The Retreat of the Rule of Law: Institutional Shortcomings and the Emergence of De Facto Legal Pluralism in the Malagasy Penal Chain

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ABSTRACT

Madagascar's penal chain is undergoing a structural crisis that successive reforms have failed to resolve: in 2025, the country ranked 112th out of 143 in the World Justice Project Rule of Law Index. This article examines how the institutional shortcomings of state justice contribute to the emergence of de facto legal pluralism. The qualitative approach combines legal texts, international indicators, opinion surveys and, as an illustrative case, a questionnaire completed by a serving magistrate, drawing on the sociology of the legal field, legal pluralism theory and institutional economics. The lack of budgetary autonomy, with justice receiving 1.62% of the state budget in 2022, and, according to the magistrate surveyed, hierarchical pressures disrupt the penal chain: summonses go unserved, custody and pre-trial detention are prolonged, and access to justice depends on litigants' resources. Community regulations fill the resulting void: 79% of rural residents live under a dina, and 41% of Malagasy citizens approve of mob justice. More often reported in towns, mob justice stems as much from the declining legitimacy of state justice as from the remoteness of the courts. This pluralism appears to owe less to culture than to the political economy of a failing justice system. Like Mozambique, Kenya and South Africa, Madagascar formally subordinates customary mechanisms to fundamental rights, but lacks the means to enforce this requirement. Reform therefore requires funding justice adequately, making judicial independence effective and regulating the relationship between formal law and community regulations in accordance with fundamental rights.

Keywords: Sociology of law, legal pluralism, penal chain, political economy of justice, Madagascar

Résumé

La chaîne pénale malgache traverse une crise structurelle que les réformes successives peinent à résorber : en 2025, Madagascar se classait au 112e rang sur 143 dans le Rule of Law Index du World Justice Project. Cet article examine comment les carences institutionnelles de la justice étatique contribuent à l'émergence d'un pluralisme juridique de fait. La démarche qualitative croise textes normatifs, indicateurs internationaux, enquêtes d'opinion et, à titre de cas illustratif, le questionnaire d'une magistrate en exercice, en mobilisant la sociologie du champ juridique, la théorie du pluralisme et l'économie institutionnelle. L'absence d'autonomie budgétaire (1,62 % du budget de l'État en 2022) et, selon la magistrate, les pressions hiérarchiques désorganisent la chaîne pénale : convocations impossibles, gardes à vue et détentions préventives prolongées, accès à la justice inégal selon les ressources. Les régulations communautaires comblent ce vide : 79 % des ruraux vivent sous un dina et 41 % des Malgaches approuvent la vindicte populaire. Plus souvent rapportée en ville, celle-ci tient autant à la perte de légitimité de la justice étatique qu'à l'éloignement des tribunaux. Ce pluralisme semble tenir moins à la culture qu'à une économie politique de la justice défaillante. Comme le Mozambique, le Kenya et l'Afrique du Sud, Madagascar subordonne formellement les mécanismes coutumiers aux droits fondamentaux, sans disposer des moyens de faire respecter cette exigence. Une réforme suppose donc de financer la justice, de rendre effective l'indépendance des magistrats et d'encadrer l'articulation entre droit formel et régulations communautaires dans le respect des droits fondamentaux.

Mots-clés : Sociologie du droit, pluralisme juridique, chaîne pénale, économie politique de la justice, Madagascar

INTRODUCTION

Madagascar presents a judicial paradox. The legal texts are in place. The Constitution of the Fourth Republic, adopted in 2010, enshrines the independence of the judiciary in its provisions on the judicial function (République de Madagascar, 2010, arts. 107-108). The Code of Criminal Procedure, derived from Ordinance No. 62-052 of 20 September 1962 and its successive amendments, organises a structured penal chain, from the judicial police investigation through to the enforcement of sentences (République de Madagascar, 1962). Organic Law No. 2007-039 of 14 January 2008 on the Superior Council of the Judiciary and Ordinance No. 2005-005 of 22 March 2006 on the Organic Law on the Statute of the Judiciary complete the framework (République de Madagascar, 2006, 2008). Their application is another matter. In 2025, the World Justice Project ranked Madagascar 112th out of 143 countries in its Rule of Law Index, barely above its 2023 position of 114th out of 142 (World Justice Project, 2023, p. 1; 2025, p. 1). Opinion surveys confirm this distance: in the Afrobarometer data analysed by Carolyn Logan, fewer than one in three Malagasy citizens reported trusting the courts (Logan, 2017, p. 5).

