



## Where Do We Stand? An Exploratory Analysis of Confidence in African Court Systems

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### Abstract

As an exploratory analysis, this research investigates the factors influencing public confidence in the court systems of five African nations; namely, South Africa, Ghana, Burkina Faso, Mali and Zambia. Incorporating frequency descriptive measurements and ordinal logistic regression, this research provides a comparative assessment across varying political, cultural, social and historical contexts to foster continued research within the criminal justice institutions, specifically the courts. The findings indicate that public confidence in the courts remains high, despite popular speculation to the contrary. There were, however, varying levels of confidence between the five nations; differences at theoretical and practical levels are discussed.

### Keywords

Justice system, public confidence, Africa, courts.

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## Introduction

Democratic government institutions need public support to perform effectively (Barua 2009; Baum 1992; Calderia 1991; Carp and Stidham 1991; Marshall 1989). Historically, institutional effectiveness within the police service and courts is measured by the willingness for the public to comply with orders. Marginal disobedience, while a norm, rarely poses a threat when such actions are addressed by a criminal justice response predicated on trust. However, producing trust, confidence and co-opting the public becomes increasingly important within nations experiencing political, economic and social instability (Roux 2009).

Lack of public confidence in the justice system may have severe effects on a society (Benesh and Howell 2001). Roberts and Stalans (1997) offer lack of confidence in this regard as making citizens less willing to take part in democratic aspects of a justice system. This lack of confidence may also reduce willingness of citizens to bring conflicts into the system for resolution (Dugard 2006). As Dugard (2006) explains within the context of South Africa, this lack of willingness to introduce claims into the court only further marginalizes the poor, denying them access to a court of reparations. Moreover, without trust and confidence in the courts, citizens may be less willing to comply with decisions issued (Gibson 1989) such as those involving civil suits and domestic disputes. In addition, lack of trust in the justice institution is a cause of decreasing appearances before the court when a summons has been received. These breakdowns in social control undermine security within a nation (Loader and Walker 2007).

As an institution, the courts are often unable to provide resolutions agreeable to all parties. Further, the courts, as with the police service, address a wide array of personal disputes and grievances against others and even the state. Historically, research conducted in a number of countries shows that low confidence exists within the courts (Chapman Mirrlees-Black and Brawn 2002; Hough and Roberts 1999; Mattinson and Mirrlees-Black 2000; Parmentier et al. 2005; Roberts 2004; Roberts and Houghs 2004; Van De Walle and Raine 2008). As stated by Roberts and Houghs (2004: 7), 'a justice system that fails to command public trust ... may simply fail to function effectively'.

Roux (2009) offered an important addition that, although limited in scope, applies to the courts. Specifically, this is the dualistic dilemma experienced by which the courts routinely try to gain both political favor and public support in efforts to display their legitimacy. This balancing act is not unique to the courts as recent research indicates this dilemma also applies within the police service (Bottoms and Tankebe 2012). As a formal mechanism of social control, the courts promote a system regulated by the rule of law (Levi, Tyler and Sacks 2012) by which grievances and complaints directed against others in the public or at the state are addressed. These results may offer mediation or arbitration but an essential element is adherence to impartiality. Perceptions of fairness, trust and confidence in these jurisdictions become tantamount to the success of a nation (Widner 2001).

Extreme lack of trust and confidence in the normal channels of court processes may eventually lead to individualized justice (Baker 2009). These adaptations may reflect the leveraging of political connections, bribery, vigilantism, and other means to avoid the system (Benesh and Howell 2001). Unfortunately, these practices are prevalent throughout parts of Africa (see Baker 2008). Resulting political and economic instability have mostly rendered the state unable or unwilling to provide justice services (Hills 2009; Marenin 2009). On the occasions when the state is willing to tackle the problem, perceptions of these services as ineffective, inefficient, unjust, biased or discriminatory make acceptance of their rulings problematic (Baker 2008, 2009; Hills 2009; Marenin 2009).

Specific to post-conflict societies, transitioning governments and developing democracies, the extent of trust in the courts, measured as public confidence in them, reveals considerable

information about what is happening at the reform levels (Donoghue 2014) and within specialized court dealing with gender-based crimes (Daly and Bouhours 2011; Lake 2014; Walker and Louw 2005), issues of citizenship (Bradley 2013), family law (Armstrong et al. 1993; Nwogugu 2014), and land reconciliation (Atuahene 2011; Gibson 2009). However, the empirical evidence of confidence and the associated characteristics is limited within the African criminal justice literature. In fact, primary research mostly compares developing nations to developed nations. While important comparisons, these studies become a 'litmus test' to measure overall progress towards 'democratic standards'. However, without a comparative framework of reference it is not possible to measure variations *across* developing nations. Subsequently, research explains the importance of trust within the courts, but rarely has research empirically assessed levels of trust *in* the courts, and the factors influencing trust using multivariate techniques.

Because of the lack of research in this area, reformers have often looked to the research within developed nations, most noticeably the United States, Canada and the United Kingdom. More recently, African scholars have turned to South Africa (modeling western democracies) as a template for reform (Gibson and Caldeira 2003). While a suitable method and an important contribution to the literature, these models have not been sufficient to provide a framework for studying variations among developed and developing countries.

This research explores factors influencing public confidence in the justice system of five African countries using wave five<sup>1</sup> of the World Value Survey, conducted between 2005 and 2008. The significance of this study is threefold. First, since limited research on the court systems in African countries exists, the present study will help to place the African continent in the scholarly literature. Second, though comparative measurement of public opinion is important since it underscores cultural variations between different societies, little attention has been given to comparative studies in the criminal justice literature uniquely focused on African states. Therefore, this study will help fill the gap by contributing substantially to comparative research. Third, the study will advance knowledge of public attitudes, measured as trust, toward the courts using both descriptive and inferential statistics, comparing representative data from five countries, namely South Africa, Ghana, Mali, Burkina Faso and Zambia. What follows is a brief overview of the demographics and legal systems of each of the five countries been studied. This section will be followed by a review of the literature comprising public confidence in the courts, followed by an explanation of the method, statistical model, analysis and, lastly, the theoretical and practical contributions of the research.

