



International
Labour
Organization

► Access to labour justice: Judicial institutions and procedures in selected African countries

Overview of procedural
elements for access to labour
justice in judicial dispute
resolution institutions





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Overview of procedural elements
for access to labour justice in judicial
dispute resolution institutions

Labour Law and Reform Unit
Governance and Tripartism Department

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Contents

Introduction	1
Methodology	3
Institutional Structure of Courts and Tribunals	5
Composition of Courts and Tribunals	5
Models of courts hearing labour cases	5
Composition of courts hearing labour cases	6
Selection and qualification of judges.	7
Qualification of Judges	7
Selection of Judges	8
Jurisdiction	11
Material Scope	11
Geographical Scope	11
Cases involving foreign workers and enforcing foreign decisions	11
Procedural Aspects	13
Procedural Rules	13
Legal Aid, Court Fees & Costs	13
First instance procedures	16
Precautionary Measures	16
Administration of documents and evidence	16
Litigants and parties	17
Representation of parties	18
Presentation of statement of claims and responses	18
Evidence and arguments phase	19
Burden of Proof	20
Admissibility and presentation of evidence	20
Judgement phase	21
Recourses and appeals to higher instances	22
Supreme Court Phase	24
Enforcement phase	25

Possibility of Conciliation/Mediation/Arbitration during the Proceedings	26
Procedural phases	28
Average duration of procedures	29

Operation & Practice **31**

Average distribution of courts.	31
Professional Judges per 100.000 people.	31

References **33**

Sources of legislation	33
Court and Agencies Websites	35
Statistics and additional information	37
Other references.	37

List of figures

Chart 1: Courts hearing labour disputes in selected African countries	6
Chart 2: Category of judges hearing labour cases	7
Chart 3: Composition of courts	8
Chart 4: Methods of selection of judges	9
Chart 5: Procedural rules applied to labour cases	13
Chart 6: Administrative costs	14
Chart 7: Responsibility for the costs with external reports	15
Chart 8: Responsibility for the payment of legal fees	15
Chart 9: Possibility of precautionary measures	17
Chart 10: Administration of documents and evidence	17
Chart 11: Representation of parties	18
Chart 12: Rules on distribution of burden of proof	20
Chart 13: Alternative dispute resolution of labour cases during the judicial proceedings	27
Chart 14: Number of procedural phases	28
Chart 15: Possible recourses to present in a labour procedure	29
 Figure 1: Qualification requirements for professional judges	 9
Figure 2: Material scope of African courts hearing labour cases	11
Figure 3: Overview of main steps of procedures in first instance	23
Figure 4: Overview of main steps of procedures in higher instances	24
Figure 5: Overview of main steps of procedures in Superior instances	25
Figure 6: Enforcement phase scheme	27

► Introduction

As the number of individual disputes arising from day-to-day workers' grievances or complaints continues to grow in many parts of the world¹, labour courts are an important part of dispute prevention and resolution systems and play a critical role in ensuring access to justice and contributing to equity in industrial relations.

Access to labour justice cannot be understood only as the formal access to labour courts and right to have a claim examined by an impartial judge, but also as access to a fair procedural regulation, which enables real conditions of equality before the judiciary.

This report aims at examining labour courts and ordinary courts hearing labour cases and various detailed aspects of their procedures and institutional settings, seeking to identify connections between them or trends in the region which may impact on the level of access to labour justice in the countries examined.

States commonly establish different types of institutions and procedures to resolve individual and collective disputes.

In African countries labour conflicts may be resolved mainly through models of judicial courts/tribunals, which are empowered to hear cases and determine a binding outcome of a dispute.² The following countries' systems were examined: Angola, Botswana, Cameroon, Congo, Côte d'Ivoire, Democratic Republic of Congo, Ethiopia, Gabon, Liberia, Kenya, Madagascar, Mozambique, Namibia, Niger, Nigeria, Senegal, South Africa, Tanzania, Uganda, and Zambia.

For the purpose of this report, these countries are divided in two major models: i) ordinary courts with jurisdiction over labour cases (with or without specialized labour branches/divisions or

judges), and ii) specialized labour courts, under the direct administration of the judiciary.

Courts hearing labour cases in Africa are mainly formed by professional and non-professional judges and cases.

There may be a combination of institutions when, for example, decisions taken by specialized labour courts may be appealed to ordinary higher courts. They can also function only as appellate courts, receiving recourses against decisions and awards rendered by alternative dispute resolution institutions in first instance.

Courts can be competent to hear collective and individual cases. In some countries, labour courts may have full jurisdiction over all labour disputes or have their jurisdiction limited to either individual or collective disputes. They may be competent to hear cases involving public employees or social security issues.

Different models may involve different organic procedural laws and court procedural rules, depending on the existence of specific rules enacted for labour disputes, or general procedural rules, applicable to all cases falling under civil jurisdiction.

Countries examined also present differences on the physical distribution of courts and their availability of services to the public, which may impact on the level of access to labour justice.

To examine the multitude of characteristics of each country and compare them, pertinent national pieces of legislation and official statistics, when available, were examined considering 4 thematic areas: i) institutional structure of courts and tribunals, ii) jurisdiction, iii) procedural aspects, and iv) operational and practice.

1 Ebisui, M; Cooney, S; Fenwick, C: *Resolving individual labour disputes: a comparative overview* / edited by Minawa Ebisui, Sean Cooney, Colin Fenwick; International Labour Office. - Geneva: ILO, 2016. p. 19

2 For more information in respect to literature review on labour courts, please see Colàs-Neila, E., Yélamos-Bayarri, E. 2020. *Access to Justice: A Literature Review on Labour Courts in Europe and Latin America*, ILO Working Paper 6 (Geneva, ILO).

The institutional structure evaluates how the courts are composed, if they are part of a multiple-tier system under judicial authority, how judges are appointed, what are the governmental bodies responsible for selecting them, and what are the requirements to be met to become a professional judge.

In jurisdiction, the courts hearing labour cases will be classified according to the material jurisdiction, if they can hear cases related to international jurisdiction, and if they can hear both individual and collective cases. For the purpose of this report, collective cases are disagreements between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers over existing rights or future interests.³

By analysing the procedural aspects, this report aims at comparing the procedures by which it is possible to present claims to the judicial dispute resolution institutions under examination, and

how the procedures themselves are applied to cases⁴, which may affect directly or indirectly the level of access to labour justice.

Lastly, in operation and practice, the report examines the average distribution of courts and judges to hear cases, who are the parties and actors involved in labour cases, what types of outcomes can be expected, what are the remedies available to deal with these outcomes, and what are the circumstances involving the enforcement or termination of these procedures. However, lack of official information about number of facilities and number of judges available or other statistical data was a common feature among countries examined.

This report used updated regulations, information provided by official channels of Ministries and courts, and statistics from 2017 to 2021, when available through official websites and translated into English, French or Portuguese.

3 ITCLO: *Labour dispute systems: guidelines for improved performance*. International Training Centre of the International Labour Organization, 2013. p. 18

4 Including with respect to formal requirements, presentation of evidence and rules of burden of proof, participation of accredited representatives, and possibility of appealing the case to higher instances, costs of procedures, possible legal aid, and legal fees.

► Methodology

In order to compare models of procedural law and structure of courts in African countries, pertinent national legislation of each country was examined to collect qualitative data and produce contextual knowledge about the composition of courts hearing labour cases, context of their jurisdiction, procedures and practice of courts. Data collected was divided in several indicators conceived to enable the comparison of countries examined. Given the variety of models and processes, a cross-country quantitative comparison cannot readily be undertaken. Data provided are

thus accompanied by descriptions of the specific context.

Lack of statistical data was a common issue among all countries examined. Very few of them provided official information in respect to number of courts available or length of trial, for example. Official data on number of judges was available in also very few of them. In this respect, existing quantitative data was examined, when available by official countries' websites and their respective agencies from 2017 to 2021.

► Institutional Structure of Courts and Tribunals

Composition of Courts and Tribunals

Models of courts hearing labour cases

African countries examined have very similar systems of hearing labour cases in first instance. Either they have specialized labour courts⁵ or separate divisions within first instance civil/ordinary courts to hear labour cases⁶.

In Angola, provincial courts (*Tribunais Provinciais*) have jurisdiction over individual and collective labour cases through specialized labour chambers.⁷ Same happens in Côte D'Ivoire, where labour courts are constituted by detached sections of the courts of first instance competent to hear individual disputes., when the importance of the labour market so requires.

In Cameroon, courts of first instance hear, together with civil and criminal cases, individual labour cases *social matters (droit social)* provided that a certain monetary amount is involved.⁸ In Mozambique, judicial divisions dealing individual and collective labour disputes in districts courts have jurisdiction over labour cases under 200 minimum wages and in province courts (*Tribunais de Relação*) over 200 minimum wages.⁹

In Ethiopia, the labour division of the regional first instance courts shall have jurisdiction to settle and determine individual labour disputes related

to dismissals, conditions of employment and work injuries.¹⁰

Countries like Botswana, Congo, Democratic Republic of Congo, Gabon, Liberia, Kenya, Madagascar, Namibia, Niger, Nigeria, Senegal, South Africa, Uganda, and Zambia have specialized labour courts, independent from civil and ordinary courts in first instance, which may or may not have full jurisdiction over labour cases.

In all countries examined, specialized labour courts, notwithstanding composed also by non-professional judges, are under the administration of the Judiciary.

However, the labour division of the High Court in Tanzania, labour court in Namibia and the industrial court in Uganda work mainly as referral courts and do not handle labour disputes in first instance.

In Tanzania, individual labour disputes resolution start with the Commission for Mediation and Arbitration in a mandatory alternative dispute resolution step, then an aggrieved party may seek revision before the Labour Division of the High Court, which the jurisdiction ambit are labour disputes referred to it.¹¹

In Namibia, labour courts are competent to hear only appeals against arbitration awards, decisions of the Labour Commissioner, decisions of the Minister, the Permanent Secretary, the Labour Commissioner or any other body or official. The Labour Court is also competent to grant

5 Botswana, Congo, Democratic Republic of Congo, Gabon, Liberia, Kenya, Madagascar, Namibia, Niger, Nigeria, Senegal, South Africa, Uganda, and Zambia.

6 Angola, Cameroon, Côte D'Ivoire, Ethiopia, Mozambique, and Tanzania,

7 Article 306 of Labour Law of Angola (Lei Geral do Trabalho) and Articles 46 and 55 Organic Law of Organization of Courts (Lei de Organização dos Tribunais).

