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Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa

Josephine Dawuni and Alice Kang

Abstract
In recent years, women have been selected as leaders of African judiciaries. This article identifies where and when women have become chief justices and presidents of constitutional courts from 1990 to 2014. We profile women from three civil-law and three common-law countries and find that the women selected meet or exceed the requirements for holding the highest position in the judiciary. We then explore why some African countries, but not others, have had female judicial leaders. We initially find that the selection method may be less important than the type of legal system, the commitment of gatekeepers, the end of major armed conflict, and regional diffusion in explaining why some countries have seen women rise to leadership positions in the judiciary.

The number of women gaining access to positions of power in Africa has grown in recent years.[1] One important seat of power is on the bench, as the

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judiciary may be a crucial site of arbitration for nearly every political issue. Therefore, for those interested in women's political power, whether on the grounds of fairness, enhancing the legitimacy of state institutions, or improving the representation of women's interests, women's presence on the bench matters. Yet much remains to be understood regarding women across African judiciaries. Scholars have examined the rise of women in African cabinets (Arriola and Johnson 2013; G. Bauer and Okpotor 2013; Russell and DeLancey 2002), legislatures (G. Bauer 2012; Lindberg 2004; Stockemer 2011; Yoon 2001, 2004), and presidencies (Adams 2008; G. Bauer 2011; J. Bauer 2009), but little is known about women in African judiciaries (for an exception, see G. Bauer and Dawuni 2016).

This study examines where and when women have risen to leadership positions in the judiciary. In the 1990s and 2000s, women in countries as geographically, legally, and politically diverse as Benin, Ghana, Lesotho, Nigeria, and Rwanda have taken on leadership roles as chief justice or president of the constitutional court.[2] The chief justice or president of the constitutional court is the public face of the judiciary. In countries such as Ghana and Nigeria, the chief justice acts not only as the presiding judge of the supreme court, but also as the head of the judicial branch. In Benin, the president of the country is required to consult the president of the constitutional court before proposing a national referendum on human rights, regional integration, or the organization of the state. Given the symbolic and substantive powers of the position, whether women rise to the top of the judiciary and how they arrive there ought to be of interest for scholars of women and politics, as well as for scholars of judicial politics.

We identify where and when women have become chief justices and presidents of constitutional courts from January 1, 1990, to December 31, 2014, and offer a preliminary examination of factors that may explain the rise of women, or lack thereof, to leadership positions in African judiciaries. Drawing on the scholarship on judicial politics, we examine whether the legal system, selection method, and commitment of gatekeepers helps explain why some countries saw the ascent of women to leadership positions in the judiciary.[3] We consider whether the end of major armed conflict is associated with the selection of a female judicial leader, as scholars of women and politics find that women's representation in the executive cabinet and legislature increases following major armed conflict. We further examine the importance of regional diffusion within the African continent. We suggest that the type of legal system, the end of major armed conflict, and regional diffusion, more than the selection method, may explain why some countries have selected women to leadership positions in the judiciary.

First, we explain what it means to hold the highest-ranking position in the judiciary under different legal systems in Africa. We then identify where and when women have acceded to leadership positions. To gain a better understanding of who the leaders are, we profile women leaders in three common-law countries (Ghana, Nigeria, Sierra Leone) and three civil-law countries (Benin,

Niger, Rwanda), reflecting the diversity of legal systems and experiences with major armed conflict in Africa. Third, we preliminarily examine factors that may explain women's ascent to leadership positions in the judiciary, and then suggest areas for future exploration in the conclusion.