### **Brief overview of the five countries**

African justice systems, unlike those in most developed nations, operate sluggishly and obligatory lengthy paper work and red tape that hamper the effective rendering of justice are endemic. There is a commonly held view that the poor performance of the systems, coupled with predominantly high crime rates, has negatively affected development and prevented most Africans from fulfilling their developmental prospects. African scholars also believed that the lack of effective criminal justice systems on the continent has not only undermined democracy, but has also led to serious and continued human rights malpractices (see Alemika et al. 2009). The paragraphs that follow offer a succinct description of the justice systems of the five countries in this paper. These countries are well suited for making comparisons because of their shared common history of colonialism and heritage. The modern justice system in each of these countries emanated from their respective colonial justice administrative systems. These countries have effectively amalgamated the interests of the new political elites with those of their colonial masters. As a result, the interests of the political elites have become dominant in these post-colonial societies (Rakodi 2002).

### *Ghana*

As a former British colony, Ghana gained its political independence in 1957, thus becoming the first sub-Saharan African country to gain independence from their colonial authorities. Like many other African countries, Ghana subsequently endured a series of military takeovers before eventually becoming a democratic state with an elected government in 1992. As a sovereign and a unitary republican West African country, Ghana is bordered by three emerging French-speaking African countries: Cote d'Ivoire to the west; Burkina Faso to the north; and Togo to the east; the Gulf of Guinea is to the south. With Accra as its capital city, Ghana's land area of 238,535 square kilometers places the country 81st in the world in terms of geographic size. Ghana's population has increased progressively following independence. The first post-independent census in 1960 produced a population figure of 6.7 million inhabitants. The population increased to 8.5 million in the next 10 years and, in the last official count in 1984, there were 12.3 million people living in Ghana. According to the 2010 census, Ghana's population is approximately 25 million. Ghana's population is largely youthful, with a median age of 30 years. Over one third (38 per cent) were 0 to 14 years, 20 per cent were between 15 years and 24 years, 35 per cent were between 25 years and 59 years, and only 7 per cent were 60 years or older. Concerning gender, 51 per cent were females and 49 per cent males. Given the population above the age of 12 years, the 2010 population and housing census report mentioned that 42 per cent never married; consensual union constituted 5 per cent; 43 per cent were married couples; separated were 2 per cent; divorced, 3 per cent, and widowed 5 per cent. About 51 per cent of the population resides in urban localities. In terms of ethnicity, the Akans, forming 48 per cent of the population, are the largest group followed by the, Mole-Dagbon (17 per cent), the Ewe (14 per cent), the Ga-Dangme (7 per cent), the Guan (4 per cent), and with the remaining 4 per cent comprised of a large number of other linguistic and cultural groups.

Ghana's legal system is founded on English common law and customary law (Ellis 1971; Kaplan et al. 1971; Rubin and Murray 1996), and the country's criminal justice system is based on the adversarial model in which offenders are presumed innocent until proven guilty in court. The current structure of the court system is a prototype of the colonial court system constructed on the Judicature Acts of 1893-75. The 1876 Supreme Court Ordinance spearheaded the establishment of Divisional and District Commissioners' courts, which are considered as the lower tier of the Supreme Court. The Supreme Court remained the highest court during colonial era, and the West African Court of Appeals heard appeals from it. Ghana remained a member of the West African Court of Appeals until attainment of political independence. The Ghana court system has survived through various regimes and constitutional and legal frameworks. However, the most significant influence in the development of its modern court system was made by the 1992 constitution of Ghana. The constitution, among other things, protects the independence of the courts and the judiciary, and specifies clearly the jurisdiction of the various levels of courts in Ghana. Aside from the formal justice system, Ghana, like many other African countries (such as Nigeria) has an informal justice system that empowers chiefs and traditional rulers to administer justice in accordance with Ghana's customary laws (Danquah 1928; Harvey 1966). According to historians, the informal justice system in Ghana has existed under both colonial and post-colonial regimes (Daniels 1964).

### *Burkina Faso*

Burkina Faso, Ghana's neighbor to the north, and thus also located in West Africa, gained its political freedom in 1960 from France. The years following independence have been challenging for the country; it has experienced a series of political unrest, riots, demonstrations and coup d'états. The 2014 riot removed the 27-year veteran president Blaise Compaore, who had seized power in 1987 through a military coup d'état which ousted a fellow military dictator, Thomas Sankara. Currently, Burkina Faso's population is about 15 million, with the majority aged 15 years to 64 years (57 per cent). About 41 per cent of the population were aged below 15 years while only 2 per cent were 65 years or older.

Like many other colonial societies, Burkina Faso's legal system, heavily influenced by their long-term relationship with France, is based on the French civil law system and customary law. The traditional courts mostly apply customary laws in the villages to resolve cases that involve divorce and inheritance. The country's constitution established, and provides for, an independent judiciary (Article 129). However, a provision made in the constitution has created a system largely influenced by the executive, headed by the president. Specifically, Article 131 makes the president of the country the head of the High Council of the Magistracy. This means that the president has appointive powers to nominate and remove magistrates. In 1995, a new constitution was adopted and subsequently, several structural changes were made to the court system. For instance, the Supreme Court, which was at the apex of the judicial system under the 1991 constitution, was divided into four new sections: a constitutional court which oversee constitutional related matters; a council of state responsible for resolving disagreements among state institutions; an audit court with jurisdiction to monitor public finances; and a court of cassation to review rulings by lower courts. There are also the High Court of Justice and the Tribunaux de grande instance that rule on major cases. In addition to the formal courts, traditional courts at the village level apply customary law in resolving cases involving divorce and inheritance.

### *Mali*

Three years after Ghana attained political independence, Mali attained a similar political status from France. Located in the Western part of Africa and bordering Burkina Faso to the north, Mali is the eighth largest country in Africa, with an area of more than 480,000 square miles. The population of Mali is currently 14.5 million and its capital is Bamako. Geographically, Mali consists of eight regions and its borders on the north reach deep into the middle of the Sahara Desert, while the country's southern part, where the majority of inhabitants live, features the Niger and Senegal rivers. Like Ghana, Mali has experienced since independence a protracted period of military coups, which have tremendously affected the socio-economic development of the country.