8 Articles 37 and 38 of Constitution of Cameroon.

9 Articles 2 and 3, 6 of the Revision Law (Lei de Revisão No. 10/2018).

10 Article 138 of Labour Proclamation Act.

11 Section 94 of the Employment and Labour Relations Act of 2004.

a declaratory order in respect to provisions of the Labour Act, a collective agreement, contract of employment or wage order, to grant urgent relief in a pending resolution of a dispute, and to grant an order to enforce an arbitration agreement.¹²

(Chart 1)

In Uganda, the industrial court's jurisdiction limit is labour disputes referred to it by a party to a dispute, by the Labour Officer at the request of the party or on the Officer's own decision when is unable to resolve the dispute. Appeals can also be filed against Labour Officers' decision.¹³

In Botswana, although the industrial court handles labour cases in first instance, such cases are referred by any party who is aggrieved and their matter was not resolved at mediation level at the District Labour office.¹⁴

In several other countries, previous mandatory attempt of resolving the dispute by alternative

dispute resolution mechanisms is also a requirement to present a labour case before a judicial court, and cases may be also referred to the court by the institutions in charge of conciliation and mediation.¹⁵

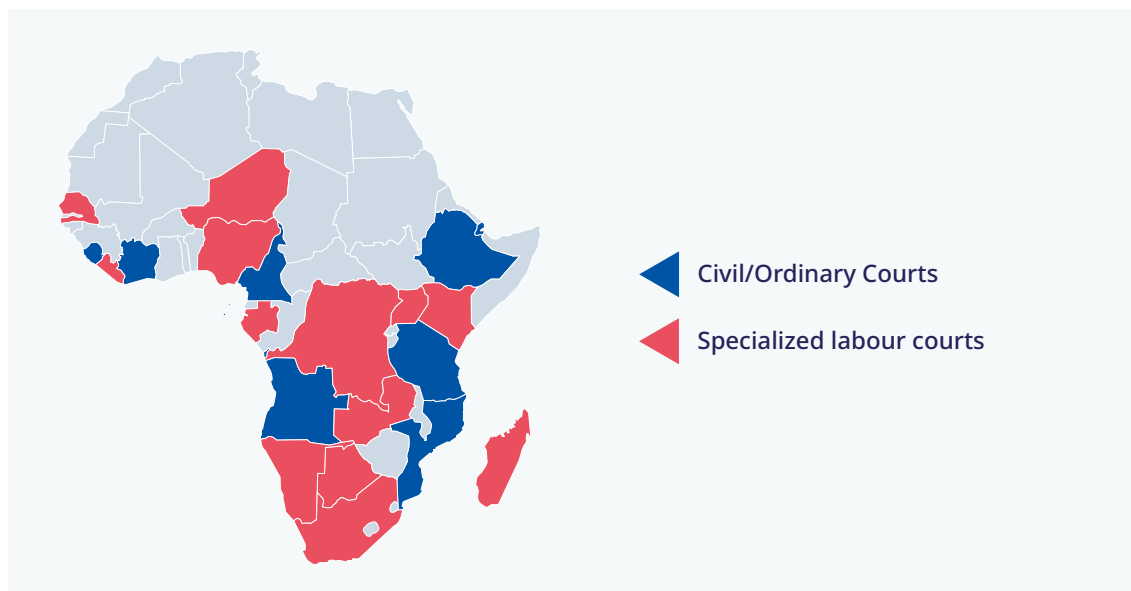
Composition of courts hearing labour cases

Labour courts and ordinary courts hearing labour cases can comprise professional judges and/or non-professional judges, often representatives of employers, workers, and experts in labour markets (often called "lay judges" or "labour advisors").

In Gabon, lay judges may be also appointed from a list provided by the labour inspector of the respective jurisdiction.¹⁶ If the labour court, for any reason, was not able to constitute lay judges, they shall be replaced by professional judges.¹⁷

(Chart 2)

► **Chart 1: Courts hearing labour disputes in selected African countries**



¹² Sections 117 (2) (a) and 119 Labour Act 2007.

¹³ Section 5(1) (3) of the Labour Disputes (Arbitration and Settlement) Act, 2006 Cap 224.

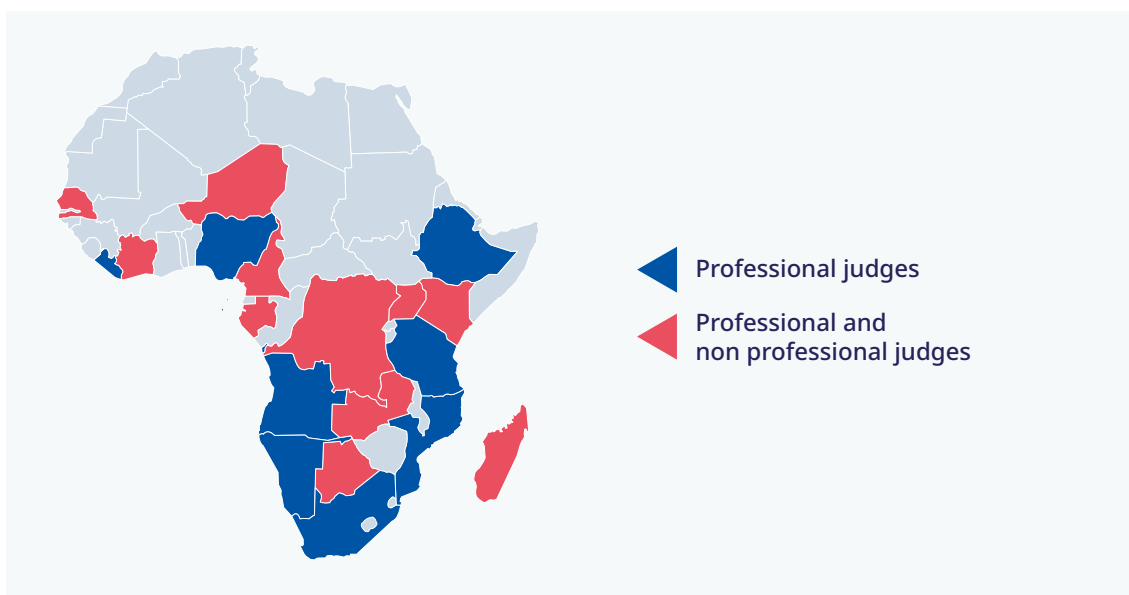
¹⁴ Sections 7 (3), (15) and (18), 8 (13)-(14) and 12 of the Trade Disputes Act, 2016.

¹⁵ Examples include Cameroon, Côte D'Ivoire, Democratic Republic of Congo, Gabon, Senegal and Tanzania.

¹⁶ Article 357 of Labour Code.

¹⁷ Article 356 of Labour Code.

► Chart 2: Category of judges hearing labour cases



Moreover, courts hearing cases in panels of judges are also very common. In general, first instance courts are composed by a professional judge, who is likely to be responsible for conducting and presiding hearings, and non-professional judges appointed by representatives of employers and workers or by labour market advisors appointed by the Government.¹⁸ (Chart 3)

that is legitimate, in order to sustain public confidence in the judiciary²⁰.

Rules on selection and qualification of judges serve to guarantee their independence and ensure a sufficient degree of expertise and high standards in the qualification. The processes of selection of first instance professional judges and the qualifications required to hold the position are quite different among the countries examined, but specific trends are important to be explored.

Selection and qualification of judges

Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives.¹⁹ The aim of judicial appointment processes should be to provide a reliable means of identifying persons who possess these qualities, and to do so in a manner

Qualification of Judges

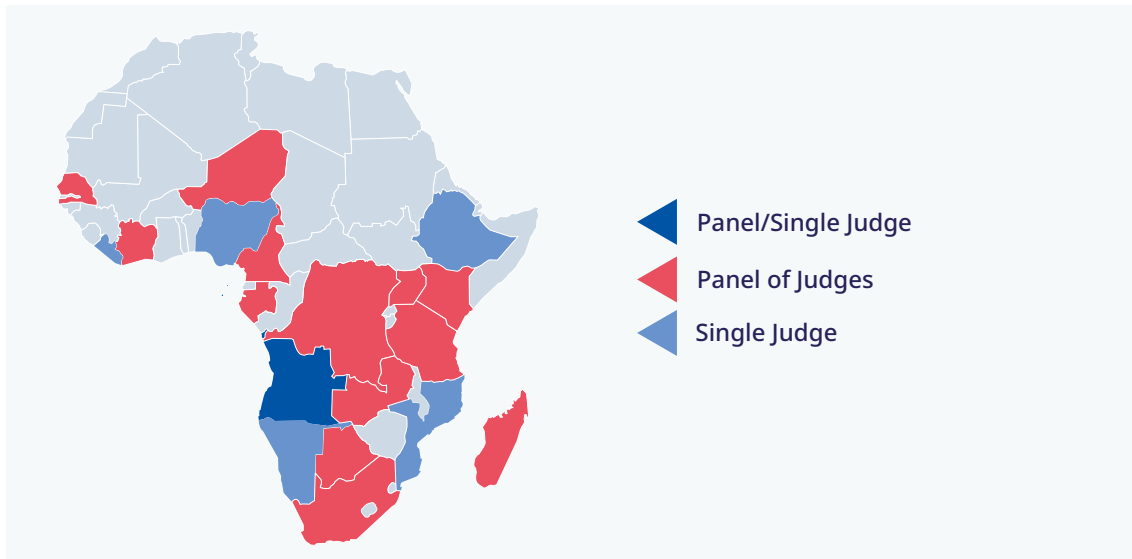
All countries examined provide specific legislation in respect to appointment and selection of judges. In some, the pertinent legislation provides that candidates must have proved professional experience in the field of law. Other requirements are related to citizenship, education (degree in law), age, attendance to training programmes. Some countries also established rules related to the

18 Examples include Botswana, Cameroon, Congo, Côte D'Ivoire, Democratic Republic of Congo, Gabon, Madagascar, Niger, Nigeria, Senegal, Tanzania, Uganda, and Zambia.

19 United Nations, High Commissioner for Human Rights: Basic Principles on the Independence of the Judiciary. Available here <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>

20 J. van Zyl Smit, *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice* (Report of Research Undertaken by Bingham Centre for the Rule of Law), 2015, p. 17.

► Chart 3: Composition of courts



reputation, credibility, and physical and mental fitness for the job. (Figure 1)

In respect to non-professional judges, requirements are not very clear among countries examined. Besides being appointed by the government upon the recommendation of workers and employers 'representatives, there is not very much information on further conditions to occupy one of these seats.

In Senegal, where the labour court is subdivided into occupational sections, the non-professional judges shall be taken from among those appointed in respect of the section concerned by the professional sector to which the parties to a case belong.²¹

The same occurs in Côte D'Ivoire, where the special division of labour may be divided into occupational sections according to the structure of the labour market. For each case, the president of the court shall appoint as many of the employer and worker assessors as possible from the relevant occupational sector to which the parties belong.²²

Some countries, however, have clear provisions in respect to the possibility of parties to challenge the nominations²³, particularly if verified any personal or institutional interest in the outcome of the labour case under trial.

Selection of Judges

All countries examined appear to have criteria in national legislation for selecting their professional judges. In large part of them, appointments are made by or under the recommendation of independent Judicial Commissions. (Chart 4)

In Zambia, besides the appointment by the President on the recommendation of the Judicial Service Commission, judges must also be approved by the National Assembly.²⁴

In South Africa, labour court judges are normally appointed from the ranks of specialist labour law practitioners (practising advocates or attorneys) and qualified academics.²⁵

²¹ Article 233 Labour Code of Senegal.

²² Articles 81.12, 81.13 of Labour Code of Côte D'Ivoire.

²³ Examples include Cameroon, Madagascar, and Senegal.

²⁴ Article 95 of Constitution of Zambia.

²⁵ Article 153 of Labour Relations Act.