The gap stems first from a lack of resources. The country had 915 magistrates for approximately 26 million litigants, that is, fewer than four magistrates per 100,000 inhabitants (Agence française de développement [AFD], 2024). In June 2026, the press still reported only about 1,157 serving magistrates, against an estimated need of nearly 2,800 (Les Nouvelles, 2026). The courts therefore operate with chronic understaffing and a lack of material resources that impair the quality of the decisions handed down (Interviewed magistrate, 2026). The UNDP study on the dysfunctions of the Malagasy penal chain already described a penal chain perceived as inaccessible, slow, ineffective, costly, corrupt and dependent (Bussiere, 2014, p. 8).

Legal dogmatics alone can no longer account for this gap; a sociology-of-law approach is required. Pierre Bourdieu defined the legal field as a space of struggle for the monopoly of legitimate symbolic violence, in which agents compete for the authority to determine the law (Bourdieu, 1986a, pp. 3-4). John Griffiths defined legal pluralism as the presence, within a single social field, of more than one legal order (Griffiths, 1986, p. 1). In Madagascar, the persistence of the Dina, regulated by Law No. 2001-004 of 25 October 2001 (République de Madagascar, 2001), can then be read as an institutional substitution, produced by the budgetary shortfall and the hierarchical subordination of state justice, rather than as a cultural survival. Recent Malagasy scholarship has dealt with the two terms of this relationship separately. Studies of judicial independence describe the budgetary dependence of the courts on the executive (Razafindralambo, 2023, p. 68), while Afrobarometer surveys document the spread of popular justice and of dina (Razafindrazaka et al., 2019a, p. 2). This article sets out to connect these two findings.

Hence the research question: to what extent do the material shortcomings and institutional dependence of Malagasy criminal justice produce de facto legal pluralism, and what are the consequences for litigants' access to fundamental guarantees? The article first seeks to identify the mechanisms through which the budgetary and hierarchical failings of the state affect the functioning of the penal chain, and then to analyse how community regulations, foremost among them the Dina, take the place of state justice. The presentation of the corpus and method is followed by the results and then by their discussion in the light of the political economy of institutions and the sociology of law.

METHODS

Nature of the study and corpus

The approach is qualitative and combines sources of different kinds, grouped into four sets. The first brings together the legal texts governing the judicial organisation and the penal chain: the 2010 Constitution, Ordinance No. 2005-005 on the Statute of the Judiciary, Organic Law No. 2007-039 on the Superior Council of the Judiciary, the Code of Criminal Procedure and Law No. 2001-004 on the Dina. The second gathers institutional reports and international indicators: the UNDP study on the dysfunctions of the Malagasy penal chain (Bussiere,

2014, pp. 8-34) and the 2023 and 2025 editions of the World Justice Project's Rule of Law Index. The third comprises opinion surveys and reports by human rights organisations, in particular the Afrobarometer dispatches on popular justice and corruption (Razafindrazaka et al., 2019a, pp. 1-2; 2019b, p. 2) and the Amnesty International report on pre-trial detention (Amnesty International, 2018, pp. 3-11). The fourth consists of the survey questionnaire completed by a serving magistrate, whose identity is not disclosed and whose answers concern the material constraints of the courts, hierarchical pressures and the customary practices observed in the courts.

Each set covers a different level. The texts show the formal architecture of justice, the reports and indicators measure its failings at the national level, the opinion surveys provide information on litigants' perceptions, and the questionnaire conveys the concrete experience of an actor in the penal chain. The whole is examined against the theoretical frameworks of the sociology of the legal field and of normative pluralism, as developed by Bourdieu, Griffiths and Étienne Le Roy (Le Roy, 2003, pp. 7-15). Cross-referencing the four sets shows where the failure of the state gives way to informal legal orders, and what litigants lose there in terms of fundamental rights.

Analytical tools and data collection procedure

The field data were collected by means of a written questionnaire, administered in early 2026 as part of a doctoral thesis in law at the Université Catholique de Madagascar. The questions covered, among other things, the material conditions under which the courts operate, the independence of magistrates, procedural time limits, the disciplinary regime for judicial actors and the place of customary mechanisms in dispute resolution. The answers were analysed thematically along four axes: budgetary resources, hierarchical pressures, procedural obstacles and community regulations. Each finding was then compared with the institutional reports and legal texts in order to verify their convergence. The results presented in Section 2 therefore rest mainly on documentary and secondary sources; the questionnaire illustrates and qualifies them from inside the courts but does not constitute a stand-alone empirical basis. The answers are treated as confidential data for exclusive academic use; to preserve the respondent's anonymity, they are cited as “Interviewed magistrate, 2026”. Legal provisions are described in the present tense; observations drawn from the questionnaire, reports and surveys are reported in the past tense, as they reflect the situation at the time the data were collected.