After a long period of one-party rule under a military regime which ended in 1991, a new constitution was written in 1992 and eventually, Mali became a democratic, multi-party state (Miles 2006). Mali's population is mostly rural, nomadic and youthful, with a median age of about 16 years. The 2007 population statistics indicates that 48 per cent of Malians were younger than 15 years old, 49 per cent were 15-64 years old, and 3 per cent were 65 and older. As a multiethnic society, Mali has several ethnic groups, with the Mande forming 50 per cent of the country's population. Other ethnic groups include Fula (17 per cent), Senufo (12 per cent), Tuareg (10 per cent), Songhai (6 per cent), Arab (4 per cent) and others (2 per cent).

Mali's legal system is based on French civil law and customary law, and provides for judicial review of legislative acts in a Constitutional Court (American Bar Association (ABA) 2012; Miles 2006). Mali's Supreme Court, established in 1969, is constituted of 19 members who serve five-year terms of office. The Supreme Court has both judicial and administrative powers. In addition to defining the jurisdictions of the constitutional court and the High Court of Justice, the 1992 constitution also guarantees judicial independence. Unlike most justice systems, access to justice through the Malian formal justice system is highly limited, due in part to the array of problems facing the system including lack of judicial independent, persistent corruption, and shortage of personnel (see, for example, Briscoe 2014; Coulibaly 2014). The right of an ordinary Malian to seek justice is also limited due to language problems. Although the official language of Mali is French, only about one-third of Malians (mostly the educated elites) can speak it. This problem hinders the ability of most Malians to utilize the courts and other justice institutions for case settlement. Moreover, court fees are too expensive for the ordinary citizen in Mali to pay and this further denies people from accessing the system (ABA 2012). The cumulative effect of the above-mentioned problems is a general lack of trust in the Mali's justice system.

### *Zambia*

Formerly called Northern Rhodesia, Zambia went through a long period of colonization until 1964 when the country attained political independence from the British. Located in the southern part of Africa and neighboring other developing African countries including Tanzania, Malawi, Zimbabwe and Democratic Republic of Congo, Zambia's population, according to the 2010 census, is slightly more than 13 million. Similar to the aforementioned nations, a large portion of the population is between 0 to 14 years (45 per cent). Approximately, 52 per cent of the population is between 15 years and 64 years. About 3 per cent of the population were 65 years or older. Zambia's population is ethnically diverse, with over 70 Bantu-speaking ethnic groups.

Due to the country's colonial past, Zambia today has a dual legal system inherited from their colonial masters (African Human Security Initiative 2009). One is the customary law, which is applied largely to minor offences but could occasionally be applied to serious offences when cases are directly reported to traditional rulers. The other aspect of the dual system is the general law, which incorporates common law principles, statutes and case precedents. The judicial system of Zambia was created by the 1991 constitution. The constitution also protects Zambia's lower and higher courts from arbitrary influence and control. For instance, Article 91, Section 2 specifies that judges, magistrates and justices of the different courts shall be independent and impartial and subject only to the constitution of Zambia and the law. Procedural requirements in Zambia's local courts are very relax and lean more towards substantive justice. As a result, these courts handle simple and most commonly committed offences (Chanda 2001). According to Chanda (2001), cases from the local courts can be transferred to the higher courts for review. Despite the differences in cases been handled by the local and higher courts, both systems are obliged to respect the rights of the accused person during trial. For instance, in both court systems, the accused are protected against double jeopardy and ex post facto law (Chanda 2001).

Public perceptions of the Zambia's judiciary have generally been mixed (African Human Security Initiative 2009). While some people believed that judges and magistrates comply with rule of law, others were skeptical about the overall performance and efficiency of the judiciary. The overall performance of the courts is very poor, as evidenced in the low rate of, and delay in, case disposition (Zambia Human Rights Commission 2007). The poor performance and inefficiency of the courts has been attributed to factors such as the lack of infrastructure and limited human resources.

### *South Africa*

South Africa is the last among the five countries studied to gain independence, with the first election of a black president in 1994. The country's unique experience with apartheid set it apart from most other colonized African countries. Apartheid was imposed in 1948 to treat white South Africans differently from the black indigenous Africans (Bickford-Smith 1995; Moleah 1993; Moodie 1975; Roux 1948; Thompson 1995). This regime worsened the existing racial segregation in the country. The protracted period of apartheid eventually ended in 1994, including South Africa among the few African countries never experiencing a coup d'état. Currently, the country's population is about 53 million people, making it the 24th most populous nation in the world. In terms of racial distribution, more than 80 per cent of the population is black Africans.

South African has a hybrid legal system combining several legal traditions from the common law system, the civil law system, and the customary law system (Byrnes 1996). The country's current legal system was transformed from the apartheid-era legal system that was largely adapted from Roman-Dutch law with elements from English law. Under the apartheid legal system, the state wielded judicial authority and administration of justice was entrusted in the

hands of the Minister of Justice (Byrnes 1996). Except for a few modifications, the current legal system mimics the true character of the apartheid system. While the new system is without discriminatory laws, it maintains the structure and character of the old system. Although additional divisions of the judiciary have been established, the Supreme Court remains the last resort in all cases, except those relating to constitutional issues. The constitution of South Africa, which created the judiciary, also established a Constitutional Court with the power to review and abolish legislation that is not consistent with the constitution. This court is the last resort of all matters pertaining to constitution of the land.

Chapter 8 of South African constitution requires other branches of government to assist and protect the courts, in order to be impartial, accessible and effective. Despite this constitutional requirement, the effectiveness of the courts is still questionable. Critics are of the view that the courts and other criminal justice institutions in South Africa are not performing optimally (Shaw 1996). These critics have called for a reform of the system to address the numerous problems hindering the effective performance of the courts (see Pelser and Rauch 2001). These problems include the lack of experienced prosecutors to ensure successful prosecution of cases, constant postponements of cases (which frustrate eyewitnesses), and the continued lack of cooperation among the criminal justice officials (Shaw 1996). Addressing these problems could boost public perceptions of the court, which according to Kotze (2003) has been very disappointing.