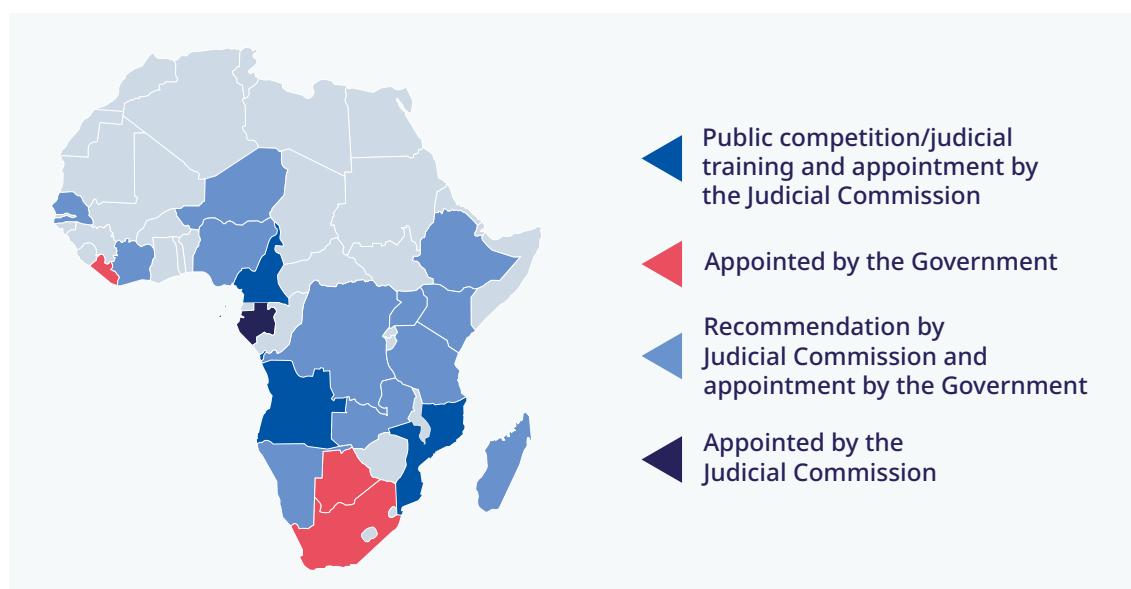
In Angola²⁶, Cameroon²⁷ and Mozambique²⁸, legislation is clear in respect to approval of judges

by public contest before nomination by Judicial Commissions.

► Figure 1: Qualification requirements for professional judges

Qualification requirements						
Citizenship	Age	Reputation or/and Health	Education (Bachelor's degree in Law)	Education (Advanced degree in Law)	Training	Experience
Congo, Democratic Republic of Congo, Ethiopia, Gabon, Liberia, Madagascar, Mozambique, Namibia, Niger, Senegal, Zambia	Congo, Democratic Republic of Congo, Côte D'Ivoire, Ethiopia, Madagascar, Mozambique, Niger	Democratic Republic of Congo, Côte D'Ivoire, Ethiopia, Liberia, Madagascar, Niger, Senegal	Angola, Botswana, Congo, Côte D'Ivoire, Democratic Republic of Congo, Gabon, Kenya, Mozambique, Namibia, Nigeria, South Africa, Tanzania, Uganda, Zambia	Cameroon, Gabon, Suriname, Madagascar, Niger	Cameroon, Madagascar, Niger	Angola, Botswana, Ethiopia, Liberia, Kenya, Nigeria, South Africa, Tanzania, Zambia

► Chart 4: Methods of selection of judges



26 Articles 43-46 of Statute of Magistrates and Public Prosecutors, 1994.

27 Article 37 of Constitution of Cameroon.

28 Articles 222 Constitution of Mozambique and Articles 8, 14 and 90 of Statute of Judges.

► Jurisdiction

Material Scope

Courts dealing with labour cases might also be divided in terms of material and geographical scope. They might have their jurisdiction shared with other mechanisms of dispute resolution depending on the nature of the claims.

Individual labour disputes might be resolved in the same way as those available for the resolution of collective labour disputes. Collective disputes, in this case, are those between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers²⁹, over violation of an existing entitlement embodied in the law, a collective agreement, or under a contract of employment (disputes concerning rights), or future rights and obligations under the employment contract (dispute concerning interests).³⁰ (Figure 2)

Some courts also have express jurisdiction over matters related to social security³¹, apprenticeship contracts³², and public employees³³.

Geographical Scope

Cases involving foreign workers and enforcing foreign decisions

Courts hearing labour cases might be competent to enforce decisions rendered by foreign courts or render decisions on labour cases involving foreign workers providing services in national territory, depending on the reach of national legislation on this regard.

Although these rules are no very clear among the countries examined, particularly in respect to labour and ordinary Courts to enforce foreign decisions in labour cases, all of them have provisions considering reciprocity requirements or approval by national courts for the enforcement of foreign decisions.

In Congo, unless there are diplomatic agreements to the contrary, judgments rendered by foreign courts may only be enforced after they

► Figure 2: Material scope of African courts hearing labour cases

Labour & Employment Relations Disputes			
Individual & Collective		Individual	
Labour Courts	Ordinary Courts	Labour Courts	Ordinary Courts
Botswana, Democratic Republic of Congo, Kenya, Namibia, Nigeria, South Africa, Uganda,	Mozambique, Tanzania	Cameroon, Congo, Gabon, Liberia, Madagascar, Niger, Senegal	Angola, Ethiopia, Côte D'Ivoire

29 ITCLO: *Labour dispute systems: guidelines for improved performance*. p. 18.

30 ITCLO: *Labour dispute systems: guidelines for improved performance*. p. 18.

31 Examples include Congo, Democratic Republic of Congo.

32 Examples include Congo.

33 Examples include Liberia.

have been declared recognized by a national court which has material jurisdiction to hear the respective issue.³⁴ Similar requirements also must be met in Liberia³⁵ and the Democratic Republic of Congo.³⁶

In Côte D'Ivoire, judicial decisions rendered in a foreign country may not give rise to any forced execution until they have been declared enforceable by a national court, subject to the special provisions resulting from international conventions.³⁷ The same happens in Madagascar³⁸ and Mozambique³⁹. In Angola, recognition by the Supreme Court is necessary.⁴⁰

In Botswana, statutory provisions for the enforcement of foreign judgments provide for the

application to the High Court for their registration.⁴¹ Similar procedures occur in Cameroon.⁴²

In Uganda, besides the recognition by a national court, proof that the judgement is yet to be satisfied and that the enforcement was incapable to be performed by execution in the original jurisdiction must be provided.⁴³ The same applied to Zambia⁴⁴ and Tanzania.⁴⁵

Under the law of South Africa, foreign decisions are not directly enforced as well. Besides countries mentioned by the Enforcement of Foreign Civil Judgements Act⁴⁶, all decisions coming from foreign countries must be recognized by a national court and must not be contrary to South African public policy or laws.

34 Article 299 of Code of Civil Procedure.

35 Chapter 25 of Code of Civil Procedure.

36 Article 117 of the Code of Judicial Organisation and Jurisdiction and Article 105 of Code of Civil Procedure.

37 Article 345 of Code of Civil Procedure.

38 Article 468 of Code of Civil Procedure.

39 Article 49, 55-61 of Code of Civil Procedure.

40 Articles 65 and 71 of Code of Civil Procedure.

41 Section 5 of Judgments (International Enforcement) Act [11.04].

42 Sections 5 to 9 of Law No. 2007/001 of 19 April 2007.

43 Section 3 of Foreign Judgments Act, Cap 9 of Laws of Uganda.

44 Section 4 of Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76 9 of Laws of Zambia.

45 Sections 3 and 4 of Reciprocal Enforcement of Foreign Judgements Act, Cap 8, 2002.

46 Sections 3-5 of Enforcement of Foreign Civil Judgments Act 32 of 1988.

► Procedural Aspects

Procedural Rules

Procedures adopted by courts hearing labour cases⁴⁷ may follow specific rules enacted for labour disputes, or general procedural rules, applicable to all cases falling under the jurisdiction of ordinary courts.

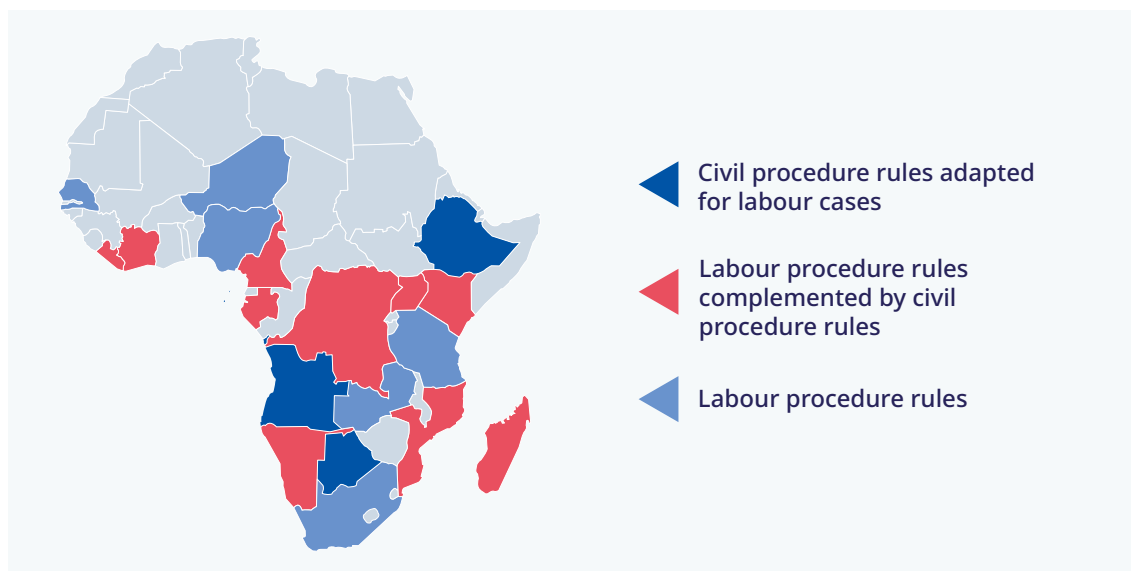
Some countries examined have special procedures intended to ensure the application of expertise in complex employment and labour legislation, particularly in first instance.⁴⁸ These procedures intend to make the system less formal and legalistic, faster, and more accessible, to adjust an unequal power relationship between the parties to labour disputes.⁴⁹

Other countries adopt general codes of civil procedures with adaptations to labour cases.⁵⁰ And there were also countries in which labour cases are heard under labour procedures rules complemented by civil procedures rules in different aspects.⁵¹ (Chart 5)

Legal Aid, Court Fees & Costs

An important aspect for the right of access to justice is the presence of judicial fees. A costly procedure may prevent people from requesting the services of courts, particularly those in more precarious economic situations⁵². Exemptions from paying legal fees are common in most countries

► Chart 5: Procedural rules applied to labour cases



47 For this study, only specific procedures for labour cases or ordinary civil procedures applied to labour cases have been considered.

48 Examples Niger, Nigeria, Senegal, South Africa, Tanzania, and Zambia.

49 Ebisui, M; Cooney, S; Fenwick, C. p. 18.

50 Examples include Angola, Botswana, and Ethiopia.

51 Examples include Cameroon, Congo, Côte D'Ivoire, Democratic Republic of Congo, Gabon, Liberia, Kenya, Madagascar, Mozambique, Namibia, Uganda.

52 Colàs-Neila, E., Yélamos-Bayarri, E. p. 20.

examined, as well as provisions guaranteeing legal aid.

The report examined access to legal aid, payment of administrative costs (court fees) and costs with external reports and experts, and payment of legal fees. Almost all countries examined have provisions in law granting legal aid to access the judiciary and which can be applied to labour cases.⁵³ Initial administrative costs or fees to present a claim may apply to some countries.⁵⁴

Courts fees in labour courts and ordinary courts hearing labour cases are either fully supported by the State or shared by the parties according to the outcomes of the cases, in which case beneficiaries of legal aid may be exempted of paying them.

