency according to the doctoral interview guide, concentrated considerable discretionary power over the appropriateness of prosecutions, which allowed for the selective steering of criminal action.

The organizational consequences of this political capture were measurable. The accumulation of pending cases was the first observable effect. The extension of pretrial detentions beyond legal limits was the second. The systematic postponement of hearings, already chronic in normal times, worsened considerably during periods of tension. The outright paralysis of certain courts, caused by public sector strikes, budget cuts, and insecurity around the courthouses, represented the third effect. These disruptions were not necessarily intentional. They resulted from the combination of already limited human and material resources and their priority mobilization to manage the political crisis itself.

The Anti-Corruption Unit, created in 2018, represented an attempt at institutional resilience in the face of these dynamics. This specialized jurisdiction was designed to operate relatively isolated from traditional political pressures. Its results, however, remained mixed. While some medium-sized corruption cases were indeed prosecuted, cases involving politically protected figures remained largely beyond its reach. This asymmetry confirmed that political capture was not limited to periods of acute crisis. It was part of the ordinary functioning of the judicial system, where the

http://ijses.com/
All rights reserved

careers of judges depended heavily on the goodwill of their superiors.

3.2. Corruption as a tipping point and crisis multiplier

Corruption within the Malagasy criminal justice system was not limited to isolated individual deviance. Available data indicated that it functioned as an institutionalized phenomenon, integrated into the economic survival strategies of judicial actors and producing a justice system differentiated according to the socioeconomic status of those brought before it. This institutionalization transformed corruption into a mechanism of social differentiation that undermined, from within, the state's monopoly on the legitimate use of symbolic violence.

Transparency International 's Corruption Perceptions Index gave Madagascar a score of 25 out of 100, ranking it 148th out of 182 countries assessed (Transparency International, 2024). This score, which had remained stable for several years, indicated that corrupt practices had not significantly decreased despite successive institutional reforms. Comparative literature on post-crisis transition states suggested a systematic correlation between political instability and increased corrupt practices. Madagascar was no exception. Periods of institutional vacuum or transitional governance, particularly between 2009 and 2013, coincided with peaks in the corruption perceptions index as measured by Transparency International.

The mechanism by which corruption acted as a tipping point can be described in three stages. The first stage was the differentiation of treatment. Those with economic or relational resources gained privileged access to judicial decisions, while ordinary citizens faced prolonged delays, opaque procedures, and decisions whose outcome seemed negotiable. Bourdieu had already identified this mechanism, demonstrating that the legal field functions as an arena of struggle where the power to interpret the law is distributed unequally according to the symbolic and economic resources of the actors (Bourdieu, 1986). This “two-tiered justice system” was not an anomaly; it was its structural product.

The second stage was the destruction of trust. Afrobarometer surveys, conducted as part of the ninth round in 2022 with 1,200 respondents, confirmed that the justice system was among the institutions with the lowest levels of public trust. This distrust did not stem solely from political or social crises. It was rooted in the daily experience of those seeking justice, confronted with practices where judicial decisions seemed negotiable. The perception of a justice system that is not properly administered but can be bought was probably the most decisive factor in the erosion of institutional legitimacy.

The third stage was defection. Once trust was destroyed, the individual seeking justice withdrew from the state sphere. This withdrawal was not an act of conscious political resistance. It was a rational strategy for normative survival. Faced with a system perceived as inequitable, costly, and inaccessible, people turned to alternative mechanisms offering more immediate and predictable conflict resolution. Bayart had demonstrated that the economic survival strategies of institutional actors produce practices that escape formal state control and reorganize themselves according to clientelistic logics (Bayart, 1989). Judicial corruption fit perfectly within this dynamic.

The multiplier effect of corruption was also evident in its interaction with political and social crises. Corruption exacerbated pre-existing problems. Crises created conditions conducive to corruption, and corruption subsequently made these crises more difficult to manage. This vicious cycle resulted in the progressive deterioration of indicators of access to justice. Vulnerable populations—rural women, miners, and inhabitants of isolated areas—disproportionately suffered the combined effects of institutional paralysis and corruption. The cost of legal proceedings, the geographical remoteness of courts, and a lack of awareness of rights constituted additional barriers that made access to formal justice practically impossible for a significant portion of the population.