#### **Literature review of public confidence in the court**

Modernization theorists have long established a relationship between social development and crime (Clinard and Abbott 1973; Durkheim 1951; Huggins 1985; Liu 2005; Messner and Rosenfeld 2000; Shelley 1981). These authors have widely argued that changes in social processes – because of urbanization and industrialization – create a situation called anomie, which ultimately leads to criminal behavior. Moreover, some scholars have also explained that, as societies become advanced, informal social control weakens since the family has no more absolute control of their children (Popenoe 1988). The weakening or breakdown of the social functions of the family may cause an upsurge in criminal activities. The prevalence of high crime rates due to modernization may undermine both institutional and state legitimacy (Evans 1996; Habermas 1975). Institutional or state legitimacy is, however, contingent upon the perception among citizens that state institutions perform their duties effectively, as well as adhere to democratic principles in dealing with citizens.

The cornerstone of democratic criminal justice reform is fundamentally trust. Kääriäinen (2007) offered a compelling point on the relationship between the state and police, suggesting reciprocity. To have trust in the state was to produce trust in the police; the inverse was also found to be true. Transitioning societies, transitional governments and post conflict societies mostly experience lack of trust. Fundamentally, this lack of trust forms as political parties vie for control of the government (Barnes 2001). Additionally, trust is lacking in the local justice systems (Widner 2001). Members of the community, who view their issues as being largely ignored, possess both historical remembrances and contemporary experiences of oppressive justice mechanics within the criminal justice system (Ruteere and Pommerolle 2003).

Widner (2001), writing on sustaining democratic regimes during a post-conflict transition, highlighted the importance of a functioning and trusted court system. To facilitate a successful transition, a strong independent and trusted court is tantamount to democratic reform. From a process perspective, this mechanism must be capable of addressing both criminal and civil wrongdoings within the community and those wrongdoings perpetrated by the government and, by extension, the justice system. Moreover, the role of the court (namely the judge), in reaffirming the social contract through statements issued, speaks to the prominence of trust in this institution (Mazzone 1998). Therefore, fostering and developing an effective democratic

court system requires public support. Citizens must have confidence in judges to decide matters in a fair and impartial manner (Dougherty, Lindquist and Bradbury 2006).

A judiciary not trusted may have its legitimacy, authority and eventual orders questioned by the citizenry or by the other branches of government (Barua 2009; Brody 2008). Mixed findings exist within the research exploring the relationship between fairness, and public trust and confidence in the court system. Some studies find perceptions of fairness and equality of treatment directly affect trust and confidence (Benesh 2006; Piquero et al. 2005; Sprott and Greene 2008; Tyler 2001). In other words, these studies suggest perceptions of fairness matter in discussions about trust and confidence in the court. Other studies find no direct link between perceptions of equality of treatment and citizens' trust and confidence in the court (Benesh and Howell 2001). In an attempt to understand public confidence in lower courts, Benesh (2006) finds that confidence in the state courts influence perceptions of fairness. This finding suggests citizens who perceive court procedures to be fair and unbiased, will subsequently have more confidence in the court than those who may perceive otherwise.

Research also shows that courtroom experience matters in determining the level of trust and confidence individuals hold towards the courts (Benesh 2006; Benesh and Howell, 2001; Van De Walle 2009; Wenzel, Bowler and Lanoue 2003). People go to court for a variety of reasons, some voluntary and some not. They serve as jurors, civil litigants, parties to domestic disputes, traffic violators, witnesses, and visitors accompanying a friend or relative, or defendants (Benesh and Howell 2001). Studies have been inconsistent concerning the influence of experience on confidence in the court. For instance, Van De Walle (2009) finds a negative relationship between experience and confidence in the court. The results of his research suggest that people experiencing the court as defendants have less confidence in the fairness and the effectiveness of justice. However, he finds no relationship between experiencing the court as a juror and confidence in the justice system. This latter finding is inconsistent with Wenzel, Bowler and Lanoue (2003) whose study finds that jurors have more confidence in the system.

Past research has found perceptions about the timeliness of court procedures to influence the level of citizens' trust and confidence in the court systems. Past research also indicates that a majority (80 per cent) of the respondents either strongly agreed or somewhat agreed with the statement 'cases are not resolved in a timely manner' (Bennach 1999). Courts are constantly criticized for slow case adjudication. Unnecessary delays facilitate a perception of injustice and hardship; it is a cause of diminished public trust and confidence in the court (National Center for State Courts 1997). Subsequently, people may avoid going to court to pursue litigation or settle a case because of the slow pace. In a study conducted by Howell (1998), '[t]oo much hassle/time' was the most common reason given by respondents for not pursuing a lawsuit. Studies examining the effect of court decisions on public confidence in the court have been in disagreement over whether or how specific decisions can shape public attitudes toward the court. Some scholars argue that decisions the court makes can shape opinion toward the court (Grosskopf and Mondak 1998; Tanenhaus and Murphy 1981); others also argue that decisions do not affect institutional prestige or legitimacy, even though decisions might influence levels of confidence in the court (Caldeira 1986; Caldeira and Gibson 1992; Gibson, Caldeira and Spence 2003). No matter which side of the argument, scholars agree the kind of decisions the court makes does influence confidence levels in the court.

In predicting the impact of court decisions on public confidence in the court, Stoutenborough and Haider-Markel (2008) examined the relationship between specific court decisions and public confidence with aggregate time series data and individual-level survey data. The authors find decisions matter in shaping public confidence. Their results indicate specific decisions by the court have significant positive and negative impacts on individual-level confidence in the court. Their research suggests the extent to which court decisions are consistent with individuals' preferences determines the level of their trust and confidence in the court.

Prior research has also examined the influence of demographic variables on the level of confidence people might have in the justice system (Stoutenborough and Haider-Markel 2008; Van De Walle 2009; Wenzel et al. 2003). For instance, Stoutenborough and Haider-Markel (2008) find respondents who are white, male, younger, educated and wealthier are more likely to have a great deal of confidence in the court. Similarly, Van De Walle (2009) finds that while males have more confidence in the court; lower educated respondents expressed lower confidence in the court.

As an acknowledged limitation, this literature review reflects Western countries. These studies assessing factors predicting citizens' trust in the courts provide valuable insight into what influences public confidence within the courts, despite their inherent methodological limitations. Furthermore, this research provides a platform for inquiry into trust and confidence in African nations. Recent reports from the region suggest the courts have varying degrees of trust. According to a 2007 Gallup Poll assessing confidence in African court systems, 53 per cent of sub-Saharan Africans have high confidence in their courts. In terms of country specifics, the poll found that 77 per cent of South Africans have high confidence in their courts, a rate higher than the median rate for the region. Similar results exist among Ghanaians (69 per cent) and Rwandans (92 per cent). Most recently, a poll conducted by Infotrak Research & Consulting (2012) found a substantial percentage (84 per cent) of Kenyans perceive high confidence in their courts. While the South African rates were consistent with the literature,<sup>2</sup> the rates within the other developing democracies were surprising. These results prompted our query into the factors producing these rates and, coupled with the release of a longitudinal dataset, presented an opportunity to study the influential factors.