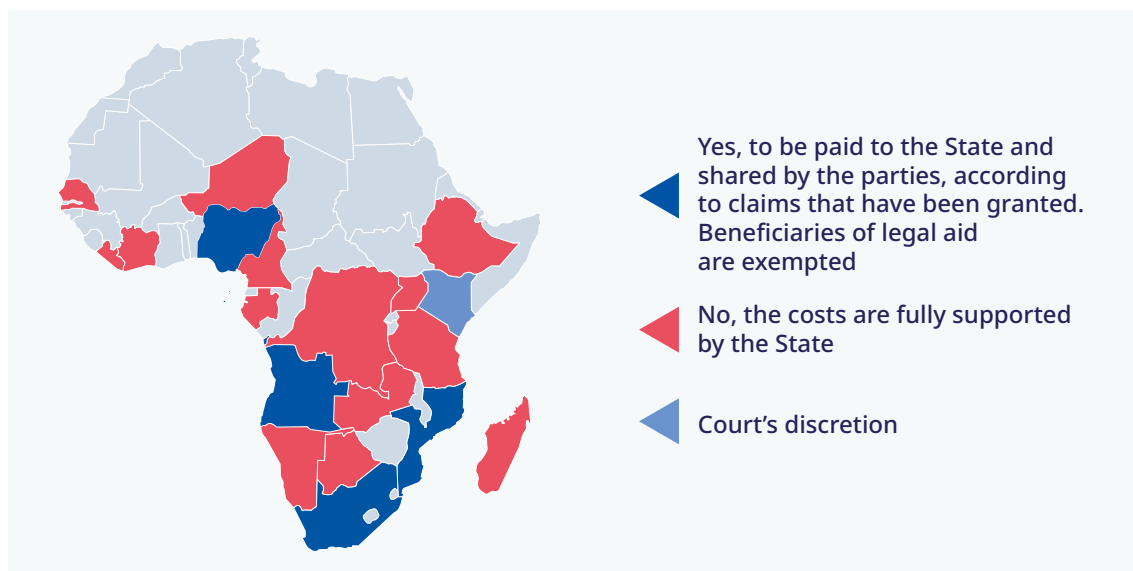
In a large part of the countries, administrative costs or fees are supported by the State. Exceptions, in specific cases, are mainly related to abuse of the right to defend, in which case the court may impose such costs.⁵⁵

In other, provisions determining the payment of courts fees distribute the burden of responsibility to pay such costs according to the claims granted. This means that in cases in which there has been presentation of a counterclaims, workers might also be sentenced to pay a share of court fees in case the decision finds counterclaims justified. **(Chart 6)**

Only in Kenya, administrative court fees are decided on the discretion of the court regardless the outcome of the case.⁵⁶

Court fees might also include fees to appeal.⁵⁷ Rules applied in respect to costs with external reports and experts may not follow the same rational of administrative costs. These costs are incurred when experts are summoned to present reports on issues related to assessment of workplace to evaluate occupational health and safety conditions, medical evaluations on occupational illnesses and accidents, judicial inspections, and investigation of possible fraud in

► **Chart 6: Administrative costs**



53 No clear provision in this respect has been found in Ethiopia.

54 Examples include Angola, Botswana, Cameroon, Congo, Ethiopia, Kenya, and Mozambique.

55 Examples include Botswana, Namibia, Niger, and Tanzania.

56 Section 12 (4) of Employment and Labour Relations Court Act, 2011 and Article 29 Employment and Labour Relations Court Rules.

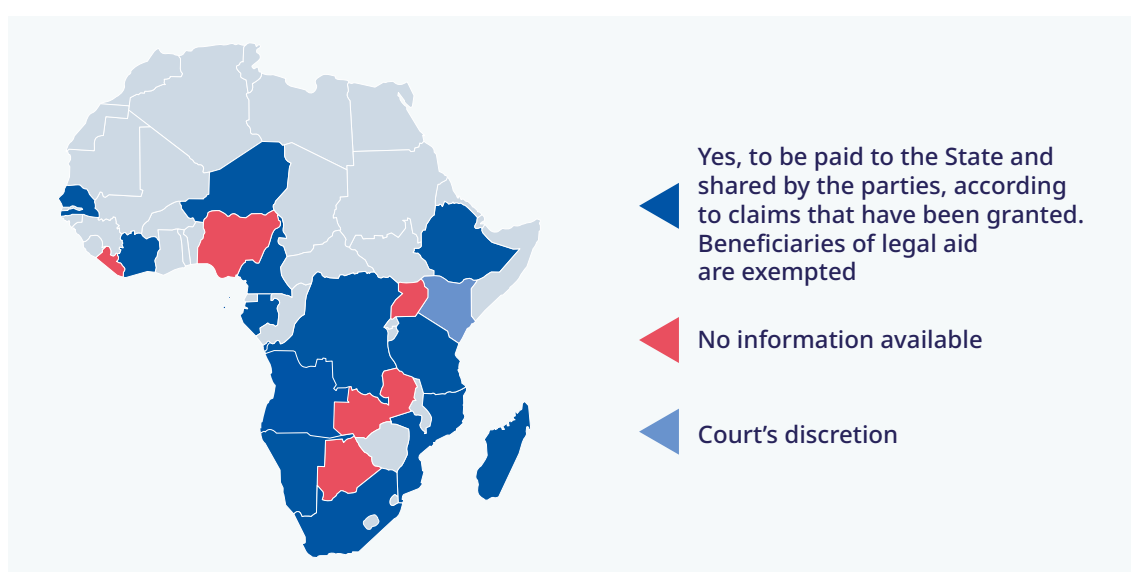
57 Examples include Ethiopia, Gabon, and Mozambique.

documents. In general, these costs are charged by the losing party or by whoever caused the expense.

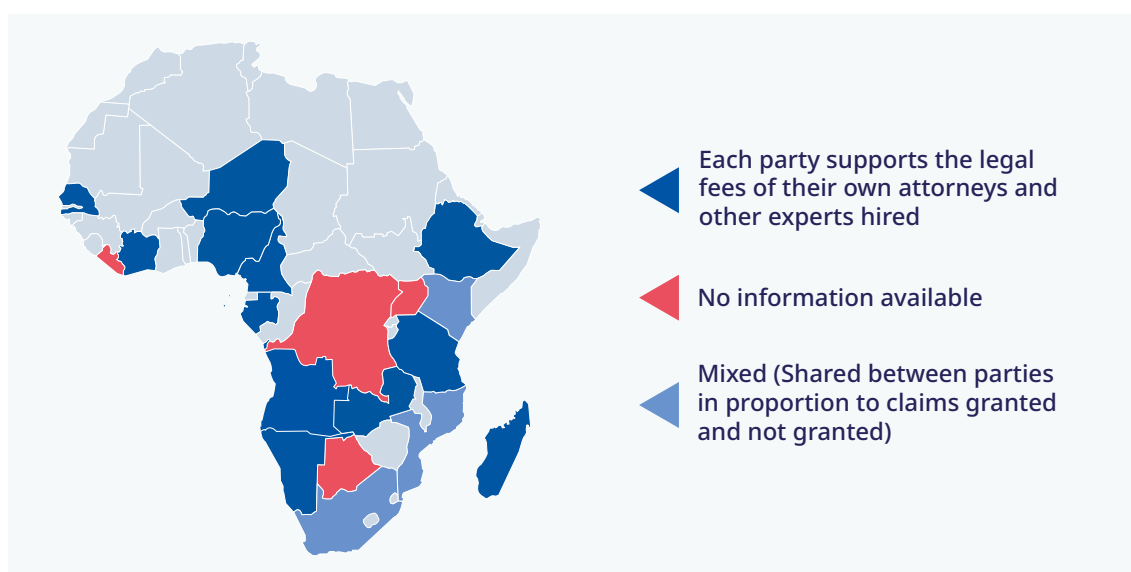
In some countries, information in respect to burden of payment of experts' fees and costs with reports in labour cases is not clear in the legislation examined. **(Chart 7)**

In respect to the responsibility over payment of legal fees, national legal systems provide for different models. In general, losing parties bear the most of it, but this may depend on the proportion of claims granted. In these cases, the plaintiff may be demanded to pay legal fees to the defendant in respect to the claims that were not granted. **(Chart 8)**

► **Chart 7: Responsibility for the costs with external reports**



► **Chart 8: Responsibility for the payment of legal fees**



In African countries examined, responsibility for bearing legal fees is not sufficiently clear in respect to labour cases. Either the national legislation is silent about this topic or implies that parties shall each bear their own costs with legal professionals, with possible chance to recover it from the losing part. This may happen because, as it will be seen further in this report, in many countries the participation of accredited lawyers during the proceedings is not mandatory.

First instance procedures

First instance procedures applied for labour cases, either in labour or ordinary courts, are similar, regardless of specific procedures provided by law. However, certain trends have been observed in cross-case analysis.

Precautionary Measures

Prior to the presentation of a statement of claim or petition to initiate a labour lawsuit, parties can present a petition to the Court for precautionary measures. Precautionary measures are an essential procedural law institution, once they often have a direct impact on the effectiveness of the future judgment and are fundamental to secure evidence and means to enforce the decision.

In some countries, information in respect precautionary measures in labour cases is not clear in the legislation examined and might be the case that they are applied according to the discretion of judiciary in specific situations. (Chart 9)

Precautionary measures are also likely to be requested during the preliminary hearings,

especially concerning securing of evidence and anticipation of effects of a final decision (such as reinstatement of workers).

Administration of documents and evidence

The search for instruments to shorten the time taken to resolve disputes also motivates many legal reforms and the introduction of specific mechanisms to present statements of claims, documents, evidence, and pleas in electronic form. Most countries examined have regulations providing formal requirements, such as written statements of claims (or specific forms to be filed), to initiate the procedures, even though admit oral petitions, particularly during hearings.

During the Covid-19 pandemic, courts may have accelerated the use of technological solutions to ensure the continuation of services provided. These changes might also have functioned as a catalyst for further change and cutting-edge innovation in the future, providing a faster and costless procedure to parties. However, access to such technological improvements may be uneven among African countries.⁵⁸ (Chart 10)

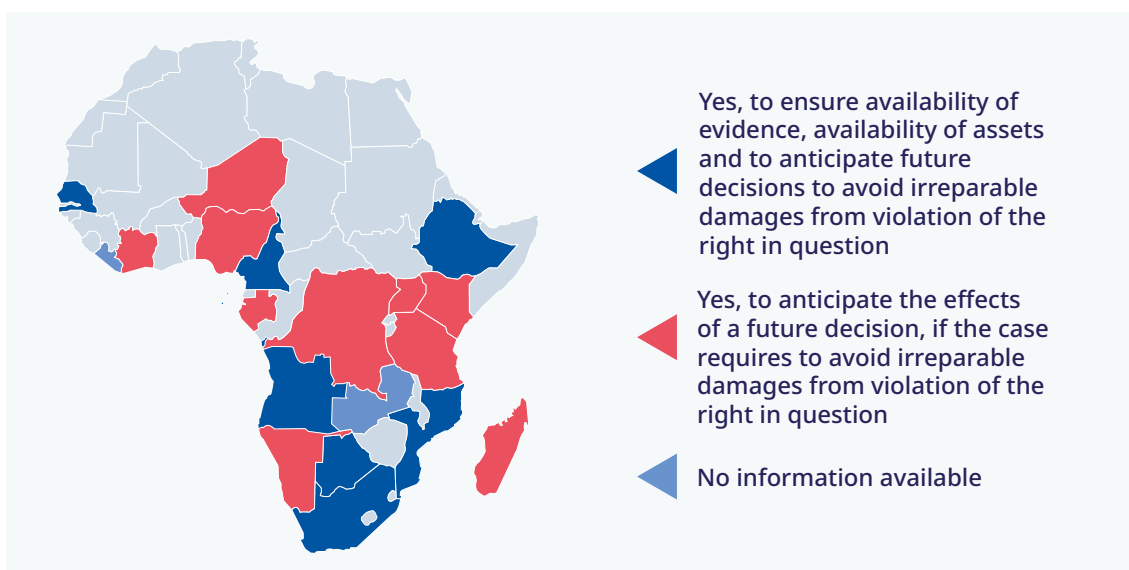
Countries like South Africa and Senegal reported the application of technological tools to enable continuation of labour procedures during the crisis, which might include electronic filing of documents and claims.⁵⁹ On the other hand, in Madagascar no progress has been made in this regard.⁶⁰ Moreover, national procedural regulations examined have made very little progress in respect to technological improvements in administering evidence and documentation or are completely obsolete in this respect.