Leadership Positions in Judiciaries across Africa

Before identifying where and when women have risen to the top of the judiciary, it is first important to clarify what we mean by leadership, because significant differences exist across judiciaries on the continent. Not all countries have a chief justice. Broadly, we differentiate among three types of legal systems: common-law systems, civil-law systems, and systems that use both common and civil law.[4]

The most usual type of legal system in Africa is based on civil law, found in twenty-six countries (Table 1). In general, civil-law countries are former French or Portuguese colonies. With several exceptions, this type of system provides for no chief justice. Since a wave of democracy spread across the continent in the early 1990s, civil-law systems have come to distribute power among multiple stand-alone high courts, overseen by a separate ministry of justice, rather than by an office of the chief justice. The constitutional court is generally considered the most prestigious of the high courts because of its power of judicial review and its power to invalidate national elections. The supreme court is the highest appellate court; it may reverse rulings from lower courts. Some civil-law countries do not have a stand-alone constitutional court and grant the supreme court the authority to strike down legislation and nullify election results. In the majority of civil-law countries, however, a stand-alone constitutional court exists. Given the prestige of the court, we examine whether women have become president of the constitutional court, or in civil-law countries with no stand-alone constitutional court, president of the supreme court.

The second most common type of legal system in Africa is based on common law, found in twelve countries. In general, countries that use common law are former British colonies. All common-law countries in Africa have a chief justice at the apex of the judiciary, though the powers of the chief justice vary across countries and over time. The chief justice usually presides over the highest appellate court in the land. In the majority of common-law countries, the chief justice heads the country's judicial service commission (e.g., the National Judicial Council in Nigeria), which has the power to recommend judicial appointees and the removal of judges from office (Leakey 2012). In some common-law countries, the chief justice additionally oversees the judiciary. In Ghana, for instance, the chief justice is "responsible for the administration and supervision of the Judiciary" (Ghana 1992:125(4)).

Last, mixed systems use a combination of common law and civil law and are found in nine countries. In general, countries that use both types of law were colonized or partially colonized by multiple powers, such as Britain and France

Table 1. Highest position in the judiciary in Africa, hy legal system, as of 2009**.**

Common law: chief justice	Civil law: president of the constitutional court
1. Gambia	1. Angola
2. Ghana	2. Benin
3. Kenya	3. Burkina Faso
4. Liberia	4. Burundi
5. Malawi	5. Central African Republic
6. Nigeria	6. Chad
7. Sierra Leone	7. Comoros
8. Sudan	8. Congo, Democratic Republic of
9. Swaziland	9. Congo, Republic of
10. Tanzania	10. Cote d'Ivoire
11. Uganda	11. Djibouti
12. Zambia	12. Equatorial Guinea
	13. Gabon
	14. Madagascar
Mixed system of common law and civil law: chief justice	15 Mali
	16. Mauritania
	17. Mozambique
1. Botswana	18. Niger
2. Lesotho	19. Sao Tome and Principe
3. Mauritius	20. Senegal
4. Namibia	21. Togo
5. Seychelles	
6. Somalia	Civil law with no stand-alone constitutional court: chief justice or president of supreme court
7. South Africa	
8. Zimbabwe	1. Cape Verde
	2. Ethiopia
Common law and civil law: first president of the supreme court	3. Guinea
1. Cameroon	4. Guinea-Bissau
	5. Rwanda

For the purpose of comparison, our study does not include countries that gained independence after 1990 (Eritrea, South Sudan). We recategorized Swaziland from a civil-law to a common-law country. Source: JuriGlobe (2009).

(Mauritius), Germany and South Africa (Namibia), Britain and the Netherlands (South Africa), or Britain, France, and Germany (Cameroon). With the exception of Cameroon, countries that use both legal systems have a chief justice. The powers of the chief justice vary, including heading the judiciary, presiding over the judicial commission, and presiding over a high court. In Mauritius, the chief justice stands second in the presidential line of succession. In common-law and mixed common-law countries, we examine whether women have held the post of chief justice, or, for Cameroon, first president of the supreme court.

Female Leaders in African Judiciaries

Having identified the highest position across judiciaries in Africa, we now examine where and when women have become chief justice or president of the stand-alone constitutional court. By using a combination of government, news, and academic sources, we compiled a list of female (and male) leaders starting from 1990 for common-law and mixed countries and starting from the creation of a stand-alone constitutional court for civil-law countries; we were unable to compile a complete list for Chad and Equatorial Guinea. We did not examine whether women served as an acting chief justice or deputy chief justice (e.g., acting Chief Justice Lombe Chibesakunda in Zambia, Deputy Chief Justice Kalpana Rawal in Kenya). Between January 1, 1990, and December 31, 2014, eighteen women in fourteen African countries served as chief justices or presidents of constitutional courts (Table 2).