The digitalization of procedures, regularly mentioned as a potential reform, failed to reverse this trend. Reducing direct contact between litigants and judicial actors theoretically limited opportunities for corruption. However, this measure remained largely cosmetic in a context where the material working conditions of judges remained precarious and the economic vulnerability of judicial actors was not addressed. As the doctoral interview guide indicated, the challenge is less about changing mindsets than about concretely modifying the conditions under which judges and litigants work, in order to create a system that promotes honesty and makes corruption more difficult.

3.3. Community defection and the recomposition of criminal pluralism

The withdrawal of litigants from the state judicial system did not create a normative vacuum. Rather, it triggered a reconfiguration of criminal law pluralism, transforming the historical coexistence of formal law and traditional regulations into a rational strategy of substitution. The recourse to dina and fokonolona was not a return to residual folklore. It represented a functional response to the shortcomings of a state incapable of guaranteeing equal access to justice.

Griffiths defined legal pluralism as the situation in which several normative orders coexist within the same society, each claiming its own legitimacy (Griffiths, 1986). This definition applied with particular acuity to the Malagasy case. Formal criminal law, inherited from the French colonial model, coexisted after independence with traditional conflict resolution mechanisms. The dina, the customary law of the communities, and the fokonolona, the community assembly for deliberation, constituted legal orders endowed with their own procedural rules, their own sanctions, and their own institutions of legitimation. Le Roy analyzed this dynamic, showing that traditional legal orders are not pre -modern vestiges but living normative systems, capable of adapting to social transformations (Le Roy, 1999).

Community disengagement accelerated due to the combined effect of three factors. The first was the geographical remoteness of the courts. In rural areas, the distance between communities and courts of first instance

http://ijses.com/
All rights reserved

made recourse to formal justice materially expensive and time-consuming. The second factor was rural insecurity. Cattle rustling and cattle raids created widespread pressure on local courts, which were sometimes accused of leniency by communities. This pressure led some courts to process cases more quickly or more severely, but it also encouraged communities to organize their own protection and justice. The third factor was the cost of legal proceedings. Court fees, lawyers' fees, and travel expenses constituted insurmountable economic barriers for the poorest populations.

Faced with these obstacles, community mechanisms offered decisive comparative advantages. Conflict resolution was more immediate, less costly, and closer to local understandings of justice. The fokonolona, as a deliberative assembly, allowed for the direct participation of community members in conflict resolution. The dina, as a body of customary law, provided a familiar and socially legitimate frame of reference. Ostrom had demonstrated that local communities develop autonomous governance mechanisms when the central state fails to fulfill its sovereign functions (Ostrom, 1990). Community defection in Madagascar fit perfectly within this framework.

This reconfiguration of criminal pluralism, however, did not occur without tensions. Areas of friction between formal and informal law primarily concerned respect for fundamental rights. Certain community justice practices conflicted with the procedural guarantees recognized by international human rights law: presumption of innocence, right to a fair trial, proportionality of penalties, and prohibition of cruel or degrading treatment. Popular justice, particularly in cases of cattle rustling, sometimes took violent forms that escaped all institutional control. The boundary between legitimate traditional regulation and private justice remained blurred, due to the lack of a clearly defined legal framework for recognition and coordination.

North had shown that informal institutions can supplant formal rules when the latter are not effectively enforced (North, 1990). This observation applied directly to the Malagasy case. Formal criminal law, never truly reappropriated since independence, gradually lost its capacity to structure the population's normative expectations. Community mechanisms, on the other hand, acquired increasing social legitimacy precisely because they met needs that the state could no longer satisfy. This reversal of normative legitimacy constituted the most profound consequence of political capture and corruption.

The reconfiguration of penal pluralism thus escaped state control. It produced a fragmentation of normative authority that complicated any attempt at top-down reform. Successive judicial reforms failed in part because they were conceived according to a vertical logic, without taking into account actual social regulations or the material conditions of their implementation. This observation led to the fourth hypothesis of the doctoral project: the reforms failed because they ignored the reality of normative pluralism and the survival strategies of the actors involved.

The question that then arose was no longer whether legal pluralism exists in Madagascar. This existence is a documented and irrefutable fact. The question became under what conditions a controlled articulation between formal law and traditional regulations can be established. The lessons learned from comparative experiences, examined later in this discussion, suggest that such an articulation is possible under certain conditions. This condition, however, presupposes that the State regains an effective regulatory capacity, which implies, as a prerequisite, addressing the structural causes of political capture and corruption.