58 ILO, *Report on rapid assessment survey: The response of labour dispute resolution mechanisms to the COVID-19 Pandemic*. International Labour Organization – ILO, 2021, p. 21-22. Available in https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/labour-law/WCMS_828628/lang-en/index.htm

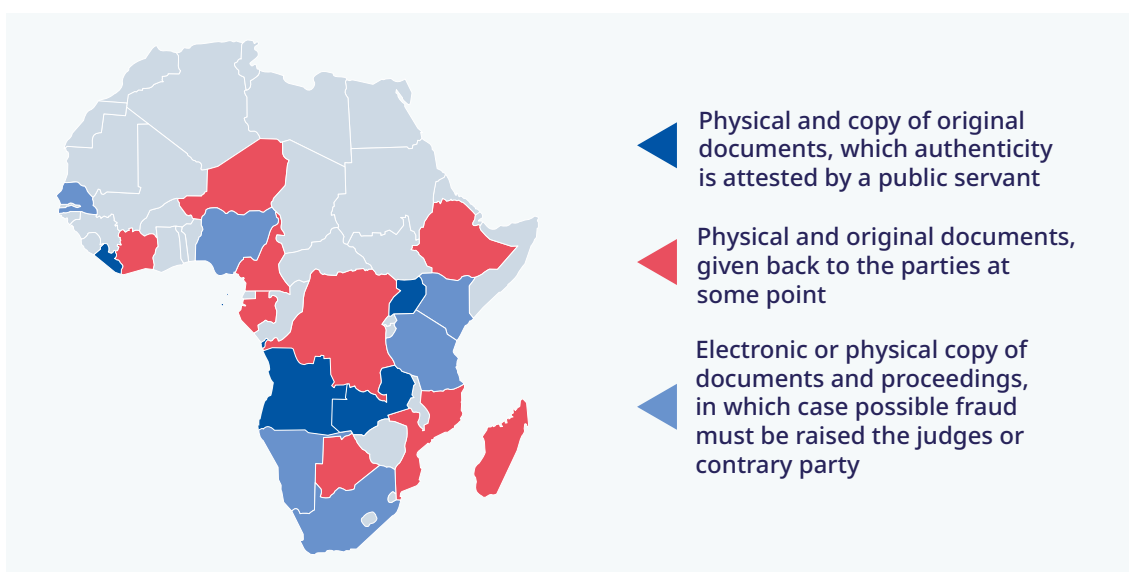
59 ILO, *Report on rapid assessment survey: The response of labour dispute resolution mechanisms to the COVID-19 Pandemic*, p. 21-22.

60 ILO, *Report on rapid assessment survey: The response of labour dispute resolution mechanisms to the COVID-19 Pandemic*, p. 21-22

► Chart 9: Possibility of precautionary measures



► Chart 10: Administration of documents and evidence



Litigants and parties

In countries examined, the range of litigants which may be part of a labour dispute in court rarely varies. In most of countries, workers, employers, public prosecutors, trade unions, third

parties indirectly involved, associations, heirs in case of death of one of the parties, and legal representatives, in case of incapacity of any of the parties, are allowed to take part in the proceedings.

Representation of parties

In respect to legal representation of parties in Court, labour and ordinary courts hearing labour cases have different approaches to admit representation. In individual labour disputes, many of the countries provide regulations admitting self-representation in specific cases. (Chart 11)

Presentation of statement of claims and responses

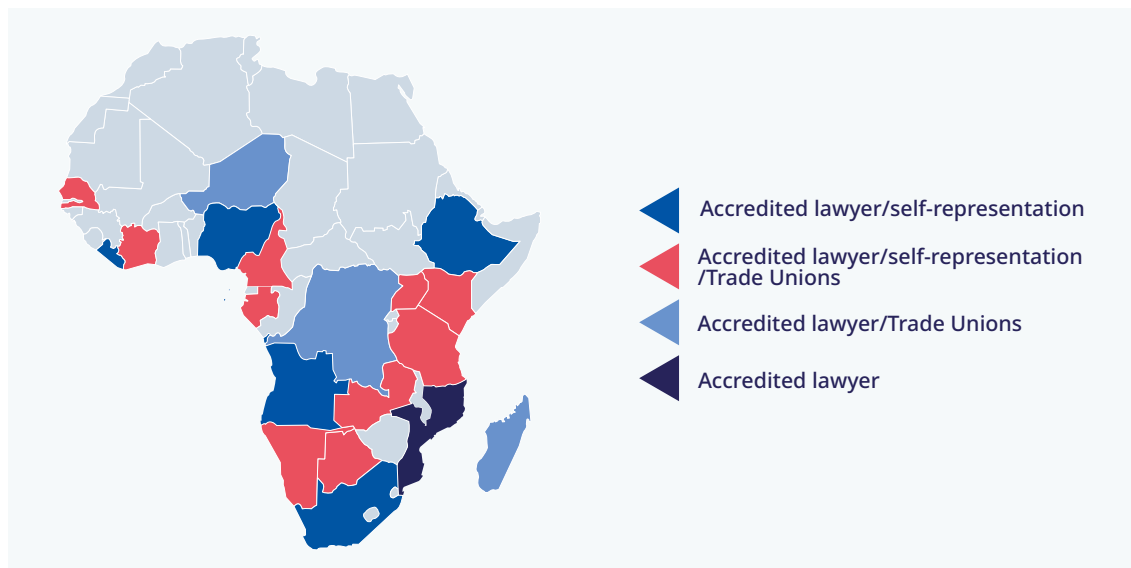
In a number of countries, mandatory attempt to resolve the case through alternative dispute resolution is a pre-judicial step that must be followed by parties before a statement of claim is presented to the respective labour court in first instance.⁶¹ The authority in charge of the resolution of the case through the alternative dispute resolution mechanism may as well refer the case to the court.

In these countries, statement of claims or petitions to commence the judicial case must be accompanied by minutes of previous hearings held and documents related to proceedings carried out during alternative dispute resolution previous steps.

In general, statements of claims might include information about the parties, facts and legal grounds of claims, and evidence that will support the claims or a request to secure or produce evidence for this purpose. In some countries, evidence may be attached in the form of affidavits.⁶² Statement of claims may be brought in written forms or orally.⁶³

In Angola, statements of claim shall be divided in two, the first to give notice of a claim and the second to include the reasons and indicate evidence and documentation to support the case. If the plaintiff does not attach the reasons after the statement of claim, the president of the court may deny continuation of proceedings.⁶⁴

► Chart 11: Representation of parties



61 Examples include Botswana, Cameroon, Congo, Democratic Republic of Congo, Gabon, Senegal, South Africa, and Uganda.

62 Examples include Botswana, Kenya, Namibia, and Nigeria.

63 Specific provisions allowing oral statements of claim are found in Cameroon, Congo, Côte D'Ivoire, Democratic Republic of Congo, Gabon, Liberia, Madagascar, Mozambique, Niger, and Nigeria.

64 Articles 315-317 of Labour Law of Angola (Lei Geral do Trabalho).

In Kenya, a statement of claim filed shall be accompanied by an affidavit verifying the facts relied on.⁶⁵ In Ethiopia, statements of claim must be accompanied by an estimate of the monetary amount involved.⁶⁶

Opposite parties will either be served with the statement of claim or will be called for a first hearing where they can present their arguments and evidence. Parties can be served by the plaintiffs, post office or via bailiffs. Reconventions or counterclaims are allowed in most of the countries examined.⁶⁷

In some countries, when the complexity of the case requires, it is possible to hold a preliminary hearing before the trial of the case, depending on the case, for mediation and conciliation, where partial conciliation is possible.⁶⁸ This hearing may also delimit the facts and legal grounds of the claims and decide on matters related to evidence that needs the assistance of the court.⁶⁹

If the defendant does not appear to the hearing or does not present reasons or defence, judgement in default may be issued in almost all countries examined. In Kenya, the party that does not comply with the pre-trial conference might be prevented to participate in the principal hearing and/or produce evidence afterwards.⁷⁰ In Tanzania, documents not disclosed during the pre-hearing may only be presented afterwards with the grant of the Court.⁷¹

In Nigeria, where a plaintiff believes that there is no defence to the claim, an application for summary judgment supported by an affidavit stating the grounds for the belief shall be filed along with the proceedings.⁷²

In general, amendments to the complaint may be authorised if agreed by the defendant and plurality of claims against the same defendant are allowed in all countries examined, depending on the material jurisdiction of the Court. Parties may also exchange pleas before the trial of the case.

Evidence and arguments phase

After received pleas from parties, documents, and requests to assist with the presentation of further evidence, courts may schedule a hearing to hear and trial the case. Matters that are not controversial or have not been contested might be judged immediately.

Normally, types of evidence admitted include documentary evidence, witnesses, hearings of parties, experts report in the areas of occupational health and safety, accounting, etc. Parties may ask the assistance of the court to produce or secure evidence.

In countries examined, evidence is collected either between the presentation of the statement of claim and the main hearing or between the pre-trial hearing and the main hearing.⁷³ The court may ex officio require production of evidence that understands to be relevant or prescribe the investigations to be made.

In general, witnesses may be cross-examined and recalled. Experts may be appointed by parties or by the court, if understands necessary.

In Democratic Republic of Congo, legislation provide that witnesses are heard separately, in the presence of the parties if they appear. If witnesses are too far away, it may be ordered that they be

65 Sections 1- 5 of Employment and Labour Court Rules, 2016.

66 Article 213-215 of Code of Civil Procedure.

67 Examples include Angola, Botswana, Congo, Gabon, Mozambique, and Niger.

68 Examples include Congo, Democratic Republic of Congo, Ethiopia, Kenya, Mozambique, and Tanzania.

69 In Kenya, the court might as well order acts in relation to production of expert reports and payment of advanced costs.

70 Sections 14-15 of Employment and Labour Court Rules, 2016.

71 Sections 14 of Labour Court Rules, 2007.

72 Sections 16-25 of National Industrial Court Act.

73 Exception to the courts which only hear appeals and reviews from decisions rendered by alternative dispute resolution mechanisms. In this cases, new evidence or arguments are only allowed with express authorization of the court and if deemed relevant to the resolution of the case.

heard by a judge appointed by a court designated for this purpose, at the place, day and time fixed by that court.⁷⁴

In some countries, distance between the courts and the addresses and locations of parties and witnesses is considered to determine dates for hearings and legal deadlines.⁷⁵

Burden of Proof

Burden of proof may also be decided during the previous steps before the main hearing. The rules may vary from country to country, but normally take into consideration the possibility and opportunity of parties to present evidence.