Bridging the gap left by prior studies on Africa, the present study has two main objectives. First, the study tests three hypotheses:

1. Respondents who are lower class citizens will have less confidence in the court system compared to those who are not.
2. Females will have less confidence in the court system compared to their male counterparts.
3. Respondents who come from developing countries such as Ghana, Zambia, Burkina Faso, and Mali will have less confidence in the justice system compared to those from South Africa.

The second objective of the study is to explore the determinants of citizens' confidence in the justice system and whether these determinants differ across the five countries.

## **Method**

### *Data source*

The study uses data from Burkina Faso, Ghana, Mali, South Africa and Zambia covered in the 2005-2009 wave of the World Values Survey.<sup>3</sup> The survey collects information on people's opinions about variety of issues in more than 50 countries to facilitate cross-national comparisons. The survey is based on a representative sample of the adult population (aged 16 years and above) and utilized a face-to-face interviewing technique to obtain relevant information from respondents selected using either the Kish Grid method or random sampling technique. The Kish Grid selection method<sup>4</sup> involves the use of a pre-assigned table of random numbers to identify an individual from a household to be interviewed. For the purposes of this study, we included a total sample of 9,090 respondents. The breakdown is as follows: 1,534 respondents from Burkina Faso; 1,534 from Ghana; 1,534 from Mali; 2,988 from South Africa; and 1,500 from Zambia.

Selection of these specific nations reflected their distinctive similarities and differences, making them worthy of comparison. For example, all these countries are former colonies and subsequently share similar colonial legacies. First, their judicial systems emanated from the colonial era and have the same judicial structure. Second, their political systems also share similar penal ideology including abolition of the death penalty. Despite these similarities, there are many differences between them. In terms of gross domestic product (GDP), the countries differ largely. Among them, South Africa has the highest GDP, ranked sixth in Africa, followed by Ghana, ranked seventeenth in Africa. The countries also differ in terms of literacy rates, unemployment rates and corruption perception indices. Though the five countries may have experienced colonialism, one might argue that there are substantial variations in their colonial experiences. Therefore, the variation may influence each justice system differently. For example, South Africa started with a Dutch legacy, but following the Boer War, was taken over by the British. Ghana and Zambia experienced British colonialism; Burkina Faso and Mali French colonialism. Ghana was the first African country to gain political independence from European colonialism in 1957, and its development of constitutional democracy has been at least a modest success. Zambia, which became independent in 1964, has also fared rather well and, in particular, its economic reform has been progressive. Conversely, the two former French colonies, Burkina Faso and Mali have had difficulties. Burkina Faso has experienced several turbulent governmental changes, and Mali has suffered even more from conflicts, including some since 2012. Another difference among the nations is their prison rates, which vary greatly. At one end we have Burkina Faso (28 prisoners per 100,000), followed by Mali (36) and then Ghana (54), rates which are among the lowest in the world. Zambia is, internationally speaking, in the low-middle range, with 119 prisoners per 100,000, while South Africa has 294 per 100,000 (Walmsley 2013).

## **Measures**

### *Dependent Variable*

Confidence in the justice system is the only dependent variable and is measured by responses to the question 'How much confidence do you have in the justice system?'. Respondents were given the following options: a great deal; quite a lot; not very much; none at all. In this study the answers were scored: 3 = a great deal; 2 = quite a lot; 1 = not very much; and 0 = none at all. The higher score would indicate higher confidence in the justice system.

### *Independent Variables*

The key independent variables include: nation, as a dummy variable with 1 = Zambia; 2 = Ghana; 3 = Burkina Faso; 4 = Mali; and 5 = South Africa. South Africa is the reference category. Social class is an ordered variable where 1 = upper class; 2 = middle class; 3 = working class; and 4 = lower class. Lower class is the reference category and assumes lower class individuals will have lower confidence in the courts. In addition, a number of variables that could confound the relationship between the effect of the two key independent variables and the confidence in the justice system were included as controls in the multivariate analysis. We measured age as the respondent's actual age in years at the time of the survey. This study tests the assumption that, as age increases, so does confidence in the justice system. Education is measured as an ordinal variable with 1 = below high school; 2 = high school; and 3 = above high school. Above high school is the reference category. We assumed those more educated would have higher confidence in the justice system. Gender is measured using a binary variable where 1 = male; and 0 = female. We assumed males would have higher confidence in the justice system than females.

The employment variable is also measured using a binary variable where 1 = employed and 0 = unemployed. We expect that employed respondents will have higher confidence in the justice system. Marital status is measured as 1 = married and 0 = not married, and expects those married to have higher confidence. Finally, the social capital<sup>5</sup> variable is an index of trust in

people, reflecting five measures in the survey. We expected that people who trust their fellows would tend to have higher confidence in the justice system. The five items have the same lead-in-question: 'I now want to ask you how much you trust various groups of people. Using the responses trust completely, somewhat, not very much, and no trust at all, could you tell me how much you trust: (1) your neighborhood; (2) people you know personally; (3) people you meet for the first time; (4) people of another religion; and (5) people of another nationality'. The answers were scored 4 = trust completely; 3 = somewhat; 2 = not very much; and 1 = no trust at all. Thus the higher score would indicate higher levels of trust. Calculation of social capital is the sum of the five items, which had factor loadings ranging from 0.67 to 0.81. The scale has a Cronbach's alpha of 0.79, indicating a good internal consistency.

Table 1 presents the descriptive statistics of all the respondents included in the study. As shown in the table, approximately 51 per cent of the respondents were males and 53 per cent had not attained high school education. Slightly more than half (54 per cent) were married and only about 42 per cent were employed. Regarding social class of respondents, 43 per cent were in the middle class with 34 per cent in the lower class. Additionally, 35 per cent of respondents claimed to have 'quite a lot' of confidence in the justice system; 29 per cent displayed 'not very much' confidence; and 23 per cent possessed a 'great deal of confidence'. Surprisingly, only 13 per cent indicated 'none at all'.