Methodological limitations

The main limitation concerns the field data. The questionnaire was completed by a single serving magistrate. Other magistrates who were approached were unable to take part, as their caseloads left them no time to devote to it. This difficulty is itself revealing: it reflects the understaffing documented in this article, with fewer than four magistrates per 100,000 inhabitants (Agence française de développement, 2024) and a workload that the interviewed magistrate herself described as disproportionate (Interviewed magistrate, 2026). The study should be read as an illustrative case study rather than as a basis for generalisation to the judicial system as a whole. Her answers convey the experience of one actor and cannot, on their own, establish the frequency of political or hierarchical pressures, the practices of the Ministry of Justice or the scale of corruption nationally. They are therefore used in two restricted ways: to illustrate mechanisms already documented by institutional reports and surveys, and, where no other source exists, as a testimony explicitly attributed to the respondent. Claims about national patterns rest on the UNDP study, the Afrobarometer surveys, the Amnesty International report and the World Justice Project indicators, not on the questionnaire. Afrobarometer surveys measure perceptions rather than judicial practices, and the World Justice Project indicators rest on national aggregates that mask regional disparities. The data used also cover different periods, from 2014 to 2026, which rules out a strictly chronological reading. Finally, the absence of interviews with customary chiefs, rural litigants and judicial police officers limits knowledge of the internal workings of the Dina.

RESULTS

Budgetary dependence as an instrument of subordination

On paper, judicial independence is guaranteed. Article 107 of the 2010 Constitution, however, makes the President of the Republic the guarantor of the independence of the judiciary and the president of the Superior

Council of the Judiciary, whose vice-president is the Minister of Justice (République de Madagascar, 2010, art. 107). The Council, governed by Organic Law No. 2007-039, is designed as a body for safeguarding magistrates and managing their careers (République de Madagascar, 2008; 2010, art. 107). In practice, this protection remained theoretical. The judiciary had no budgetary autonomy: its funding was included in the budget of the Ministry of Justice, following the usual Finance Act procedure (Interviewed magistrate, 2026). The budget of the Superior Council of the Judiciary itself appeared as a line in the budget of the Presidency of the Republic, and the Ministry's budget included the prison administration (Razafindralambo, 2023, p. 68). Between 2021 and 2022, the budget of the Ministry of Justice fell from 219.4 to 178.2 billion ariary, a nominal decrease of almost 19%, and its share of the general state budget dropped from 1.91% to 1.62% (Razafindralambo, 2023, p. 68). Budgetary trade-offs were thus made by the executive alone, both for the allocation of resources and for the execution of certain expenditure, while the Ministry of Justice managed the budget, programmes and all resources, including those of the courts (Razafindralambo, 2023, pp. 64, 68).

The first effect of this dependence was the chronic understaffing of the courts. According to the interviewed magistrate, a magistrate forced to handle a disproportionate volume of cases could not devote the necessary time for analysis to each case. The quality of judgments suffered as a result, without the formal impartiality of the decision necessarily being called into question (Interviewed magistrate, 2026). The recurring criticism of "judicial slowness" found a material explanation here: speed and quality appeared difficult to reconcile in a context of scarcity.

Careers did not escape this dependence. According to the interviewed magistrate, magistrates had no effective autonomy in managing their professional trajectories. The influence of the Minister of Justice could weigh on judges' independence, depending on the minister's style of governance, as could the lack of funds to ensure fair proceedings, such as covering witnesses' costs. She described political and hierarchical pressures as frequent and religious pressures as occasional, while social pressures varied according to the personality and reputation of the judge concerned. In sensitive cases, the credibility of decisions suffered. The cases of abduction of persons with albinism (varira in Malagasy) provide an illustration: political speeches imposed a repressive orientation on them that undermined respect for the presumption of innocence (Interviewed magistrate, 2026).