However, it is not very clear in many national legislations which rules labour cases shall follow in this respect, which implies that courts seek guidance in general procedural law and decide with discretion depending upon the opportunity to give evidence. (Chart 12)

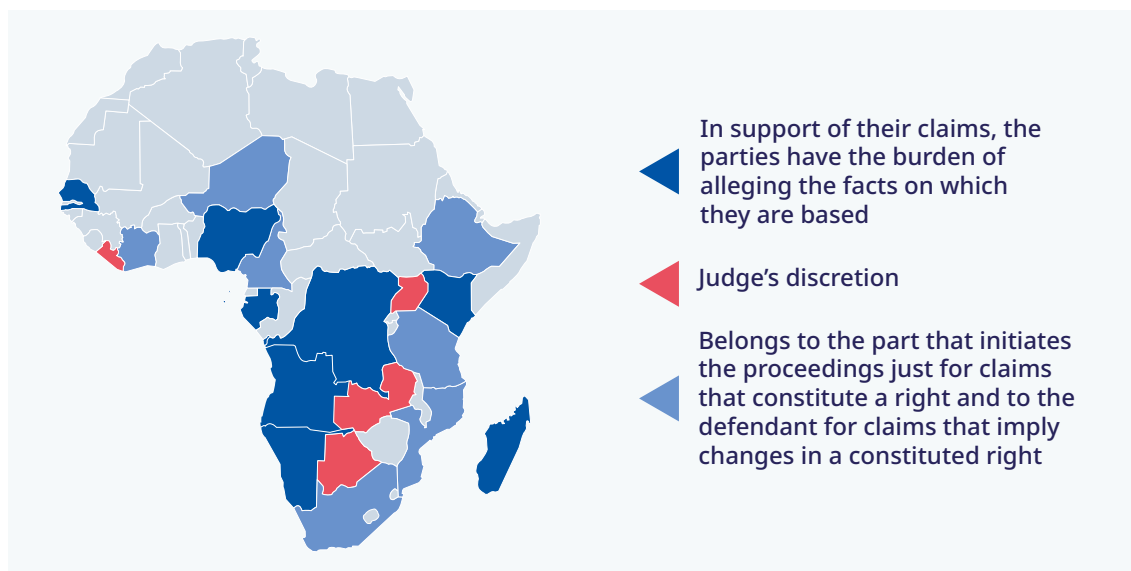
In Botswana, for example, legislation provides that the Court shall not be bound by the rules of evidence or procedure in civil or criminal proceedings and may disregard any technical irregularity which does not and is not likely to result in a miscarriage of justice.⁷⁶ The same applies to Nigeria.⁷⁷

In South Africa, in most of the cases, the burden will be borne by the plaintiff in most of the cases, but in cases involving discrimination and claims of unfair dismissals the burden of proof may shift to the defendant against whom claims of discrimination and unfair dismissals have been made.⁷⁸

Admissibility and presentation of evidence

In respect to admissibility of evidence, all countries examined provide rules conditioned to deadlines for presentation of evidence and lawfulness of different types of evidence presented.

► Chart 12: Rules on distribution of burden of proof



⁷⁴ Article 33 of Code of Civil Procedure.

⁷⁵ Examples include Congo and Democratic Republic of Congo.

⁷⁶ Section 19 of Trade Disputes Act.

⁷⁷ Section 6, Order 4, Rules of National Industrial Court.

⁷⁸ Articles 38 and 39 of Uniform Rules of Courts

Regardless the documentation enclosed with the initial statement of claim and defence and counterclaims presented, parties may request, in general, hearing of parties and witnesses, elaboration of technical reports by experts, judicial inspections and presentation of public and private documents in the possession of a third party.

In all countries, evidence is admissible conditioned by legal deadlines. Lawfulness of evidence produced and judge's discretion are also considered when admitting evidence to a case. In Madagascar⁷⁹, Mozambique⁸⁰ and South Africa⁸¹, accord of parties is also necessary for the evidence to be admissible.

During the main hearing, parties might be obliged to appear. In all countries examined, the absence without valid grounds might lead to disadvantage in weighing the evidence of the case or even to partial or default judgements. Postponements of hearings are allowed, provided that reasonable justifications are presented.

The presiding judges may also determine the order of acts, depending on the complexity of evidence to be produced. Finished the evidence phase and hearing of the case, parties may present final arguments in written forms or oral debates.⁸²

The overview below provides a short description of common procedural measures and acts that might be adopted during first instance procedures in courts hearing labour cases in African countries selected. Important to bear in mind that they may occur in different ways depending on the type of procedure applied to the labour lawsuit.⁸³ Also, the order in which they happen can change from country to country, and, sometimes, depending on the dynamics of the case itself and under the discretion of some courts.⁸⁴

That said, main steps in first instance may consider: presentation of the statement of claim, notification of opposite parties, preliminary hearings to attempt conciliation, collection and production of evidence, main hearings (when also evidence can be collected, such as witnesses and parties' testimonials), judgement and notification of the decision, and amendments to the final decision in specific circumstances under first instance jurisdiction. The overview considers judicial proceedings in first instance, where a binding decision is rendered for the first time in respect to a case.

Preliminary measures or injunctions, although in many cases they serve to guarantee or secure presentation of evidence in advance, may happen in a separate proceeding before or during the main case, on provisional basis. They may also be requested in different instances and the way they are operationalized differ from country to country. For these reasons, they will not be considered to be part of the following steps.

Judgement phase

Concluded evidence phase, parties may have the opportunity to present final considerations orally or in writing, depending on the discretion of the presiding court.

The court will render a judgement, either in panel or by a single judge. Judgements may be rendered in total or partially at the end of the main hearing or within a reasonable deadline after that, when parties shall be notified.

Usually, non-professional judges forming the panel are allowed to vote and be part of the judgement. In Democratic Republic of Congo, during the deliberation, they have the right to vote and the decisions are taken by a majority

79 Articles 9-17 Code of Civil Procedure.

80 Articles 438 and 517 of Code of Civil Procedure.

81 Articles 5 and 6 (9) and (10) of Employment and Labour Court Rules, 2016.

82 Examples include Botswana, Cameroon, Côte D'Ivoire, and Kenya.

83 In some countries, depending on the amount involved, if the claims are monetary, or nature of the claim, the proceedings may follow a faster or detailed (ordinary) procedures, which may affect the occurrence of certain acts. For the purpose of this report, only ordinary procedures were considered.

84 Different stages of hearings or exchange of arguments may follow the principle of orality, which may change the order of acts or length of proceedings. In countries which follow only or mainly labour procedural rules, proceedings tend to be less complex than in countries where labour cases are heard under general procedural rules.

of votes. However, if more than two opinions are formed, the least senior non-professional judge (called judge-assessor) is obliged to agree with the opinion of the President.⁸⁵

Decisions may comprise merit decisions to decide on inexistence of a right, a credit or relationship. However, national legislations examined bring very few details in respect to the extension of decisions rendered.

In Kenya, the court can grant conservatory, declaratory, injunction, compelling and compensation orders.⁸⁶

Recourses and appeals against final decisions might attack all aspects of the merits (facts and legal grounds) or might be limited only to points of law and specific grounds provided by the law. All countries examined provide possibility of fully appealing against first instance decisions, even if with limitations.⁸⁷ Small clerical mistakes may be corrected by the court that rendered the judgement ex officio or upon the request of parties.

(Figure 3)

Recourses and appeals to higher instances

The examined systems may accept more than one type of recourse against decisions rendered during the proceedings. There have been observed recourses against final decisions, which may attack merits, points of law or seek annulment of decisions. Possibility to present recourses against interlocutory decisions is not sufficiently clear in the countries examined in respect to labour cases.

Recourses may also vary from country to country. However, for the purposes of this report, proceedings in second instance will be considered in respect to recourses or appeals which attack the merits of the case, even if the name of the recourse is not necessarily appeal. Recourses and reviews to Labour Courts against awards and decisions originated in first instance by alternative labour disputes resolution mechanisms are also included.

All countries provide possibility to re-examination labour cases. However, in many cases, it is necessary to grant a leave to present a recourse or the grounds to do it are limited.

In Nigeria, according to Section 9 of the National Industrial Court Act appeals are only allowed if involving questions of constitutional and fundamental right. In Botswana, only if a question arises as to the interpretation of a decision, or as to a decision being inconsistent with any written law.⁸⁸

In Madagascar, the Labour Court rules in the first and last instance, except for the question of jurisdiction, when the amount of the claim does not exceed a monetary threshold.⁸⁹ The same applies to Senegal⁹⁰ and Gabon⁹¹.

The presentation of recourses against decisions on the merits of the case may have court fees or, in cases of decisions determining payment of sums in monetary claims, demand a deposit of an amount which may be converted in payment in case the decision stands.⁹² Some countries provide for different recourses to challenge judgments in default.⁹³

85 Articles 25 et seq of Law on the establishment, organisation, and operation of labour courts, 2002.

86 Article 12 (3) of Employment and Labour Court Act.

87 For example, in Cameroon it is not possible to present a recourse against decisions involving work certificates and pay slips (Article 152 of Labour Code).

88 Sections 26-29 of Trade Disputes Act and Rules of Court of Appeal of Botswana (see more in <https://www.justice.gov.bw/services/about-court-appeal>).

89 Sections 16 and 17 of Labour Procedures Ordinance.

90 Articles 260-265 of Labour Code of Senegal.

91 Article 373, Section 5, of Labour Code of Gabon.

92 Examples include Congo and Madagascar.

93 Examples include Côte D'Ivoire, Democratic Republic of Congo, Ethiopia, Gabon, Madagascar and Niger.

► **Figure 3: Overview of main steps of procedures in first instance**

General overview of first instances phases
<p>Representation: Parties may be self-represented, represented by accredited lawyers or authorized representatives (such as Trade Unions or Employers and Employees 'Organizations).</p>
<p>Parties: Workers, employers, trade unions, third parties indirectly involved, and legal representatives, in case of incapacity of any of the parties, may take part in the proceedings.</p>
<p>Admissibility of the claim and responses: Statement of claims may be presented by parties or referred by authorities in charge of alternative labour dispute resolution mechanisms (such as Labour Commissioners, Labour Inspection). Parties are notified of the presentation of the claim and defendants have the opportunity to present defences and counterclaims. Defendants may be notified by the plaintiff or via bailiffs and regular post service.</p>
<p>Initial evaluation of the cases and delimitation of facts and legal grounds: After received pleas from parties, documents, and requests to assist with the presentation of further evidence, the Courts may: i) decide on a preliminary hearing to attempt conciliation between parties, ii) delimit the facts and legal grounds of the claims, iii) distribute the burden of proof, and iv) determine admissibility of evidence and production of evidence. Partial conciliation or default judgements are possible.</p>
<p>6. Evidence: Preparation of case. Procedures in respect to summoning of experts and witnesses are likely to take place during this phase, although in some countries they happen during the initial phase. Determination of judicial inspections and expert reports may take place and hearings may be postponed. Authenticity or validity of evidence may be argued in written pleas.</p>
<p>Hearing of the case (main hearing): Parties summoned to attend the hearing might only be absent in specific cases. The absence without justification might cause the disregard of the party's arguments related to facts. New attempt of conciliation. Evidence produced is examined. Parties and witnesses, including experts, may be heard. This may happen in separate hearings. Witnesses may be recalled.</p>
<p>Final arguments and judgement: Concluded evidence examination, parties may present their final arguments in some countries. The Court may retire itself to discuss the case (in case of panel) and render the decision on the merits, in which case parties are notified immediately. Decisions may also be rendered after the hearing, within a deadline, and parties notified.</p>
<p>Presentation of recourses: The decision might also establish the possibility of recourses, if allowed by the law. Recourses might be presented by the interested parties at first instance or directly to higher instances. Payment of court fees or deposits to present recourses may be required.</p>

The appeal or respective recourse might be presented to the same Court which rendered the decision or directly to the next instance. If presented to the Court the rendered the decision, its admissibility will be assessed in first instance.

Regardless of in which court the recourse is lodged, the opposite parties must be notified by the Court to present a response or to join the appeal with a counter-appeal, in case there is interest. If received by the first instance, proceedings must be sent to immediate Higher Instance.

The recipient Court can also decide on the ready effectiveness of the appealed decision, meaning that its effects may be suspended in total or partially depending on the content of the recourse. In most of the countries examined, recourses do not suspend the enforcement of the last decision standing or depending upon a judicial decision in this regard.