**Table 1: Frequency distribution of variables used in the study (N = 9090)**

<i>Variables</i>	<i>Mean (S.E) / %</i>
Confidence in the Justice System:	
None at all	12.9
Not very much	28.5
Quite a lot	35.3
A great deal	23.4
Nation:	
Zambia	16.5
Ghana	16.9
Burkina Faso	16.9
Mali	16.9
South Africa	32.9
Social Class:	
Upper class	2.8
Middle class	42.8
Working class	20.2
Lower class	34.2
Education:	
Below high school	52.7
High school	39.6
Above high school	7.6
Male	50.5
Age (5, 95)	35.40 (.16)
Married	54.0
Employed	41.8
Social capital index (5, 20)	12.70 (.03)

Note: Standard errors in parenthesis

## Results

Before exploring the effects of the predicting variables on public confidence in the justice system through a multivariate analysis, the relationship between the two key independent variables – nation and social class – and the dependent variable – confidence in the justice system – was examined using cross-tabulation and a chi-square test. As shown in Table 2, 50 per cent of Zambians have either quite a lot or a great deal of confidence in the justice system;

63 per cent Ghanaians; 47 per cent Burkinabes; 63 per cent Malians; and further 63 per cent South Africans. A chi-square test indicates that the relationship between nation and confidence in the justice system is significant ( $p < .001$ ). In addition, about 62 per cent of lower class respondents express either 'quite a lot' or 'a great deal confidence' in the justice system compared to only 49 per cent of upper class respondents. Similarly, the relationship between social class and public confidence in the justice system was found to be significant ( $p < .001$ ).

**Table 2: Level of confidence in the Justice System by nation and social class**

Confidence in the Justice System	Nation					Social class			
	Zambia	Ghana	Burkina Faso	Mali	South Africa	Upper Class	Middle Class	Working Class	Lower Class
None at all	13	10	23	13	10	17	14	13	11
Not very much	37	27	30	24	27	34	30	29	27
Quite a lot	31	37	29	29	41	30	35	35	38
A great deal	19	26	18	34	22	19	21	23	24
Pearson chi-square	374.47***					32.80***			
d.f	12					9			
N	8684					7924			

Note: Values are in percentages and were run-up to the nearest whole number; \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$

To determine whether the observed relationships will still hold after controlling for other variables, we used ordinal logistic regression analysis using a pooled sample made up of respondents from the five countries. Table 3 presents the results of this regression analysis. The model is significant ( $\chi^2 = 434.33$ ,  $p < .001$ ) and explains 6 per cent of the variance in confidence in the justice system. The nation variable is a significant predictor of public confidence in the justice system (Wald = 144.24,  $p < .001$ ). Compared to South African respondents, Zambians are 19 per cent less likely to have confidence in the justice system. Similarly, respondents from Burkina Faso are 55 per cent less likely to have confidence in the justice system compared to South Africans. Social class was equally found to be significant (Wald = 25.27,  $p < .001$ ).

Compared to lower class respondents, upper class respondents are 40 per cent less likely to have confidence in the justice system. Middle class respondents are 19 per cent less likely to have confidence in the justice system compared to lower class respondents. Similarly, working class respondents are 21 per cent less likely to have confidence in the justice system compared to lower class respondents. In addition, education, age, and social capital were significant predictors of confidence in the justice system. Individuals having education below high school have 1.71 greater odds of having confidence in the justice system compared to those with more than high school education. In addition, respondents with high school education have 1.39 greater odds of having confidence in the justice system than those with more than high school. Further, as a person's age increases, his level of confidence in the justice system also increases, and people who trust other people have 1.11 greater odds of having confidence in the justice system.

Table 4 examines the effect of predicting variables on confidence in the justice system in the five countries and explores whether the determinants are similar or different for the countries. Five ordinal logistic regression models were developed to analyze data from each country separately. Model 1 presents the results of the analysis for Burkina Faso. Controlling for other variables in the model, social capital index (Wald = 34.84) is the leading correlate of confidence in the justice system. As social capital index increases, Burkinabe confidence in the justice system also increases. Age is the second most important determinant (Wald = 9.50). An increase in a person's age results in a greater confidence in the justice system. Education is also a significant predictor. Citizens with below high school education have 1.97 greater odds of having confidence in the Burkinabe justice system compared to those with more than high school education. The model explains 8 per cent of the variance in Burkinabe justice system.

**Table 3: Ordinal logistic regression of variables predicting confidence in the Justice System**

	<i>OR</i>	<i>Wald</i>
Nation: South Africa (ref)	----	----
Zambia	0.81	9.42**
Ghana	1.07	0.94
Burkina Faso	0.45	109.25***
Mali	0.87	3.13
Education: Above high school (ref)	----	----
Below high school	1.71	38.50***
High school	1.39	15.70***
Male	1.04	0.70
Employed	0.99	0.03
Married	1.01	0.08
Social Class: Lower Class (ref)	----	----
Upper Class	0.60	13.88***
Middle Class	0.81	14.39***
Working Class	0.79	13.03***
Age	1.00	4.68*
Social Capital index	1.11	193.26***
Thresholds:		
None at all	0.49	21.15***
Not very much	3.21	36.95***
Quite a lot	16.94	68.75***
-2 Log likelihood		8866.01
Model X <sup>2</sup>		34.33***
Nagelkerke R <sup>2</sup>		0.06
df		14
N		134

Note: OR = Odds Ratio, \*p<.05, \*\*p<.01, \*\*\*p<.001

Model 2 provides the results for Ghana. Only one variable – social capital – significantly predicted confidence in the Ghanaian justice system. Ghanaians who trust their fellows have 1.10 greater odds of having confidence in the justice system than those who do not trust their fellows. The model however explains 4 per cent of the variance in Ghanaians confidence in the justice system. Model 3 provides the analysis for Mali and explains 8 per cent of the variance in Malians confidence in the justice system. Social class and social capital index are significant predictors in the model. Compared to lower class citizens, upper class citizens are 76 per cent less likely to have confidence in the justice system. Further, Malians who trust their fellows have 1.15 greater odds of having confidence in the justice system.