Procedural pathologies: when scarcity dictates judicial time

Scarcity also weighed on procedure itself. In the absence of a budget line dedicated to inter-institutional collaboration, blockages recurred: the travel expenses of judicial police officers, the costs of witnesses and bailiffs' fees had no structural funding (Interviewed magistrate, 2026). A judicial police officer deprived of travel funds could not carry out investigations. A bailiff whose fees were not guaranteed could not serve summonses within the required time limits, a finding that the UNDP study confirmed at the institutional level: because they were not paid, bailiffs refused to serve summonses to appear, which multiplied adjournments, all the more so as the appropriations for criminal legal costs had been divided by 7.5 since 2008 (Bussiere, 2014, p. 20).

This was the main source of procedural delays. In her experience, the hearings themselves were not necessarily long; it was the time taken to summon the parties that was often excessive. Summonses served by bailiffs were the primary source of delay, compounded by urban planning problems: untraceable addresses and litigants' lack of means of transport (Interviewed magistrate, 2026). A litigant summoned before a court that could be a day's travel or more away (Bussiere, 2014, p. 23), with no means of transport or financial assistance, found it materially impossible to appear. No legal text barred access to the court; logistics alone were enough to prevent it.

The aggregate indicators pointed in the same direction as this testimony. The UNDP study linked these pathologies to a cluster of dysfunctions that were driving the population away from the conventional judicial system (Bussiere, 2014, p. 8). In 2025, the World Justice Project ranked Madagascar 113th out of 143 for both civil and criminal justice, against 113th and 117th out of 142 in 2023, and recorded a decline in the indicators measuring whether civil and criminal justice are free from improper government influence (World Justice Project, 2023, p. 2; 2025, pp. 2-3). On one point, however, the testimony qualified this picture: the interviewed magistrate described coordination between magistrates, court clerks, lawyers and law enforcement as broadly satisfactory, with cases processed in real time. What recurrently hampered it was the absence of a budget line

dedicated to inter-institutional collaboration, for instance to cover the costs of judicial police officers (Interviewed magistrate, 2026).

Judicial time was not distributed evenly across the territory. Police custody sometimes exceeded the legal time limits, particularly in remote areas where the judiciary lacked the means to monitor police or gendarmerie cells (Interviewed magistrate, 2026). The interviewed magistrate indicated that the practice of releasing defendants awaiting trial now limited prolonged pre-trial detention; in her view, the remaining problems could only be resolved by improving material and human resources. Amnesty International's data painted a bleaker picture: in October 2017, more than half (55%) of the prison population had not yet been tried (Amnesty International, 2018, p. 3), and of the 129 detainees who died in prison that year, 52 were in pre-trial detention (Amnesty International, 2018, p. 7).

This situation produced a social selection effect among litigants. Those with financial resources could travel, pay a lawyer and follow their case; the others remained excluded from the judicial process, a situation that Amnesty International linked to the poorest detainees' insufficient access to legal assistance (Amnesty International, 2018, p. 5). Amnesty International noted that those held in prolonged pre-trial detention were mostly the least educated and most disadvantaged people, from rural areas (Amnesty International, 2018, p. 11). Cultural and linguistic barriers, linked to the diversity of Malagasy dialects, excluded a further share of litigants (Interviewed magistrate, 2026).

The Dina as a substitute for state justice

In isolated areas, formal justice was unable to serve summonses, carry out investigations within the required time limits or follow up on cases (Bussiere, 2014, p. 21; Interviewed magistrate, 2026). Rural populations, faced with everyday conflicts such as cattle theft or land disputes (McLain et al., 2021), had no formal alternative and turned to community mechanisms, foremost among them the Dina, which the interviewed magistrate described as still widely practised (Interviewed magistrate, 2026). According to Afrobarometer, 79% of rural residents and 55% of urban residents reported living with a dina as a means of social regulation, these pacts dealing mainly with zebu theft (35%), hygiene and sanitation (18%) and respect for traditions (13%) (Razafindrazaka et al., 2019a, p. 2).

Law No. 2001-004 of 25 October 2001 on the general regulation of Dina in matters of public security had nevertheless attempted to regulate this practice. It requires every Dina to comply with the laws and regulations in force and provides that its violation entails the application of the vonodina, that is, pecuniary or in-kind reparations for the benefit of the victim and the fokonolona (République de Madagascar, 2001, arts. 2-3). In practice, this regulation remained largely unenforced. According to the interviewed magistrate, the Dina functioned as a parallel justice system, often at odds with the principles of state justice, and its practice was marked by physical sanctions and sometimes by mob justice; attempts at regulation met with repeated failure (Interviewed magistrate, 2026).