The Court of Appeals⁹⁴ may be a specialised labour court of appeal, or an ordinary Court of Appeal which may hear labour cases in chambers that can be specialized in labour or social matters.

94 Or immediate higher instance competent to hear the recourse.

Recourses from the Industrial Court of Botswana are sent directly to the Highest Court of Appeal⁹⁵, that hears and determines appeals second and final instance with respect to labour cases.⁹⁶

The same happens in Angola, where recourses are directed to the Supreme Court and distributed to its respective labour chamber.⁹⁷ In South Africa, recourses are sent to the Labour Appeal Court.⁹⁸ In other countries examined, in the absence of specialized courts or chambers in second instance, recourses follow civil procedural rules.

Below there is an overview of the main common steps of presentation of appeals in these different appealing jurisdictions. (Figure 4)

Supreme Court Phase

In a number of countries⁹⁹, a Supreme or Superior Court is the highest instance in the judiciary to hear recourses in labour related cases, including many in respect for constitutional matters. In most of the times, labour cases do not go that far due to the limitations to further discuss evidence and facts. In countries in which Constitutional Courts are established, their functions are often limited to conformity of treaties, laws, ordinances and autonomous regulations with the Constitution.

In Democratic Republic of Congo, a recourse to the Supreme Court may only be based on only on one of the following grounds: violation of the essential procedural requirements, lack, insufficiency or contradiction of reasons; violation of the law or custom applicable to the dispute;

► Figure 4: Overview of main steps of procedures in higher instances

Overview of main steps of presentation of recourses and appeals against final decisions of first instance.

Presentation of recourse and responses: The notice of recourse and its reasons might be presented before the Court which rendered the appealed decision or directly to the Registrar of the higher instance where the recourse shall be heard. In either case, the opposite party shall be summoned to present a response to the recourse or/and a joint recourse.

Distribution of the recourse in higher instance: The procedures of recourse are directed to a panel or chamber of the respective Court of Appeal/Higher Instance, in which it might be assigned to a judge Rapporteur, who will make report about the case to be examined by the Panel. The Public Prosecutor's Office may be summoned to take part in the proceedings or to present its opinion in respect to the case (this is particularly the case of Angola and Mozambique).

Re-examination of the case: Parties may have the opportunity to present their arguments in written form before the trial. New evidence or evidence may or may not be admitted, depending on its relevance. The Court may also conduct its own investigation. Parties may be summoned to a hearing, in which the case will be examined.

Hearing and Judgement: The Court examines the first-instance judgment within the limits of the grounds specified in the recourse. During the hearing, parties may be heard, as well as new evidence may be examined. The Court decides about the merits of the recourse in a panel and the decision is rendered according to the majority. Decisions may comprise: i) reform of the previous decision; ii) annulment of the decision and replacement with a new one; iii) annulment of the decision and determination of a new trial in first instance. Votes in contrary may be part of the final judgement.

95 Order 6, Rules of High Court. More information available in <https://www.justice.gov.bw/services/appealing-cases-high-court-and-industrial-court>

96 See more in <https://www.justice.gov.bw/services/about-court-appeal>

97 Articles 700 to 720 of Code of Civil Procedures.

98 Section 5 of the Labour Appeal Court Rules.

99 Examples include Cameroon, Congo, Democratic Republic of Congo, Gabon, Côte D'Ivoire, Madagascar and Nigeria.

or contradiction between two final decisions.¹⁰⁰ In Gabon, only recourses on point of law are allowed.¹⁰¹ Same applies to Mozambique.¹⁰² In South Africa, there is a possibility of further appeal to the Constitutional Court if constitutional matters are involved in the labour cases.¹⁰³

Proceedings at the Supreme Courts are remarkably similar to proceedings carried out by second instance courts, particularly concerning the appointment of a panel of judges and few possibilities to present recourses, due to more strict requirements to be met. In most cases, only matters on point of law can be re-examined at this stage. As well, court fees may apply to present a recourse.¹⁰⁴ Some formalities, however, differ from country to country. (Figure 5)

Enforcement phase

Final decisions might be enforceable immediately according to express statutory provisions, regardless of presentation of recourses. Examples include Cameroon¹⁰⁵ and Congo¹⁰⁶. In Cameroon, the judgment may order immediate enforcement notwithstanding any opposition or appeal, and provision with exemption from security up to a sum to be fixed by regulation.

In the Democratic Republic of Congo, opposition and recourses suspend enforcement if the judgment does not pronounce provisional execution.¹⁰⁷ In Ethiopia, the suspension of the execution might require a deposit in guarantee.¹⁰⁸

► Figure 5: Overview of main steps of procedures in Superior instances

Overview of main steps of presentation of recourses to Superior instances

Presentation of recourse and responses: The notice of recourse and its reasons might be presented before the Court which rendered the appealed decision or directly to the Registrar of the Supreme Court where the recourse shall be heard. In either case, the opposite party shall be summoned to present a response to the recourse. Incidental or joint recourses are rarely allowed.

Distribution of the recourse in higher instance: The procedures of recourse are directed to a panel or chamber of the respective Supreme Court, in which it will be assigned to a judge Rapporteur, who will make report about the case to be examined by the Panel. The Public Prosecutor's Office may be summoned to take part in the proceedings or to present its opinion in respect to the case (this is particularly the case of Cameroon, Gabon, Côte D'Ivoire, Madagascar and Niger).

Examination of reasons of the recourse: Parties may have the opportunity to present their arguments in written form before the trial, although this is not common. New evidence or evidence rejected by the previous instance is generally rejected, except when in support of the allegations related to violation of specific point of the allegations of the recourse. Parties may be summoned to a hearing, in which the case will be examined. A panel, with 3 or more judges will analyse the case. Parties may be summoned to appear in the trial hearing.

Judgement: Decision may i) Adopt a resolution to dismiss the recourse and leave the decision unchanged; ii) Adopt a resolution on full or partial cancellation of the decision and refer the case for new proceedings to trial or appeal; iii) Adopt a resolution to abolish the decision and keep in force a judicial court of first instance that was standing before; iv) abolish judicial decisions and to close the proceedings in the case or leave the application without consideration; v) Reverse and adopt a new decision or change the decision.

100 Articles 97 - 132 of Code of Civil Procedure.

101 Articles 545-548 of Code of Civil Procedure.

102 Article 729 of Code of Civil Procedure (*Recurso de Revista*).

103 Sections 23, 166 (i) and (ii), Constitution of South Africa.

104 In Congo, the applicant must deposit at the Registry of the Supreme Court a sum of 10,000 francs (equivalent to USD 5). If the appeal is rejected this sum shall be automatically acquired by the Treasury as a fine unless the Supreme Court expressly decides otherwise.

105 Article 146 of Labour Code and Article 68 of Code of Civil Procedure.

106 Article 232 of Labour Code and Articles 58, 59 and Article 112 of Code of Civil Procedure.

107 Articles 64 and 74 of Code of Civil Procedure.

108 Articles 332 – 336 of Code of Civil Procedure.

In Gabon, provisional execution, notwithstanding any means of appeal and exemption from security, is allowed when the sums in question are not contested and undisputed and recognised as being due.¹⁰⁹ The same applied to Côte D'Ivoire.¹¹⁰

In Senegal, the judgment may order immediate enforcement, notwithstanding opposition or appeal and with no guarantee, up to a sum not exceeding twenty times the monthly amount of the interprofessional minimum wage. Limitation is not considered in the case of wages which have not been established and which are recognised as being due.¹¹¹

In most of the countries examined, enforcement proceedings are either regulated by specific legislation or be complemented by the general civil procedures. However, national regulations examined not always provide extensive detail in respect to these proceedings applied in labour cases.

In all countries examined, legislation provide for the possibility of seizure of assets in case of enforcement in respect to monetary claims. Although it is common for enforcement to be carried out by the court that rendered the first decision at judicial level, it can be sent to another court when the debtor has more conditions to comply with the decision, such as where the debtor resides, carries on business, or have sufficient assets to guarantee the payment.¹¹²

In general, enforcement proceedings are carried out by bailiffs, sheriffs or by the winning party directly.

Enforcement may be initiated upon a request of the interested party to the court registry¹¹³ or ex officio by the court. The competent court will, upon the request and with the presentation of proof of the last decision standing, as well as

of indication of means to promote the execution against the debtor (such as indication of assets, properties, addresses, etc), issue an enforcement order. Where the claim for which permission to garnish is sought is not liquid, the provisional assessment is made by the judge or by the party.¹¹⁴

Debtors may present measures to contest the execution, but most of them are only accepted if specific requirements are met. If no opposition is presented and the debtor does not comply with the obligation voluntarily, enforcement measures may be taken, such as seizure of assets and restriction of rights. Although the opposition to the enforcement proceedings seems to be allowed in some countries¹¹⁵, its presentation and terms are not always very clear in national legislations examined. (Figure 6)

In terms of assets which can be attached, most of the countries have express provisions in this regard, authorizing seizure of movable and immovable assets to enable the payment of monetary claims.

Possibility of Conciliation/ Mediation/Arbitration during the Proceedings

In all countries examined, courts may refer cases to alternative disputes resolution solutions during judicial proceedings. Ratification of the Court may be mandatory in case agreements are reached after decisions on the merit have been rendered or are under recourse. (Chart 13)

In respect to the possibility of conciliation during the proceedings, it is worth to mention that Congo¹¹⁶ and Senegal¹¹⁷ provide express

109 Article 372 of Labour Code and Articles 389 - 460 of Code of Civil Procedure.

110 Article 81.27 of Labour Code.

111 Article 270 of Labour Code.

112 Examples include Congo, Democratic Republic of Congo, Ethiopia, and Kenya.

113 In a number of countries, this request is called *formule exécutoire*.

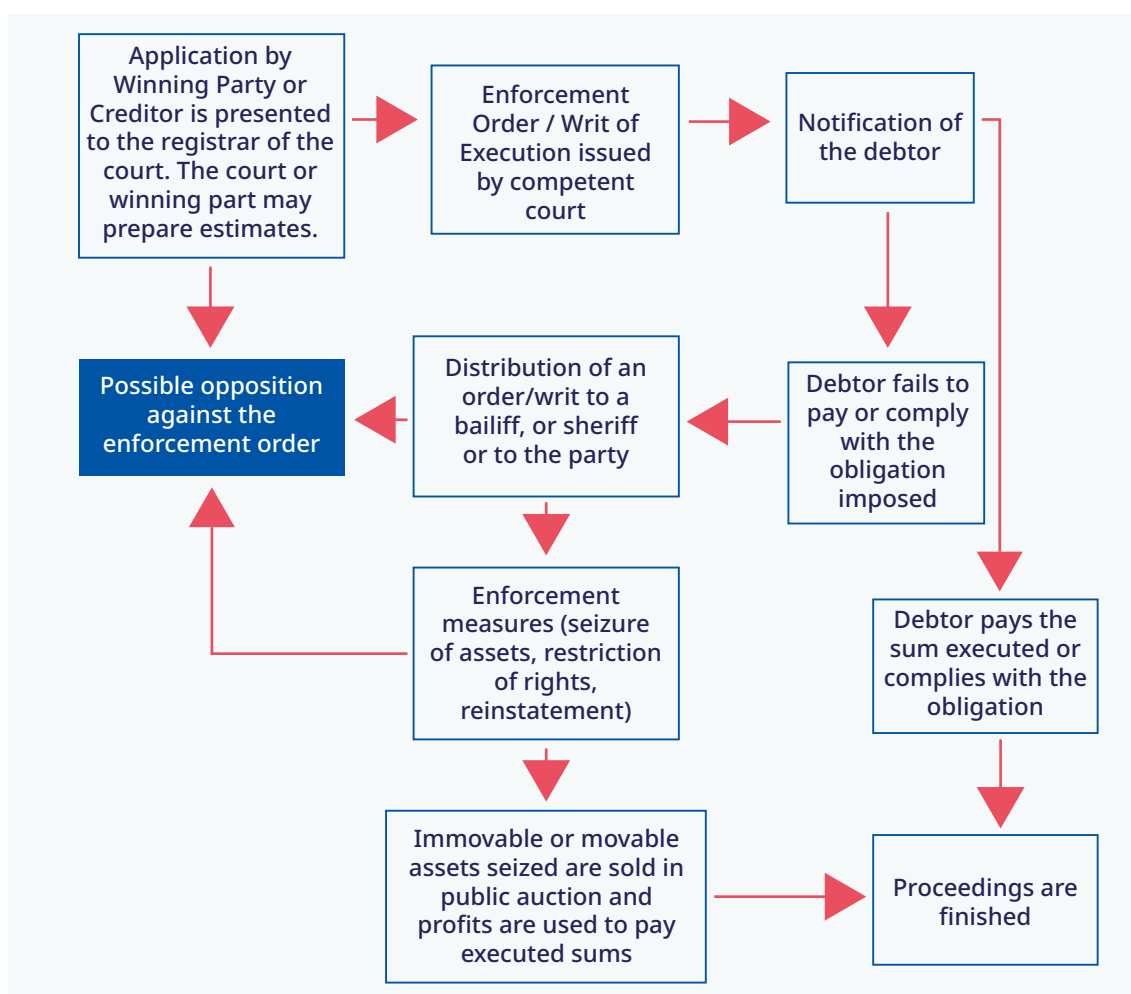
114 Examples include Côte D'Ivoire, Democratic Republic of Congo, Mozambique, and Niger.

