

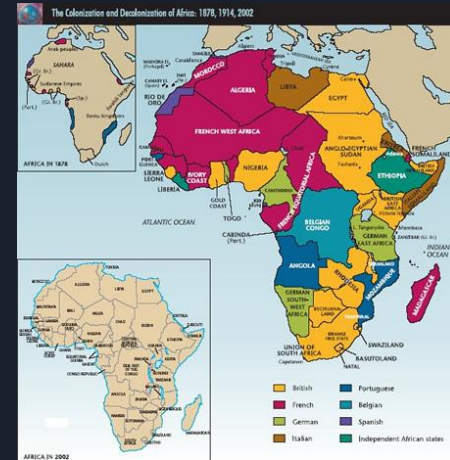


Establishing an Integrated Judiciary to Facilitate the African Continental Free Trade Area

Ansel Brown

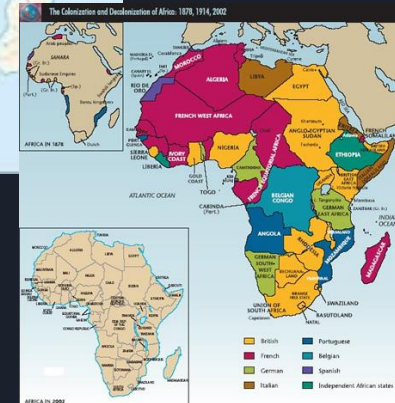
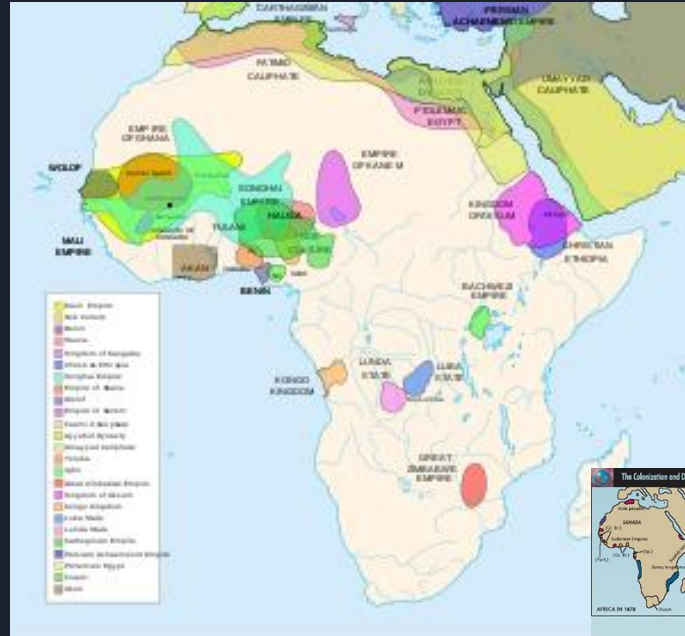
Africa, the Global Economy, and Justice

- 40% of Sub-Saharan Africans live in extreme poverty, more than half of the worldwide total living in extreme poverty.
- GDP per capita in Africa is 10% that of GDP per capita worldwide.
- GDP per capita in Sub-Sahara Africa only \$1,700 USD compared to nearly \$55,000 per capita GDP within European Union.
- 86% of the countries with low human development in the world are in continent of Africa.
- Average life expectancy in Sub-Sahara Africa is only 62 years, compared to hefty 80 years for a person living in Europe.
- ***BUT: Some of the world's fastest growing economies are in Africa!***



Pre-Colonial Africa

- UN Report: 17% of total African trade was within the continent, compared with 68% intracontinental in Europe and 59% in Asia.
- African Sahel: Songhai & Kanem empires
- Central Africa: Kongo & Lunda kingdoms
- East Africa: Bantu-Swahili & Kitaru states
- Horn of Africa: Axum & Somali dominions
- North Africa: Egyptian & Moorish kingdoms
- Southern Africa: Zimbabwe & Nguni kingdoms
- West Africa: Ashanti & Yoruba kingdoms



African Continental Free Trade Area (AfCFTA): Dispute Resolution Mechanisms

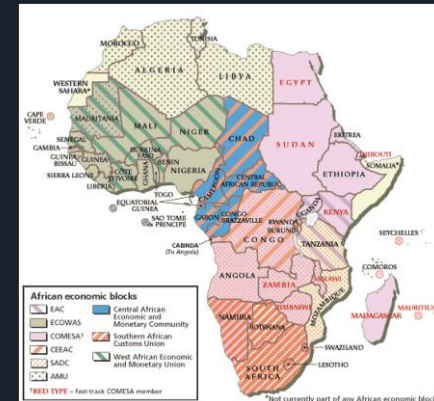
- AfCFTA went into force on May 30, 2019
- Protocol on Rules and Procedures on the Settlement of Disputes
 - State relief only, no “private” causes of action
 - Cumbersome and protracted processes
 - State consent to “recommendations”
 - No judicial enforcement of “reports”
 - Only retracting trade concessions, voluntary compensation

“a continental market with the free movement of persons, capital, goods and services . . . [is] crucial for deepening economic integration, and promoting agricultural development, food security, industrialisation and structural economic transformation . . .”



Patchwork of African Regional Judiciaries

- African Court of Human and Peoples' Rights
(only human rights, limited personal jurisdiction / private action)
- Common Market of Eastern and Southern Africa Court of Justice
(primarily treaty interpretation, no direct effect in national law)
- East African Court of Justice
(primarily treaty interpretation, no direct effect in national law)
- Economic Community of West African States Court of Justice
(lacks original and appellate courts, no direct effect or supremacy)



Models of Regional Judicial Integration

- Court of Justice of the European Union
 - EU treaty interpretation and direct effects
- Caribbean Court of Justice
 - Private standing where government inaction or consent
- United States Courts
 - Diversity jurisdiction, regional appellate circuits



Proposal for an Integrated African Judiciary



- Seven Regional Courts:
 - Jurisdiction in cases appealed from the national courts where parties are from different states
 - Jurisdiction in cases where regional entities are parties
 - Supremacy in interpreting regional community law
 - National courts give direct effect to community law
- African High Court:
 - Limited jurisdiction to hear appeals from regional courts involving the interpretation of AU treaties and acts
 - Regional courts have the first option to bring such cases before the continental court