Afrobarometer surveys indicated that distrust of the criminal justice system was already significant, independent of crises. Political and social crises exacerbated pre-existing distrust. Vulnerable populations increasingly turned to informal or community-based justice mechanisms during periods of tension. This dynamic confirmed that community defection was not a marginal or transient phenomenon. It represented a structural trend in the reconfiguration of normative authority, directly linked to the state's inability to guarantee equitable access to formal justice.

Community justice, frequently mentioned as a potential reform, failed to reverse this trend under the current institutional conditions. Criminal mediation, local courts, and participatory justice mechanisms remained largely embryonic. Their development required material investment, specific training for stakeholders, and sustained political will—three conditions that were not met simultaneously during the period under study. Without these conditions, community justice remained an institutional discourse without any real impact on the daily practices of those seeking justice.

IV. Discussion

The results obtained in this study directly challenge the theoretical frameworks used to analyze the Malagasy criminal justice system. Comparison with existing scientific literature allows us to clarify the scope of these findings, assess the article's contribution, and formulate implications for judicial reform policy.

4.1. Theoretical scope: the recomposition of penal pluralism through the lens of Griffiths, Le Roy and Bourdieu

The theory of legal pluralism, as formulated by Griffiths, posits that several normative orders coexist within the same society without any one of them holding an effective monopoly (Griffiths, 1986). The results of this study confirm this proposition for the Malagasy case, but they introduce an important nuance. Normative coexistence has not been maintained in a state of static equilibrium. It has been transformed under the influence of political capture and corruption. Malagasy criminal law pluralism has moved from a historical coexistence, relatively tolerated by the postcolonial state, to an active recomposition in which community mechanisms have acquired increasing legitimacy precisely because the state has failed. Vanderlinden had already anticipated this dynamic by showing that legal pluralism is not a fixed state but an evolving process, sensitive to political and social transformations (Vanderlinden, 1989).

Le Roy extended this reflection by analyzing the mechanisms through which traditional legal orders

http://ijses.com/
All rights reserved

reappropriate the functions that the state can no longer fulfill (Le Roy, 1999). The results of this study confirm this analysis for the dina and the fokonolona. However, they reveal an element that Le Roy had not fully developed: the recomposition of penal pluralism is not solely the product of an endogenous dynamic of community survival. It is also, and perhaps primarily, the exogenous product of state institutional failure. Corruption and political capture have acted as catalysts that have accelerated the transfer of normative authority. Without these factors, the coexistence of formal law and traditional regulations would likely have maintained a more stable equilibrium.

Bourdieu's sociology of the legal field offers a complementary perspective. Bourdieu demonstrated that the legal field functions as an arena of struggles for the monopoly of legitimate symbolic violence, where agents vie for the authority to interpret the law (Bourdieu, 1986). The findings of this study indicate that this monopoly has eroded from within. Corruption has destroyed the credibility of the judicial institution as the legitimate holder of normative authority. Those seeking justice, confronted with a justice system perceived as negotiable, have withdrawn their symbolic recognition of the state institution. This withdrawal has de facto transferred normative legitimacy to community mechanisms. Bourdieu did not envision this scenario in the precise terms in which it manifests itself in Madagascar. His work focused primarily on Western liberal democracies, where the legal field retains relative autonomy. The Malagasy case shows that this autonomy can be destroyed when political capture and corruption reach a critical threshold.

North demonstrated that informal institutions supplant formal rules when the latter are not effectively enforced (North, 1990). This proposition was particularly evident in the Malagasy context. The Code of Criminal Procedure, inherited from the French colonial model, was never fully reappropriated or adapted to local social realities. Informal rules, clientelistic practices, local arrangements, and community justice gradually supplanted formal rules. Ostrom had established that local communities develop autonomous governance mechanisms in response to the failures of the central state (Ostrom, 1990). The results of this study confirm this proposition for rural Malagasy communities facing insecurity and geographical isolation from the courts.