115 Examples include Angola and Mozambique.

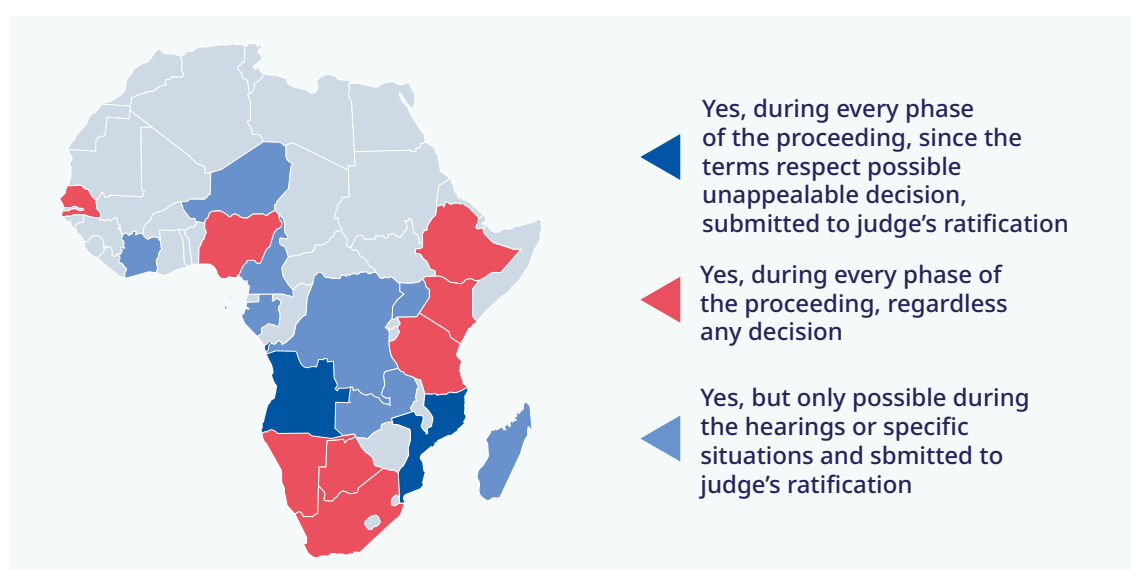
116 Article 234 of Labour Code.

117 Article 240 of Labour Code.

► Figure 6: Enforcement phase scheme



► Chart 13: Alternative dispute resolution of labour cases during the judicial proceedings



authorization for married female workers to settle agreements (as well as to fill a claim and defend themselves) without the authorization of a husband.

Procedural phases

Depending on the judicial tiers established in a country and the possibilities of review of final decisions set forth in the procedural law, the number of procedural phases may drastically vary from country to country. Most of the countries examined have normally 4 procedural phases: i) first instance; ii) second instance (appeal); iii) third instance (Supreme or Superior Court); and iv) enforcement phase.

However, due to limitation of presentation of appeals in some countries or considering that in some countries labour courts handle cases on the basis of referral, this may vary. **(Chart 14)**

The number of recourses provided by the national legislation impact direct in the number of procedural phases. In some countries examined,

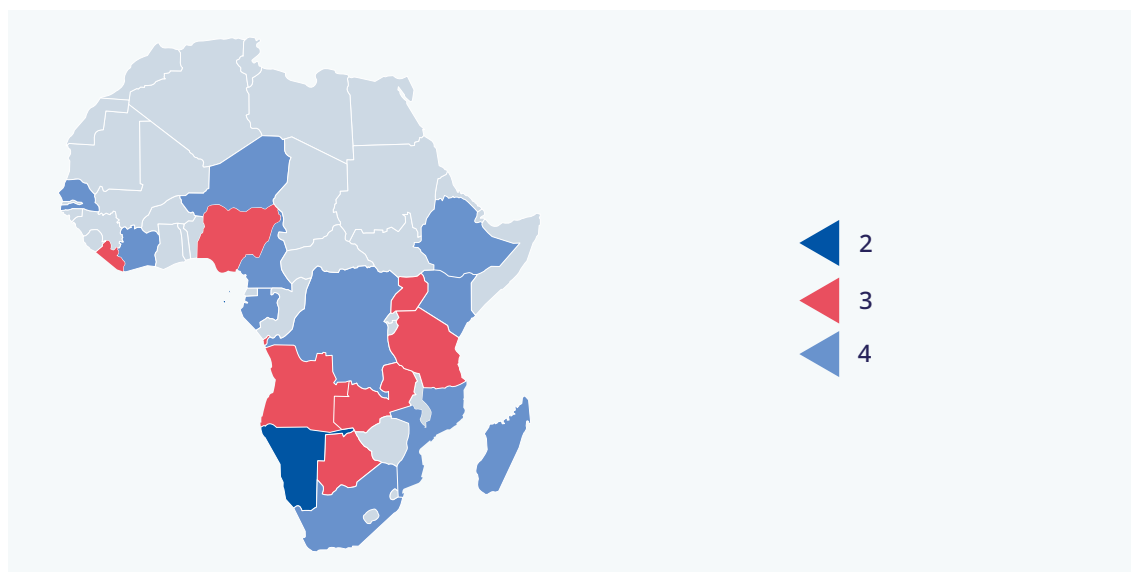
it is possible to present appeals against interlocutory.¹¹⁸ Other recourses are allowed to attack the merits of the case, points of interpretation of the law, review of a case that already exhausted all other recourses.

Recourses during enforcement phase and specific recourses reconsider decisions that cannot be ordinarily appealed are allowed in a number of countries, but it is not very clear in national legislations examined the extension to which they can be applied to labour cases.

In Mozambique, according to the article 676 of Code of Civil Procedure, appeal, review, grievance and recourse to the plenary of the Supreme Court are considered ordinary recourses, and the review, opposition by third parties and the suspension of execution and annulment of manifestly unjust or illegal sentences are considered extraordinary recourses. **(Chart 15)**

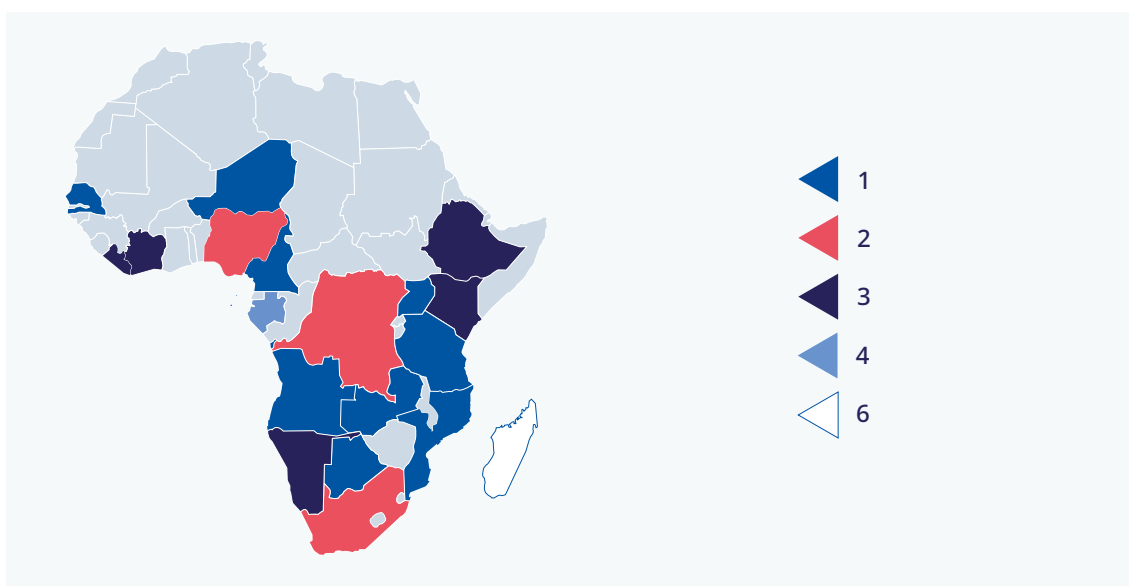
In most countries, however, to decisions rendered in labour cases only recourses on the merits of the case (such as appeal and cassation), oppositions and reviews are allowed.

► **Chart 14: Number of procedural phases**



118 Examples include Angola and Mozambique.

► Chart 15: Possible recourses to present in a labour procedure



Average duration of procedures

There is little official information or few statistics on average duration of procedures in courts hearing labour cases in African countries. Although there are few statutory provisions in respect to length of trial, no official statistical information is available.

In Botswana, official information states that cases must be resolved in 6 months in first instance

in case of default judgments, but no provision in respect to general cases were found.¹¹⁹ In Congo, the expected statutory length of trial is 60 days.¹²⁰ The same statutory provision is present in Ethiopian legislation.¹²¹ In Côte D'Ivoire, this deadline falls to one month.

In Namibia, statutory provisions determine that applications to the Labour Court must be concluded within 90 days.¹²²

119 See more in <https://www.gov.bw/industrial-court/case-referral-court>

120 Article 238 of Labour Code.

121 Article 138 (2) of Code of Civil Procedure.

122 Article 17 (25) of Rules of Labour Courts.

► Operation & Practice

Average distribution of courts

There is little official information and no statistical data on distribution of courts hearing labour cases in African countries. This information does not seem to be available or updated in several countries' official websites. In countries such as Uganda, Zambia, Liberia and Botswana, only one labour court is available. In Namibia, there are 2 labour divisions inside de 2 high courts.

Professional Judges per 100.000 people

Similar difficulties are found in respect to statistics on the availability of judges to hear labour cases. Most of labour and ordinary courts do not provide information on how many judges, professional and non-professional, are available per 100,000 habitants only for labour cases.

In Kenya, official reports state that there are 11 judges hearing labour cases at the Employment and Labour Relations Court.¹²³

¹²³ State of the judiciary and the administration of justice annual report 2019 – 2020. Available in <https://www.judiciary.go.ke/download/state-of-the-judiciary-and-the-administration-of-justice-annual-report-2019-2020/>

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