African Constitutionalism Beyond Reception

Translation, Circulation, Feedback and Decolonisation

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African constitutionalism is often approached through the language of reception. International human rights standards are incorporated into constitutions, treaties are given domestic effect, courts draw upon international jurisprudence, and regional instruments adapt international commitments to African contexts. Yet this perspective leaves a fundamental question unresolved: What happens to the legal meaning of an international norm when it is interpreted and applied within an African constitutional or regional order?

This post argues that African constitutionalism should be understood not simply as a practice of reception, but also as a practice of legal translation. International norms, understood here as norms embodied in, or derived from, positive international law, including treaty obligations, internationally recognised rights, and rules and principles of international law, are therefore not treated as abstract claims of universal validity. Rather, the argument concerns how legally recognised norms acquire meaning through their interpretation and application across different legal orders. Legal translation denotes the process through which an international norm acquires a distinct juridical meaning when situated within another normative and institutional environment. The focus thus shifts from the movement of norms across legal systems to the transformation of their meaning through that movement. As such, reception concerns entry, whereas translation concerns reconstruction, circulation concerns the movement of a reconstructed meaning, and feedback concerns the circumstances in which that meaning subsequently acquires legal significance beyond its original setting. Decolonisation gives this process its epistemic dimension by asking who is recognised as capable of producing legal meaning.

Reception is Not Translation

The movement of norms across legal orders has long been examined through concepts such as legal transplants, vernacularisation, localisation, and norm diffusion.[1] These approaches demonstrate that norms do not necessarily travel unchanged. Legal translation builds on this insight but places particular emphasis on their juridical reconstruction. A norm may be formally received while the relationships, assumptions, and legal consequences through which it operates are reconfigured in its new setting. Translation is therefore distinct from reception, asking not simply whether a norm has entered a legal order, but what legal meaning it acquires there.

In the African context, this process can be observed at two interconnected levels. Constitutional translation occurs when international norms are interpreted through constitutional texts, principles, institutions, and domestic adjudication. Regional translation occurs when African regional institutions situate internationally recognised rights and obligations within distinctive regional frameworks and forms of legal reasoning. African legal orders consequently become not only sites of implementation but also sites of juridical meaning-making.

From Reception to Translation

African constitutions establish different institutional pathways through which international law enters constitutional reasoning. For example, Article 2(5) of

[1] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (University of Georgia Press, 2nd ed., 1993); Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, American Anthropologist, 108 (2006), DOI: 10.1525/aa.2006.108.1.38; Amitav Acharya, *How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism*, International Organization, 58 (2004), DOI: 10.1017/S0020818304582024.

the Constitution of Kenya provides that the general rules of international law form part of Kenyan law, while Article 2(6) gives ratified treaties and conventions domestic status. The Constitution of South Africa adopts a different approach, with section 39(1)(b) requiring courts to consider international law in interpreting the Bill of Rights, while section 233 directs courts interpreting legislation to prefer interpretations consistent with international law. Such provisions do more than determine the domestic status of international law; they create institutional conditions in which international norms can acquire constitutional meaning.

South African jurisprudence illustrates this process through the use of *ubuntu*. For example, in *Dikoko v Mokhatla*, the Constitutional Court connected the concept with human dignity guaranteed by the South African Constitution but also recognised as a human right in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).[2] *Ubuntu* thus operates not merely as a cultural reference but as a resource for constitutional reasoning. Its significance lies in the way it participates in determining the relationships among constitutional values, including dignity and the interests of communities affected by the exercise of property rights. The point is not that *ubuntu* itself constitutes or replaces an international norm. Rather, an African normative resource participates in the constitutional interpretation through which internationally recognised rights acquire concrete juridical meaning within a particular legal order.