Model 4 provides the analysis for Zambia and explains 4 per cent of the variance in Zambians confidence in the justice system. As in the case of Burkina Faso, respondents' education and social capital index relate to confidence in the justice system. Zambians who have below high school education and those who have high school education are more likely to have confidence in the justice system compared to those who have above high school education. As social capital index increases, so does Zambians confidence in the justice system. Finally, South African results are presented in model 5 and the model explains 6 per cent of the variance in confidence in the justice system. Similar to Burkina Faso, education, age and social capital index significantly correlate to confidence in the justice system. Compared to South Africans with above high school education, those with high school and below high school education are more likely to have confidence in the justice system. Though age is significant in both Burkina Faso and South Africa, the direction of the effect differs. In the Burkina Faso model, age had a positive effect whereas in South African model, it had a negative effect. In South Africa, the older a person becomes, the less likely will the person have confidence in the justice system.

Table 4: Ordinal logistic regression estimating the effect of predicting variables on confidence in the Justice System in the five countries

	Model 1 Burkina Faso		Model 2 Ghana		Model 3 Mali		Model 4 Zambia		Model 5 South Africa	
	OR	Wald	OR	Wald	OR	Wald	OR	Wald	OR	Wald
Social Class: Lower Class (ref)	---	---	---	---	---	---	---	---	---	---
Upper Class	3.07	0.52	0.78	0.39	0.24	19.42***	1.06	0.4	0.67	3.52
Middle Class	0.79	3.03	0.87	1.40	0.93	0.18	1.02	0.2	0.69	16.80***
Working Class	0.82	1.33	1.08	0.41	0.73	2.66	0.75	2.50	0.66	14.87***
Education: Above high school (ref)	---	---	---	---	---	---	---	---	---	---
Below high school	1.97	7.58**	1.51	3.87	1.33	1.82	1.67	7.25**	2.29	26.86***
High school	1.56	2.79	1.44	2.89	1.15	0.33	1.57	6.83**	1.41	6.25*
Male	1.22	2.46	1.06	0.35	1.03	0.04	1.03	0.08	1.00	0.00
Employed	0.94	0.19	1.04	0.12	0.90	0.69	0.86	1.16	1.07	0.71
Married	1.14	0.89	0.96	0.16	0.89	0.63	1.13	0.93	0.98	0.06
Age	1.01	9.50**	1.00	0.03	0.99	1.70	1.00	0.49	0.99	21.56***
Social Capital index	1.11	34.84***	1.10	38.93***	1.15	40.02***	1.11	28.37***	1.11	58.22***
Thresholds:										
None at all	3.11	8.54**	0.44	5.93*	0.72	0.55	0.55	2.42	0.29	23.11***
Not very much	12.85	41.85***	2.45	7.48**	3.68	8.51***	4.08	13.56***	1.61	3.50
Quite a lot	59.26	99.71***	12.80	55.95***	13.55	32.86***	18.99	59.90***	11.17	87.12***
-2 Log likelihood	1316.56		1823.47		1141.74		1346.63		3145.66	
Model X <sup>2</sup>	73.63***		52.88***		68.63***		46.39***		145.41***	
Nagelkerke R <sup>2</sup>	0.08		0.04		0.08		0.04		0.06	
df	10		10		10		10		10	
N	1016		1470		894		1089		2665	

Note: OR = Odds Ratio, \*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

However, similar to Burkina Faso, as it is in the other countries, a unit increase in social capital leads to an increase in confidence in the justice system in South Africa. In addition, social class is a significant predictor in the South African model. Middle class and working class South Africans are significantly less likely to have confidence in the justice system compared to lower class citizens.

### **Discussion and Conclusion**

The purpose of this research was to explore variations in public trust with the courts, specific to five African nations. Utilizing a longitudinal dataset provided a representative sample that, while limited in scope, provides an initial empirical assessment concerning trust in each nation and the factors influencing trust. We give special attention to the basic demographic characteristics such as age, gender, and socioeconomic status to promote additional research. The study, while exploratory, provides the first empirical assessment of confidence in the justice system in Africa. This analysis is both relevant and timely as each nation examined continues to develop a democratic justice system, specifically the court system.

Despite the debate on the efficacy of the modernization theory (Matunhu 2011; Nivette 2013), Clinard and Abbott (1973) introduced a critical point concerning the inevitability of crime through modernization within developing nations. This inevitability has been uniquely apparent within the democratization processes occurring across Africa. Democracy requires that people should be empowered to govern themselves through participation in making the decisions that affect them. However, many citizens within developing (and developed) nations are denied access to or participation within the democratic process and, specific to the criminal justice system, are unable to turn to a court of law looking for recompense. The deliberate failure by states to protect the democratic rights of individuals has severe and devastating consequence, especially considering the unique role of democracy in shaping attitudes toward institutions and justice (Hsieh and Boateng 2015; Karstedt and LaFree 2006).

The mutual relationship between confidence and democracy can never be underestimated. Past research has observed that level of democracy has a positive effect on institutional trust and confidence (Chu et al. 2008; Hsieh and Boateng 2015). Persons who are satisfied with a country's level of democracy and who believe that their voices are heard, that they are being treated fairly and that their rights are respected, tend to have higher confidence in government institutions such as the court system. Moreover, having higher confidence in institutions might be an indication of the level of democratic dispensation in a given society.

In every society, courts depend on public support to operate effectively. A lack of public confidence in the courts has adverse consequences on the efficient and effective operation of the criminal justice system. Additionally, as Kääriäinen (2007) posits the reciprocal relationship between the justice institutions and the state can witness public trust and confidence threatened through negative contacts. These negative contacts easily erode public trust and confidence, which then become more difficult to rebuild, as positive contacts overall are increasingly rare within the courts, due to one party to a complaint most likely experiencing a negative contact. Since citizens will be less willing to cooperate and participate in essential functions, such as serving as witnesses or jurors, the lack of confidence in the system will not only affect public policy but may also perpetuate the individualization of justice. This may be signified citizens resorting to diverse means of seeking justice outside the system for the crime committed against them.