Popular justice also extended beyond the framework of the Dina. More than a quarter of Malagasy citizens (26%) stated that their locality had experienced acts of mob justice in the previous two years, and 41% said they agreed with this practice, a higher proportion among rural (43%) than urban (31%) residents. The acts themselves, however, were more often reported in urban (31%) than in rural (24%) areas (Razafindrazaka et al., 2019a, p. 2). The authors of the survey described mob justice as a rare phenomenon before the 2009 political crisis (Razafindrazaka et al., 2019a, p. 1).

Normative frictions between customary sanctions and formal law

Where the Dina replaced formal justice, the two normative orders came into conflict. Formal criminal law rests on the presumption of innocence, the right to a fair trial and the pursuit of the convicted person's rehabilitation. In our reading, the Dina followed other logics: immediate reparation, the restoration of social order and sometimes the exclusion of the wrongdoer from the group. State justice aims to reintegrate the individual into the social body; community justice sought to preserve the cohesion of the group, even at the cost of excluding whoever threatened it.

This divergence was evident in the sanctions applied. Whereas the law provides for pecuniary or in-kind reparations, physical sanctions and mob justice ran directly counter to the fundamental guarantees of formal criminal law (Interviewed magistrate, 2026). The presumption of innocence was not respected, the right to a fair trial was not guaranteed, and the absence of a defence deprived the accused of any possibility of challenge. The Afrobarometer survey also noted that two-thirds of Malagasy citizens considered mob justice at least "sometimes" justified in cases of rape or zebu theft (Razafindrazaka et al., 2019a, p. 2).

The state also came up against the social legitimacy of customary chiefs. These chiefs enjoyed authority recognised by local communities, which could be mobilised to resist state interventions (Klein, 2024). Field studies show that customary governance systems continue to function in many rural areas, their effectiveness depending on the perceived legitimacy of those who make and enforce the rules (McLain et al., 2021). The ampanjaka (customary sovereigns), the councils of elders (ray aman-dreny) that assist them and village notables derived their legitimacy from their ancestral and territorial roots and their knowledge of local social relations (Feeley-Harnik, 1991; Henkels, 1999). Beside them, magistrates and judicial police officers seemed distant and expensive (Bussiere, 2014, p. 8). The Dina responded quickly, on the spot, among people who knew one another. This response could be arbitrary, but it existed, where formal justice was often absent.

Justice differentiated according to litigants' capital

The interviewed magistrate spoke in this regard of "two-tier justice". She defined it as unequal access to justice according to social or financial categories, with certain people enjoying privileges or immunities that accentuated disparities and undermined equality before the law (Interviewed magistrate, 2026). This finding was in line with citizens' perceptions: 56% of Malagasy citizens believed that people were "often" or "always" treated unequally before the law, and a majority considered that officials who commit crimes went unpunished (Razafindrazaka et al., 2019b, p. 2). The UNDP study further noted the uneven distribution of courts: courts of first instance and courts of appeal were located in the major cities, so that a large part of the rural population had to travel for a day or more to reach a court (Bussiere, 2014, p. 23).

The same bias was found in the discipline of judicial actors. The interviewed magistrate observed that the disciplinary regime for magistrates lacked clarity and consistency: some serious misconduct was punished lightly, while minor breaches led to disproportionate sanctions, revealing practices of favouritism. Lawyers, for their part, were rarely sanctioned (Interviewed magistrate, 2026). According to this testimony, the sanction depended less on the seriousness of the misconduct than on the position of its author within the institution.

DISCUSSION

These results describe more than slow justice. Read against the literature on the political economy of institutions and the sociology of law, they make it possible to interpret the failure of the penal chain as a mode of government, legal pluralism as a product of this failure, and litigants' distrust as the effect of a redefinition of the legal field.

A political economy of failure

Understanding why these shortcomings persist requires turning to the political economy of judicial institutions. Douglass North showed that formal rules, however precise, remain ineffective when they are not accompanied by the material conditions for their application (North, 1990, p. 45). The Malagasy case lends itself well to this analysis: the constitutional and organic texts proclaim the independence of the judiciary but remain largely unapplied in their most concrete dimension, funding. Razafindralambo demonstrates this: the resources of the judiciary depend on budgetary choices prepared and executed by the executive, in which the courts themselves have no say (Razafindralambo, 2023, p. 68). Jean-François Bayart described as the "politics of the belly" a mode of government in which access to state resources and their redistribution structure loyalties and power relations (Bayart, 1989). Without transposing this framework term for term, the lack of budgetary autonomy of the Malagasy judiciary can be read as a mechanism of subordination rather than as an accident along the way.