A similar process can be observed at the regional level. While the rights to property (article 17 UDHR), health (articles 1 and 12 of the International Covenant on Economic, Social and Cultural Rights) and the "right of peoples to dispose of their wealth" (article 1 of the ICCPR) are firmly anchored in international human rights law, their corresponding provisions in the African Charter, the African Commission treats these rights not merely as separate guarantees. For example, in *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights v Nigeria*, the Commission interpreted them in an interconnected manner in assessing the environmental destruction in the Niger Delta of southern Nigeria.[3] Environmental harm was therefore understood through its cumulative and communal effects on a broader constellation of individual and collective rights. This approach was not a practice of mere compliance, nor did the Commission create new rights. Instead, it transcended international fragmentation by establishing a specific, relational framework between environmental protection, health, property, natural resources, and collective interests. Ultimately, *SERAC* demonstrates how an African regional institution can give concrete, autonomous juridical content to universally recognised human rights through an interpretation shaped by the specific institutional and normative context of the African Charter.

The *Endorois* and *Ogiek* jurisprudence develops this relational approach further. In *Enorois*, the Commission addressed the relationship between land, culture, property, development, and community rights. Rather than treating these rights as separate guarantees, the Commission examined the community's displacement from its ancestral land through their combined effects on cultural identity, property, development, and access to resources.[4] The African Court's *Ogiek* judgment likewise connected land, culture, natural resources, and collective interests, treating the protection of the community's ancestral territory as closely connected to the preservation of its cultural and collective life.[5] These cases illustrate legal transla-

[2] Constitutional Court of South Africa, *Dikoko v Mokhatla* (CCT 62/05), 26.5.2006.

[3] African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* (Communication No. 155/96), 27.10.2001, https://www.refworld.org/jurisprudence/caselaw/achpr/2001/149449, last accessed 28.9.2026.

[4] African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (Communication No. 276/03), 4.2.2010, https://www.refworld.org/jurisprudence/caselaw/achpr/2010/71724, last accessed: 28.9.2026.

[5] African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v Republic of Kenya (Ogiek)* (Application No. 006/2012), 26.5.2017.

tion not simply because African institutions applied internationally recognised rights, but because they articulated their juridical significance through relationships among individual, collective, cultural, developmental, and land-related interests. The relevant rights were therefore not merely reproduced in their abstract for their application was reconstructed through the particular normative and institutional configuration of the African regional human rights system.

From Translation to Circulation and Feedback

Translation does not necessarily produce legal influence beyond the order in which it occurs. A meaning reconstructed within an African constitutional or regional order may remain confined to that setting, influence neighbouring jurisdictions, or circulate internationally without acquiring legal significance. This makes circulation distinct from translation. Circulation refers to the movement of a translated legal meaning beyond the order in which it was first articulated, whether through judicial citation, regional jurisprudence, treaty-body reasoning, State practice, legislation, international litigation, or institutional uptake. It is related to judicial dialogue, but the concepts are not identical as dialogue concerns interaction among legal actors, whereas circulation entails the movement of meaning across legal orders.

Circulation alone, however, does not establish that African legal reasoning has influenced international law. A judgment may be cited abroad without acquiring authority, and a concept may become internationally visible without affecting the interpretation of a legal obligation. Feedback requires legal uptake in a process capable of influencing the interpretation, application, or development of international law. The possibility of such feedback rests on ordinary processes of international legal interpretation. Article 31 of the Vienna Convention on the Law of Treaties requires treaties to be interpreted in good faith according to the ordinary meaning of their terms, in their context and in light of their object and purpose. Article 31(3)(c) further requires consideration of relevant rules of international law applicable between the parties.[6] Treaty interpretation therefore takes place within a broader normative environment.

African legal practice may become part of that environment where its interpretations, treaty practice, or state practice enters processes capable of influencing legal reasoning beyond the context in which they originated. Once taken up in judicial interpretation, regional jurisprudence, international litigation, treaty practice, or other legally consequential settings, a meaning generated within an African legal order may acquire relevance to the further interpretation or development of international law. African investment treaty practice provides a useful illustration. For example, the Morocco–Nigeria Bilateral Investment Treatylinks investment protection to environmental and human-rights considerations. The African Continental Free Trade Area Investment Protocol embeds regulatory autonomy and sustainable development within investment governance. What is distinctive is their explicit integration of these objectives into the design of African investment rules, rather than treating them solely as external constraints on investment protection.[7]

Their significance lies in showing how internationally recognised legal commitments can be recombined within African treaty instruments and potentially enter wider processes of transnational legal reasoning. Feedback should therefore not be understood as a reversal of legal influence. It describes the possibility that meanings generated within African legal practice may travel beyond their original setting and, when legally taken up, contribute to the continuing interpretation and development of international law. By framing authority as relational and co-consti-

[6] Campbell McLachlan, *The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention*, International and Comparative Law Quarterly, 54 (2005), p. 279, DOI: 10.1093/iclq/lei001.