4.2. Scientific contribution in relation to previous studies

French-language academic literature specifically dedicated to the Malagasy criminal justice system remains remarkably scarce. The UNDP institutional study, published in 2014 under the direction of Bussiere, is the only large-scale analysis devoted to the dysfunctions of this system (Bussiere, 2014). This study provided a valuable diagnosis of the breakdowns in coordination and chronic procedural delays. However, it remained focused on a descriptive and institutional approach, without examining the deep-rooted socio-political mechanisms that perpetuate the failures. Randriamahefarilala 's work on the colonial legacy has provided important historical insight, showing how the French penal model was imported without genuine reappropriation (Randriamahefarilala , 2023). This historical perspective, however, has not been linked to an analysis of normative pluralism and the dynamics of corruption.

The contribution of this article lies precisely in its articulation of these three dimensions. By combining institutional analysis, the political economy of justice, and the theory of legal pluralism, the study offers an integrated perspective that previous works had not attempted. This articulation helps us understand why successive reforms have failed: they were conceived according to a top-down logic, without taking into account actual social regulations or the material conditions of their implementation. Bayart demonstrated that the economic survival strategies of institutional actors produce practices that escape the formal control of the state (Bayart, 1989). This observation applies directly to Malagasy judicial reforms, which ignored the economic conditions in which judges and litigants operate.

4.3. Towards a Constitutionally Framed Legal Pluralism

From a contextual perspective, legal pluralism is a subject of debate in a multipolar world. It leads us to comparative references and allows other states to avoid viewing Western institutional models as the sole perspective.

The objective is not to replace the imported model, which is already dysfunctional, but to strengthen the institution's capacity to examine experiences from its operation, to assess its strengths and weaknesses, and to study its adaptation to Malagasy socio-cultural contexts. This approach demonstrates the evolution of the legal system, which encompasses national norms, international commitments, regional instruments, and legitimate social practices.

In the Malagasy context, restoring public trust in institutions goes far beyond simply strengthening the administration or procedures. Recognizing forms of participation and social regulation is truly important in this regard.

Multipolarity and legal pluralism are two distinct terms, not directly related. The former concerns benchmark institutional experiences, while the latter offers the possibility of analyzing the relationships between state law, international commitments, and social or customary norms. Bringing these two terms together opens avenues for a distinctly Malagasy institutional model, open to international cooperation but requiring constitutional revision, where the state remains the guarantor of equality before the law, freedoms, and equitable access to public services and justice.

4.4. Limitations of the results

The study has several limitations that warrant explicit discussion. The first concerns the difficulty of measuring the true extent of informal justice. The available data, primarily from institutional reports and perception surveys, do not allow for a precise quantification of the volume of conflicts resolved through the dina (traditional law) and fokonolona (community law). This deficiency prevents a rigorous assessment of the proportion of litigants who actually turn to community mechanisms. The second limitation concerns the representativeness of the perception data. Transparency

http://ijses.com/
All rights reserved

International's indices and Afrobarometer surveys measure perceptions rather than actual practices. They indicate a trend but do not allow for distinguishing between actual corruption and the perception of corruption. The third limitation stems from the lack of primary interviews with Malagasy judicial actors. The interview guide served as an analytical framework but was not administered in this study. This absence limits the ability to capture the actors' subjective perspectives and to empirically test certain hypotheses.

4.5. Implications for judicial reform policy: comparative lessons from Rwanda and Senegal

The results of this study have direct implications for judicial reform policy in Madagascar. They indicate that a purely technical reform, focused on digitalization or the training of magistrates, will remain ineffective as long as it ignores the political dimension of institutional capture and the sociological reality of community defection.

The Rwandan experience offers an initial lesson. The constitutional integration of the gacaca courts , post-genocide community tribunals, has shown that a controlled articulation between formal law and traditional regulations is possible, provided it is framed by mechanisms for oversight, appeals, and cross-training of stakeholders (Reyntjens , 2006). The gacaca courts have made it possible to process a considerable volume of cases in a context of extremely limited judicial resources. This experience demonstrates that community justice can function as a complement to state justice rather than a substitute. However, the gacaca courts have also revealed significant limitations: tensions with fundamental rights, particularly the presumption of innocence and the right to a fair trial, as well as risks of political manipulation. These limitations must be taken into account in any attempt to transpose them to the Malagasy context.