North speaks here of a gap between formal and informal rules. The texts establish formal rules of independence; favouritism in disciplinary matters, ministerial influence over careers and budgetary dependence constitute

informal rules that neutralise the former (North, 1990, p. 52). It is as though the executive retained control over judicial funding in order to keep magistrates in a position of vulnerability, without having to intervene directly in individual cases. Budgetary constraint then becomes a form of silent discipline. The testimony gathered on the minister's influence over careers and on the pressures observed in the “Varira” cases points in this direction, although it cannot on its own establish deliberate intent.

Budgetary dependence keeps magistrates in check and, at the same time, makes litigants unequal before the courts. Where the state withdraws materially, other legal orders take its place, the Dina first and foremost.

. De facto legal pluralism produced by the retreat of the state

The results on the Dina confirm the usefulness of the notion of legal pluralism, but shift its emphasis. In Madagascar, the coexistence of normative orders described by Griffiths arose less from the choices of the legislature, even though Law No. 2001-004 formally recognised the Dina (République de Madagascar, 2001), than from the gradual withdrawal of public authority. Étienne Le Roy proposed the concept of “juridicity” to designate all the ways of producing and living the law, of which state law is only one expression among others (Le Roy, 2003, pp. 7-15). From this perspective, the withdrawal of formal justice does not create a normative vacuum: it widens the space occupied by other registers of juridicity. The state, unable to fund its own procedural obligations, involuntarily delegates its regulatory power to community bodies.

One reason people turn to the Dina is that many cannot physically access formal justice (Bussiere, 2014, p. 23). Elinor Ostrom's work on common-pool resources showed that local communities can devise and enforce their own rules without depending on either the state or the market (Ostrom, 1990). Transposed by analogy to dispute resolution, this perspective suggests that the Dina thrives in isolated areas because it offers a rational response to the absence of a public justice service.

Sally Engle Merry nevertheless pointed out that the coexistence of norms is rarely peaceful: legal pluralism generates power relations, implicit hierarchies and mechanisms of domination (Merry, 1988, p. 872). In the isolated areas of Madagascar, this hierarchy tends to be reversed: the Dina does not complement formal law, it supplants it. Dina practice extends to physical sanctions and sometimes mob justice (Interviewed magistrate, 2026), whereas the law limits it to pecuniary or in-kind reparations (République de Madagascar, 2001, art. 3), and access to fundamental guarantees then depends on geography and income level.

Opinion data, however, call for a more nuanced reading than a strictly territorial one. While approval of mob justice was higher in rural areas, the acts were more often reported in urban areas (Razafindrazaka et al., 2019a, p. 2). Popular justice therefore also develops where courts exist but fail to inspire trust, which shifts the explanation away from geographical distance alone towards the question of the legitimacy of state justice.

This pluralism pits two very unequally endowed legal orders against each other. State justice, deprived of resources, fails to impose its jurisdictional monopoly; community justice, rooted in local social relations, fills the vacuum left by the state, at the cost of violations of fundamental rights such as physical sanctions or the exclusion of wrongdoers who have had no defence.

Redefinition of the legal field and erosion of state legitimacy

The material withdrawal of the state and the emergence of de facto legal pluralism also redraw the boundaries of the legal field. Bourdieu showed that, within this field, the distribution of capital determines the position of each agent (Bourdieu, 1986a, p. 14). In Madagascar, litigants do not have the same resources to access formal justice, and the capacity to assert one's rights depends on economic, cultural and social capital, as well as on geographical location.

Each form of capital weighs differently (Bourdieu, 1986b). Money pays for the lawyer, travel and procedural costs. Cultural capital provides command of the official language and knowledge of one's rights. Social capital opens access to networks, up to and including the intervention of a relative with a magistrate or a court clerk.

Rural populations, often with little schooling and far from the cities, generally lack all three at once (Amnesty International, 2018, p. 11).

The existence of courts is not enough to guarantee access to the law: an active policy of proximity, information and support for litigants is also needed. In Madagascar, such a policy is lacking: the absence of effective legal aid (Amnesty International, 2018, p. 5), the concentration of courts in urban centres (Bussiere, 2014, p. 23) and the insufficiency of continuing training for judicial actors (Interviewed magistrate, 2026) open a gulf between written law and its implementation. Mauro Cappelletti and Bryant Garth had already made the point: access to justice is measured by citizens' effective capacity to bring cases before the courts and obtain a decision within a reasonable time (Cappelletti & Garth, 1978, p. 183). Budgetary scarcity therefore makes justice slower, and more unequal too.