Of the twenty-one civil-law countries with a stand-alone constitutional court, five have had one or more women preside over the high court: Benin, Burundi, Gabon, Niger, and Senegal. Countries with stand-alone constitutional courts that did not have a female president are Angola, Burkina Faso, Central African Republic, Comoros, Republic of Congo, Cote d'Ivoire, Djibouti, Ethiopia, Madagascar, Mali, Mauritania, Mozambique, Sao Tome and Principe, and Togo. The president of the first constitutional court of the Democratic Republic of Congo had not yet been selected by the end of 2014, but the court's judges were all men.[5] Djibouti has had a woman at the helm of its supreme court, but no female president of its constitutional court.

In six of the twelve common-law countries, women were selected as chief justice during the study period: Gambia, Ghana, Liberia, Malawi, Nigeria, and Sierra Leone. Common-law countries with no selection of a female chief justice during our period of study were Kenya, Sudan, Swaziland, Tanzania, Uganda, and Zambia.[6] Women have been selected as chief justice in one of the nine countries that combine common law and civil law: Lesotho.

We note a pattern of an increasing number of women occupying the highest position in the judiciary over time (Figure 1). Differentiating between positions of leadership, we see that the number of women chief justices has slowly increased over time, reaching a high of five in 2013. The number of women presidents of constitutional courts rose over the 1990s, peaking at five in 2007, and declined in the mid-2000s.

Profiles of Female Leaders in Six Countries

To gain a better sense of who the female leaders are, we profile women chief justices or constitutional court presidents in six countries. We selected countries that vary on factors that scholars suggest are of significance. Three are civil-law countries, of which one experienced the end of a major armed conflict (Rwanda) and two that did not (Benin and Niger). Three are common-law

Table 2. Women leaders in the judiciary in Africa, 1990-2014.

Name	Country	Title	Years
1. Elisabeth Pognon	Benin	president, constitutional court	1993-98
2. Conceptia Denis Ouinsou	Benin	president, constitutional court	1998-2008
3. Domitille Barancira	Burundi	president, constitutional court	1998-2006
4. Christine Nzeyimana	Burundi	president, constitutional court	2007-13
5. Marie Madeleine Mborantsuo	Gabon	president, constitutional court	1991-
6. Mabel Agyemang	Gambia	chief justice	2013-14
7. Georgina Wood	Ghana	chief justice	2007-
8. Maria do Ceu Silva Monteiro	Guinea-Bissau	president, supreme court	2004-12
9. Nthomeng Majara	Lesotho	chief justice	2014-
10. Frances Johnson-Morris	Liberia	chief justice	1996-97
11. Gloria Musu-Scott	Liberia	chief justice	1997-2003
12. Anastasia Msosa	Malawi	chief justice	2013-
13. Fatimata Salifou Bazeye	Niger	president, constitutional court	2007-09, 2010-13
14. Kadidiatou Abdoulaye Diori Ly	Niger	president, constitutional court	2013-
15. Aloma Mariam Mukhtar	Nigeria	chief justice	2012-14
16. Aloysie Cyanzayire	Rwanda	president, supreme court	2004-11
17. Mireille Ndiaye	Senegal	president, constitutional council	2002-10
18. Umu Hawa Tejan-Jalloh	Sierra Leone	chief justice	2008-

countries, of which one experienced the end of a major armed conflict (Sierra Leone) and two that did not (Nigeria and Ghana).