This study investigated the determinants of public confidence in the court system in five African countries. The study offers thought-provoking and interesting findings, summarized as follows: first, Africans generally have high confidence in the justice system and this is consistent with previous research (Gallup Poll 2007; Gibson and Calderia 2003; Infotrak Research & Consulting

2012). However, this result contradicts the popular speculation that Africans have low confidence in the justice system mainly because of their colonial past and some other issues prevailing on the continent such as corruption and high illiteracy rates.

Given the unique relationship between democracy and confidence, it may be concluded – based on the current study’s results, which point to higher levels of confidence expressed by citizens in their respective justice system – that Africa is democratically advancing. Although we cannot be emphatic about the actual level of democracy in any given African country, we strongly argue that most Africans believe that justice can be served through the formal court system.

Higher confidence in the court does not only legitimizes the processes, practices, and policies of the court (Baker 2009) but also increases citizens’ reliance on the use of the court to settle cases. However, levels of democracy vary across the African countries. For instance, citizens from Zambia and Burkina Faso expressed less confidence in the justice system than South Africans, which might indicate that the degree at which common citizens participates in the governance of their country is higher in South Africa than in the two other countries. This also speaks to the need for continued investment in those nations to aid them through their ongoing development and modernization. Since there was no significant difference between Ghanaians, Malians and South Africans regarding their levels of confidence in the justice system, we argue from a scholarly point of view that levels of democracy are the same in these countries. This finding presents a unique opportunity for future research to understand the factors specific to those nations producing these levels of confidence.

The societal-level variable representing social class presented another intriguing and rather unexpected finding. Results indicated that lower class citizens have more confidence in the courts than either upper, middle or working class individuals. The observation is important because it draws scholarly attention to reexamine some of the arguments espoused by conflict theorists. A conflict orientation typically offers that criminal justice institutions, such as the police and the courts, represent and protect the interests of the upper class while the lower class citizens constantly become victims of abusive practices (see Chambliss and Seidman 1971; Das 1983). Subsequently, the lower class marginalized by the system tends to have less trust and confidence in the system. However, as illustrated in this research, though the argument might hold true, it does not necessarily mean the lower class will be less confident in the system. An alternative explanation requiring additional research could be related to the type of alternative justice mechanisms utilized in the sampled regions. Pluralism within the courts, specifically the creation and utilization of community courts, such as South Africa’s Guguletu Community Forum and the Community Peace Programmes, present as unique opportunities to evaluate trust in the court. A line of inquiry should focus on the ability of these alternative justice mechanisms to influence trust in the justice system and, by proxy, the state.

Further, the study revealed that education, age and social capital predict largely the level of confidence in the court system among Africans. The less educated, older and those reporting trust in the public have more confidence in the courts. However, gender, marital status, and employment were not significant predictors of confidence in the court system in the selected nations.

While marital status and employment were not significant predictors, it was surprising for gender not to be a predictor. For example, the recent Human Development Report (2010) ranked four of the five nations examined in this study, above 120 for the gender inequality index: Burkina Faso (121), Ghana (122), Mali (143), and Zambia (131). While South Africa (94) ranked well below these developing African nations, the nation displays only medium human development. As sexual assault continues to plague both developed and developing nations and public confidence and trust in the criminal justice system is a vital element to reducing these victimizations, future research must explore the relationship between gender and the courts.

At the individual level, the study found the correlates of confidence in the court system are somewhat different in the five countries. The only factor found to predict confidence in the court system in all the five countries is social capital. Citizens will have confidence in the system when they trust each other. Apart from this, the countries differ in terms of which variable influences citizens' level of confidence in the court system. For instance, education and age predict confidence in the Burkina Faso system but do not predict public confidence in the Ghanaian system. Furthermore, social class has tremendous influence on confidence in the justice system among South Africans and Malians but not among Ghanaians, Zambians, and Burkinabes. Even when one variable has an effect on public confidence in the justice system in two countries, the direction of the effect can differ. This was evident in the effect of age on confidence in the justice system in Burkina Faso and South Africa. In South Africa, older citizens have less confidence in the justice system than younger people and the opposite exists in Burkina Faso where older people have more confidence in the justice system than younger people. This pattern of results explains the extent of variation among African countries when it comes to factors that build their confidence in their respective court systems.

We caution interpretation of these findings beyond the scope of this research. The study utilized a survey not specifically designed to investigate criminal justice issues, though it has a representative sample of the nations' populations. In view of this, we were constrained to examine many desirable items that might better measure public confidence in the justice system among Africans including, for instance, the level of corruption in the system as well as the slow pace of adjudication. Further, a single item measuring confidence in the justice system is not enough to measure adequately the variable. Due to these limitations, we suggest future studies include more variables and address the issue more rigorously. Future studies should consider using primary sources of data instead of secondary sources. This will offer the flexibility to incorporate variables of interest. However, the decision to utilize the World Value Survey does not limit the contributions of the present study, nor reduce the generalizability or trustworthiness of those projects utilizing the survey. Rather, utilizing this survey indexing attitude provides a meaningful platform for social inquiry into the criminal justice system from an atypical source.

Despite the above limitations, the present study establishes factors that have potential influences on public confidence in the justice system in five African countries. Among these factors were social class, social capital, education and age. Based on the findings of this study, it is logical to conclude that the determinants of confidence in the justice system in Africa differ from one African country to the other. A plausible reason for the variation could be due to the historical past of each country as well as the prevailing conditions in the various countries.

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<sup>1</sup> While a little dated, the current wave does not include all five nations selected for the present study. Therefore, the only suitable wave of analysis allowing for a comparative analysis is wave five.

<sup>2</sup> Gibson and Calderia (2003), in writing about the South African Constitutional court, argued that South Africans have high support for their constitutional court and trust the court to make decisions right for the country.

<sup>3</sup> For detail discussion of the survey, see World Values Survey (2005).

<sup>4</sup> The Kish grid selection method is conducted as follows: First, everyone that fits the eligibility criteria, such as being over the age of 18, is gathered together. If there is only one person, that person is the primary survey respondent. Second, the interviewer collects the age and gender of everyone that is eligible for the survey. Third, individuals in the household are placed in a selection grid. Fourth, the researchers then choose a respondent based on their place

in the grid, using some form of random selection so that the person selected to take the survey did not have some commonalities that caused them to introduce bias into the data.

<sup>5</sup> Please refer to the seminal work of Knack and Keefer (1997) for discussion on social capital and the suitability of using the World Values Survey.

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