This differentiation ultimately wears down the legitimacy of the rule of law. For many litigants, state justice is distant and biased; this is what the low level of trust in the courts and the majority perception of unequal treatment before the law suggest (Logan, 2017, p. 5; Razafindrazaka et al., 2019b, p. 2). A litigant who sees that the sanction depends less on the seriousness of the offence than on the social position of the offender loses confidence in the impartiality of the system and turns to alternative mechanisms, perceived as more accessible and more predictable.

The result is a vicious circle. The more formal justice is perceived as inaccessible and biased, the more people turn to community mechanisms; the more these mechanisms develop, the more the legitimacy of formal justice erodes. Private conflict resolution, moreover, extends beyond the Dina: it also relies on the fokonolona, customary chiefs and elders (see Sections 2.3 and 2.4), and probably on other arrangements, such as family mediation, that this study did not document.

Implications for judicial reform

Successive reforms have done little to change these mechanisms; Amnesty International already noted their failure to resolve the problem of pre-trial detention (Amnesty International, 2018, p. 3). North's framework suggests looking for the reason in a top-down logic that ignores the informal rules actually practised by actors (North, 1990, p. 52). Any reform that fails to address the budgetary dependence of the judiciary risks reproducing the status quo. The interviewed magistrate identified several concrete levers: a budget line for inter-institutional collaboration, a reorganisation of the bailiff profession and of the payment of bailiffs' fees, the modernisation of urban addressing, and stronger continuing training, which she judged insufficient, particularly for lawyers, whereas the initial training of magistrates was of good quality (Interviewed magistrate, 2026). Razafindralambo accordingly argues for an in-depth restructuring of the judicial administration and of the Superior Council of the Judiciary, endowed with increased resources so as to prevent any undue interference in their functioning (Razafindralambo, 2023, p. 57). The adoption by the National Assembly, on 5 June 2026, of a proposed organic law overhauling the Statute of the Judiciary, presented as intended to strengthen the independence of magistrates (Assemblée nationale de Madagascar, 2026), is an opportunity to be seized; on 8 July 2026, the High Constitutional Court declared it consistent with the Constitution except for two provisions, including the automatic dismissal of magistrates convicted of corruption (Haute Cour Constitutionnelle, 2026), but its scope will depend on the resources that accompany it. Its adoption under the transition that followed the change of regime of October 2025, when the High Constitutional Court found the presidency vacant and invited the military authority embodied by Colonel Michaël Randrianirina to exercise the functions of Head of State (Haute Cour Constitutionnelle, 2025), makes its implementation all the more uncertain.

Ostrom's work suggests a complementary path: the conditions for the sustainability of community institutions include accessible conflict-resolution mechanisms and minimal recognition, by external authorities, of communities' right to organise themselves (Ostrom, 1990, p. 90). Rather than imposing a single model of justice from the centre, the aim would be to organise the articulation between normative orders. The Rwandan experience of the gacaca courts, however, calls for caution. Max Rettig showed that, in Sovu, these state-supervised community courts brought to light, and even aggravated, conflicts, resentments and divisions, while lies, half-truths and silences limited their contribution to truth and justice (Rettig, 2008, pp. 39-44). The post-genocide context also limits their transferability to the Malagasy case. Human Rights Watch, drawing on more

than 350 cases, documented a wide range of fair trial violations, including limits on the ability of the accused to defend themselves, the intimidation of defence witnesses and flawed decisions attributable to the inadequate training of lay judges; it also recalled that the UN Human Rights Committee had concluded in 2009 that the gacaca system did not operate in accordance with basic fair trial rules (Human Rights Watch, 2011). Rwanda has, however, developed a second, less studied model that is closer to the Malagasy Dina: the abunzi mediation committees, composed of elected community mediators, before which mediation is compulsory for certain minor civil and criminal disputes prior to any referral to the courts of first instance, the formal courts acting as a higher instance (Republic of Rwanda, 2010). Unlike the Dina, this mechanism is integrated into the judicial chain rather than juxtaposed with it.