Benin

In Benin, two women have served as presidents of the constitutional court. In 1993, Elisabeth Pognon was appointed to the new stand-alone body and elected by fellow members of the court as its president the same year. Pognon was born in Togo in 1937 (Houngan Ayémonna 2008:55-59). She attended secondary school in Lomé and Dakar before going to Paris, where she received a degree in law. In 1965, she became Benin's first woman judge, serving in the ordinary courts, as president of the court of first instance in Cotonou, and on the court of appeals and other high courts before becoming a judge in the administrative chamber of the supreme court.

Conceptia Denis Ouinsou was the second woman to preside over Benin's constitutional court. She was elected president by her peers on the court in

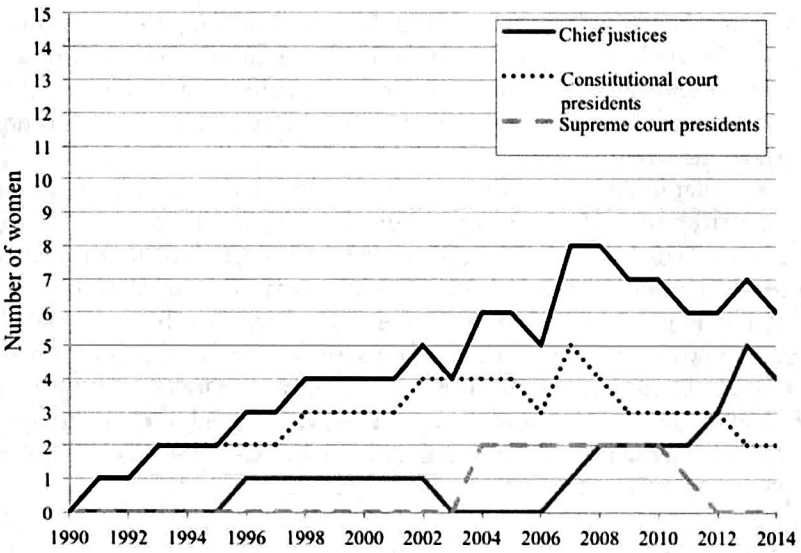

Figure 1. Number of women leaders in the judiciary in Africa, 1990-2014, as of December 31 of each year. The category of supreme court presidents refers to the highest position in Guinea-Bissau and Rwanda. Source: authors' compiled data set.

1998. She was born in 1942 in Haiti (Houngan Ayemonna 2008:60-67), where she obtained a degree in administration and social sciences in 1965 and a degree in law. She then obtained a postgraduate degree in law from the University of Paris II and a doctorate in private law in 1976 from the same university. She taught in the faculty of law at the Université Nationale du Bénin before being appointed Minister of Higher Education and Scientific Research in 1998, where she served for several weeks before being called to the constitutional court.

Niger

Two women have presided over the Constitutional Court of Niger, which is a stand-alone court as mandated by the 1999 constitution. The first woman president of the court was Fatimata Bazeye Salifou. She was appointed to the constitutional court by a body of jurists in 2007 and elected president by members of the court the same year. She was born in Zinder around 1951 and attended the École Nationale de la Magistrature in Paris, receiving her degree in 1979 (Idrissa and Decalo 2012:96; UNFPA 2013:31).[7] She served on local courts and the court of appeals and was nominated to the supreme court in 2005 (Dunbar 1991:88; Idrissa and Decalo 2012:96). She was forced into early (and temporary) retirement following a disagreement with the government over a judges' strike. She served as president of the constitutional court until 2009, when President

Tandja dissolved the body, following the court's decision that he could not hold a constitutional referendum, which, if passed, would have allowed him to run for a third term. After a coup d'état in February 2010, a caretaker authority appointed Bazeye president of a transitional constitutional council.

Kadidiatou Abdoulaye Diori Ly is the second woman to preside over the Constitutional Court of Niger. Born in 1952 in Niamey, she started out as a midwife before deciding to study for the baccalaureate through an informal night school. She attended the University of Niamey and obtained a doctorate in public law from the University of Paris-South XI in 2005. She is the widow of Abdoulaye Diori, a minister and son of Niger's first president. She was first appointed to the constitutional court in 2010 by a collective of civil-society organizations.[8] She was appointed to the court again by President Mahamadou Issoufou in 2013 and was elected its president by her peers the same year.