[7] See African Union, Pan-African Investment Code (2016) and African Union, Investment Protocol to the Agreement Establishing the African Continental Free Trade Area. Anna Hankings-Evans, *The Africanization of International Investment Disputes from Past to Present*, Verfassungsblog, 23.7.2020, https://verfassungsblog.de/the-africanization-of-international-investment-disputes-from-past-to-present/, last accessed: 28.9.2026.

tuted across jurisdictions, this approach moves past a rigid, unidirectional model of influence, highlighting circulation as a dynamic process where legal meanings are constantly rearticulated across geographic boundaries.[8]

Decolonisation

The decolonial significance of this architecture lies in its directionality. When international legal norms are presumed to possess their authoritative meaning before entering African legal orders, African law is positioned as secondary by being relegated to receiving, implementing, adapting, or resisting norms whose meaning has already been determined elsewhere. Legal translation unsettles this hierarchy by drawing attention to the interpretive processes through which meaning is reconstructed within African constitutional and regional orders. Decolonisation, from this perspective, does not require a return to precolonial forms of governance or a rejection of international law. It concerns the recognition of African constitutional and regional institutions as legitimate sites of legal meaning-making. African philosophies like *ubuntu* matter not as alternatives to law, but as active forces that shape legal interpretation and the application of constitutional rights. This also means that decolonisation should not simply reverse the direction of legal influence. The objective is neither to reproduce a hierarchy in which norms move outward from Europe or the Global North and are received in Africa, nor to construct an opposite hierarchy in which African meanings replace all others. It is to recognise a more plural process in which legal meaning is produced, translated, and circulated across international, regional, and constitutional orders, with each capable of contributing to its further development.

Conclusion

African constitutionalism has often been examined through the international norms it receives. That perspective, however, captures only one direction of legal movement. Reception concerns the entry of an international legal norm into an African legal order. Translation concerns its juridical reconstruction within that order. Circulation concerns the movement of that reconstructed meaning beyond its original setting. Feedback concerns the circumstances in which it subsequently acquires legal significance within wider processes of international legal interpretation or development. The central question is therefore not simply how Africa receives international law, but what happens to international law when Africa interprets it. African constitutionalism is neither a site of passive reception nor a self-contained legal order detached from international law. It is a practice of legal translation in which international legal norms encounter constitutional institutions, regional frameworks, and African normative resources, acquiring new juridical relationships in the process.

Some meanings may remain locally situated; others may circulate more widely and, through subsequent legal uptake, participate in the continuing development of international law. The decolonial implication is ultimately an epistemic one, whereby African legal orders should be understood not only as places where international law is implemented, but as sites from which legal meaning can emerge, travel, and potentially feed back into the international legal order.

Ultimately, this trajectory from translation to feedback epitomises the dynamics of reflexive globalisation at the heart of the RefLex research agenda. Legal orders can no longer be viewed as insulated spheres where norms simply travel in a unidirectional path from the global to the local. Instead, they constitute interconnected spaces where global norms shape domestic constitutional law, while domestic constitutional interpretations simultaneously contest, reconfigure, and potentially reconstruct the authority and meaning of global law. The African constitutional and regional experience demonstrates that globalisation is not merely a process of top-down dissemination, but a

[8] This understanding also resonates with recent work at the Centre for Advanced Studies Reflexive Globalisation and the Law on global legal orders that approaches legal change not simply as the transmission of norms between discrete jurisdictions, but as a process of interaction, contestation and reconfiguration across legal spaces.

reflexive loop where the periphery actively co-constitutes the global legal order.

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