Madagascar is not an isolated case. Penal Reform International observed that, when most sub-Saharan African countries became independent, the majority of their citizens settled disputes through traditional and informal forums, and that these forums, expected to disappear with modernisation, have remained as widespread as ever (Penal Reform International, 2000, p. 1). The regional question is therefore less whether such forums should exist than how the state articulates them with its own courts. Other African states have framed this articulation constitutionally rather than leaving it to the retreat of the state. In Mozambique, the 2004 Constitution recognises the various normative and dispute-resolution systems that coexist in society, provided they do not contradict the fundamental values and principles of the Constitution (República de Moçambique, 2004, art. 4); Santos (2006) nevertheless shows that community courts and traditional authorities there form hybrid legal orders whose boundaries with state law remain porous. Kenya's 2010 Constitution requires courts to promote traditional dispute resolution mechanisms, but prohibits their use in a way that contravenes the Bill of Rights, is repugnant to justice and morality, or is inconsistent with the Constitution or any written law (Republic of Kenya, 2010, art. 159(2)(c) and (3)); in practice, most Kenyans with justice-related problems turn to such mechanisms rather than to the formal courts (Kodiaga & Kamau, 2021). South Africa's 1996 Constitution, for its part, requires courts to apply customary law where it is applicable, subject to the Constitution and to any legislation that specifically deals with customary law (Republic of South Africa, 1996, s. 211(3)). These frameworks share a common technique, a conformity clause that subordinates customary mechanisms to constitutional rights, which Law No. 2001-004 also contains (République de Madagascar, 2001, art. 2). The Malagasy specificity therefore lies less in the absence of such a clause than in the absence of the means to enforce it: without courts able to review Dina decisions within a reasonable time, the conformity requirement remains a formality. Comparative fieldwork on how these clauses are applied would be needed to determine whether the Malagasy configuration is exceptional or typical of the region.

The lesson we draw from these experiences is that state supervision of community courts does not in itself guarantee their fairness; in the Malagasy case, it would need to be coupled with effective guarantees of the rights of the defence. Madagascar already has a legal framework in Law No. 2001-004 (République de Madagascar, 2001). Its effective implementation would require dedicated funding, cross-training of formal and customary actors, and oversight and appeal mechanisms.

CONCLUSION

This article asked to what extent the material shortcomings and institutional dependence of Malagasy criminal justice produce de facto legal pluralism. The documentary sources, cross-checked against the testimony gathered, indicate that the judiciary has no budgetary autonomy, that the share of justice in the state budget declined between 2021 and 2022, and that this scarcity is reflected in summonses that cannot be served, prolonged police custody and pre-trial detention, and justice that is unequally accessible. The Dina in isolated areas, and popular justice even in the cities, fill the resulting vacuum, at the cost of physical sanctions and the abandonment of fair trial guarantees. This shift appears to owe as much to the loss of legitimacy of state justice as to the distance of the courts. The Dina is therefore better understood as the communities' response to the absence of a public justice service than as an archaic remnant that legal modernity has yet to absorb.

This reading rests on the combination of the sociology of the legal field, the theory of normative pluralism and institutional economics. It nevertheless remains dependent on a limited corpus, dominated by a single testimony and by secondary data. Fieldwork with customary chiefs, rural litigants and judicial police officers, together with

a comparison with other African contexts where state and customary justice coexist, would make it possible to test and refine these conclusions.

The Malagasy case also raises a broader question, that of the conditions for the effectiveness of law in states where the institutional architecture, inherited from an imported model, has arguably never been fully reappropriated. In such a setting, de facto legal pluralism depends on an institutional configuration, and this configuration can change. This would require funding justice in line with its legal obligations, making judicial independence effective and organising the articulation between formal law and community regulations in accordance with fundamental rights. Otherwise, the Dina will continue to thrive wherever the state withdraws, and formal justice will remain, for a growing share of the population, a written law that it cannot invoke.

Declarations

Ethical approval: the research involves one human participant, surveyed by questionnaire. No formal ethics committee approval was required, as the study involved a single adult professional answering a written questionnaire about her professional practice, with no collection of sensitive personal data. The participant was informed in writing of the purpose of the research, of the confidentiality of her answers and of their exclusive use for academic purposes, and she consented to their use in anonymised form.

Conflicts of interest: the authors declare that they have no conflicts of interest.

Data availability: the legal texts, World Justice Project indicators and Afrobarometer surveys used are publicly available and cited in the references. The questionnaire responses are not disclosed in order to preserve the participant's confidentiality; they may be made available upon reasoned request to the corresponding author.

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