The Senegalese experience offers a second lesson. Recent judicial reforms in Senegal, notably the creation of the Court for the Repression of Illicit Enrichment and the modernization of the judicial map, have shown that institutional reforms can produce tangible results when political will is sustained. However, the persistence of customary justice in Casamance has also demonstrated that top-down reforms are insufficient to transform local normative practices. Traditional conflict resolution mechanisms have continued to operate in rural areas precisely because the state has failed to guarantee effective access to formal justice. This observation directly aligns with the findings of this study on community defection in Madagascar.

Transposing these lessons to the Malagasy context requires three prerequisites. The first is the restoration of effective judicial independence, achieved through reforming the appointment process for judges and genuinely strengthening the autonomy of the High Council of the Judiciary. The second is the establishment of a legal framework for recognizing and integrating traditional conflict resolution mechanisms, coupled with oversight and appeal mechanisms that comply with international human rights standards. The third is the improvement of the material working conditions of judicial actors, in order to reduce the economic vulnerability that fuels corrupt practices. Without this last condition, the first two remain largely superficial. As the doctoral interview guide indicated, the goal is less about changing mindsets than about concretely altering the conditions under which judges and litigants work, in order to create a system that promotes honesty and makes corruption more difficult.

V. CONCLUSION

The Malagasy criminal justice system does not suffer from a mere technical deficiency. It is experiencing a crisis of legitimacy stemming from the interplay between the political capture of judicial institutions, the institutionalization of corruption, and the persistence of informal normative regulations that formal law ignores or marginalizes. The research question posed in this article specifically examined the mechanism by which corruption, as a product of this political capture, transfers normative authority to community legal orders. The results obtained provide a nuanced answer to this question.

Three major findings emerged from the analysis. The first established that the Malagasy judiciary, during the period 2002-2024, operated according to a logic of structural dependence on the political calendar. The crises of 2002, 2009, and 2018 were not isolated incidents. They revealed a systemic mechanism of institutional capture that simultaneously affected the resources, career paths, and procedural orientations of the judicial system. The World Justice Project ranked Madagascar 112th out of 143 countries in its 2024 Rule of Law Index, with an overall score of 0.43 out of 1 (World Justice Project, 2024). This ranking reflected a structural reality that the United Nations Development Programme study had already identified in 2014 (Bussiere, 2014). The second finding demonstrated that corruption acts as a tipping point. The Corruption Perceptions Index gave Madagascar a score of 25 out of 100, ranking it 148th out of 182 assessed countries (Transparency International, 2024). This finding corroborated the hypothesis that corruption is not an isolated individual act of deviance but an institutionalized phenomenon that produces a justice system differentiated according to the socioeconomic status of the individual seeking justice. The third observation established that this differentiation precipitated a rational shift of individuals towards the mechanisms of dina (traditional law) and fokonolona (community law). This shift did not constitute a return to residual folklore. It represented a normative survival strategy in the face of a state incapable of guaranteeing equal access to justice.

The scientific contribution of this article lies in its articulation of three dimensions that previous works had addressed separately. Francophone academic literature specifically devoted to the Malagasy criminal justice system remains remarkably scarce. The UNDP's institutional study provided a diagnosis of coordination breakdowns and chronic procedural delays (Bussiere, 2014). Randriamahefarilala 's work shed historical light on the colonial legacy (Randriamahefarilala, 2023). However, no work had attempted to simultaneously articulate the structural, socio-political, and normative dimensions of Malagasy criminal justice

http://ijses.com/
All rights reserved

dysfunction. By combining Bourdieu's sociology of the legal field, Griffiths' theory of legal pluralism, and the political economy of justice inspired by Bayart, this article offers an integrated analysis that illuminates the deep-seated mechanisms of the reproduction of this dysfunction. Bourdieu demonstrated that the legal field functions as an arena of struggles for the monopoly of legitimate symbolic violence (Bourdieu, 1986). The results of this study indicate that this monopoly has eroded from within under the combined effects of political capture and corruption. Griffiths defined legal pluralism as the effective coexistence of several normative orders within the same society (Griffiths, 1986). In Madagascar, this coexistence has transformed into an active recomposition where community mechanisms have acquired increasing legitimacy precisely because the state has failed.

The study nevertheless has limitations that must be explicitly acknowledged. The first lies in the absence of primary interviews conducted with Malagasy judicial actors. The interview guide served as an analytical framework but was not administered within the framework of this study. This absence limits the ability to capture the actors' subjective perspectives and to empirically verify certain hypotheses. The second concerns the representativeness of the perception data. Transparency International's indices and Afrobarometer surveys measure perceptions rather than actual practices. They indicate a trend but do not allow for a precise quantification of the extent of corrupt practices within each link of the criminal justice system. The third relates to the uneven availability of national judicial statistics. Some data from the Ministry of Justice are not published regularly, making it difficult to accurately measure trial delays, the pre-trial detention rate, and the number of pending cases. These limitations do not invalidate the analysis. They do, however, limit its scope and call for further research based on primary data.

Several research perspectives stem directly from these observations. The first concerns transitional justice. Madagascar has never initiated a formal transitional justice process following successive political crises. National reconciliation mechanisms, when they have existed, have remained superficial and politically manipulated. In-depth research on the conditions for a transitional process adapted to the Malagasy context would allow us to examine the possibility of restoring institutional trust without reproducing the power grabs that generated the crisis. The second perspective concerns the potential impact of the digitalization of procedures. Reducing direct contact between litigants and judicial actors theoretically limits opportunities for corruption. However, this measure remains largely cosmetic in a context where the material working conditions of magistrates remain precarious and where the economic vulnerability of judicial actors is not addressed. An empirical evaluation of the real effects of digitalization on corrupt practices would constitute a significant contribution to the existing literature. The third perspective concerns the role of African regional courts. The African Court on Human and Peoples' Rights could serve as an external oversight mechanism capable of compensating for shortcomings in the national judicial system. This hypothesis warrants further exploration through comparative research extending to other countries in the region.

Ultimately, the overhaul of the Malagasy criminal justice system requires a simultaneous transformation of institutional structures, political practices, and the material conditions of access to justice. The lessons learned from the comparative experiences of Rwanda and Senegal, presented in detail above, confirm that such a system is possible under certain conditions. This condition, however, presupposes that the State regains its effective regulatory capacity. Without this prior restoration, any reform will remain merely cosmetic. The Malagasy criminal justice system will not be reformed by additional legislation. It will be reformed when the material and political conditions of its operation have been genuinely transformed.

REFERENCES

[1] Bayart, J.-F. (1989). *The State in Africa.* The Politics of the Belly. Fayard.
[2] Bourdieu, P. (1986). *The force of law. Elements for a sociology of the legal field*. Actes de la recherche en sciences sociales, 64(1), 3-19.
[3] Bussiere, B. (2014). *Study on the dysfunctions of the Malagasy criminal justice system*. UNDP Madagascar.
[4] Cappelletti, M., & Garth, B. (1978). *Access to Justice: The Worldwide Movement to Make Rights Effective*. Sijthoff and Noordhoff.
[5] Griffiths, J. (1986). *What is Legal Pluralism?* Journal of Legal Pluralism and Unofficial Law, 18(24), 1-55.
[6] Le Roy, É. (1999). *The game of laws. A "dynamic" anthropology of law* . LGDJ.
[7] Randriamahefarilala, R. (2023). *Malagasy criminal justice: between colonial legacy and the right to a fair trial*. Francophone Institute for Justice and Democracy.
[8] Reyntjens, F. (2006). Gacaca: *Truth, Justice, and Reconciliation in Post-Conflict Rwanda*. African Studies Review, 49(3), 25-50.
[9] Vanderlinden, J. (1989). *Return to Legal Pluralism*: Twenty Years Later. Journal of Legal Pluralism and Unofficial Law, 28, 149-157.
[10] https://doi.org/10.1017/CBO9780511808678 : North, D. (1990). *Institutions, Institutional Change and Economic Performance*. Cambridge University Press. (Accessed on June 15, 2025).
[11] https://doi.org/10.1017/CBO9780511807763. Ostrom, E. (1990). *Governing the Commons* . Cambridge University Press . (Accessed June 15, 2025).
[12] https://www.transparency.org/en/cpi/2023/index/mdg: Transparency International. (2024). *Corruption Perceptions Index 2023*. Transparency International. (Consulté le 15 juin 2025).
[13] https://worldjusticeproject.org/rule-of-law-index/country/2024/Madagascar. World Justice Project. (2024). *Rule of Law Index 2024*. World Justice Project. (Consulté le 15 juin 2025).

http://ijses.com/
All rights reserved