Rwanda

Aloysie Cyanzayire was elected president of the Supreme Court of Rwanda by the senate in 2003. (The title of the position has since evolved to that of chief justice as Rwanda incorporated aspects of the common-law system.) Her term ended in December 2011, when she met the eight-year limit, and she subsequently became chief ombudsperson of the country.[9] She received a BA in law from the National University of Rwanda. At the time of the 1994 civil war, she was a judge in Butare.[10] After the civil war, she was secretary general of the ministry of justice and an adviser to the Office Rwandais d'Information. In 2000, the country's parliament, by forty-four votes out of fifty-two, elected her to head the local-level system of postgenocide reconciliation courts.[11] (Her opponent, Jean-Marie Vianney Rusaku, received three votes.) As head of the local *gacaca* courts, Cyanzayire became one of six vice presidents of the supreme court. Before her appointment as president of the supreme court, she was deputy chief justice.

Ghana

Ghana's first and current female chief justice, Georgina Theodora Wood, was appointed to the position in 2007 following the death of Chief Justice George Kingsley Acquah. Justice Wood had been serving as a judge in the Supreme Court of Ghana. She had a long career in the judicial service, spanning more than thirty-five years. She received a bachelor of laws (LLB) from the University of Ghana in 1970 and a barrister-at-law (B.L.) certification about 1972 from the Ghana School of Law. She received training from the Ghana Police Service, allowing her to work as a deputy superintendent of police.[12] After being called to the Ghana bar and serving as a police prosecutor, she joined the judicial service as a magistrate in 1974. From this position she rose through the ranks of the lower courts.[13] She served on the Supreme Court of the Gambia between

2003 and 2007.[14] In 2002, President Kufuor nominated her as a candidate for chief justice, but she declined, for reasons not openly stated. In 2007, when he again nominated her, she accepted the nomination and received an overwhelmingly positive confirmation by the twenty-six-member vetting committee in the parliament of Ghana.

Nigeria

Aloma Mariam Mukhtar is the first and so far only woman to have held the position of chief justice in Nigeria. She was appointed chief justice in 2012. After receiving her basic education in Nigeria, she attended Gibson and Welder College in England, where she graduated and was called to the English bar in 1966. She was called to the Nigerian bar in 1967. Her ascent to the top of the judicial ladder has been marked by her taking positions as a "first." She is reputed to be the first female lawyer from northern Nigeria. Between 1969 and 1973, she served as the first female magistrate in the North Eastern Government and became the first chief registrar of Kano State; she rose to serve on the Kano High Court in 1977.[15] She continued to rise through the ranks to become the first woman to serve on the court of appeal and the first woman to serve on the supreme court.[16] Upon reaching the mandatory retirement age of seventy, she left office in November 2014.

Sierra Leone

Umu Hawa Tejan-Jalloh is Sierra Leone's first and current female chief justice. In January 2008, the president of Sierra Leone nominated her to be acting chief justice. In December of the same year, the House of Parliament unanimously voted in favor of her nomination as chief justice. She attended secondary school in Sierra Leone before earning a BA with honors in history and political science at Columbia University and a LLB at the College of Law in London (Steady 2011).[17] She subsequently returned to Sierra Leone, where she served as state counsel in the judicial service starting in 1975, senior state counsel starting in 1986, and then judge on the high court. In 2004, she was promoted to the court of appeals, and in 2007, she was appointed to the supreme court.

Table 3 briefly compares the profiled female chief justices or presidents of the constitutional court to their predecessors. (The exception is Benin, where there was no male predecessor to Pognon and we therefore examined her closest male successor.) The table compares when women and men leaders were first called to the bench and shows that women and men had similar years of record as judges.

In the three civil-law countries, female judicial leaders appear to be as qualified as, or even more qualified than, their male counterparts. In Benin, according to articles 115 and 116 of the constitution, the president of the constitutional court must be a judge or a jurist of high rank with fifteen or more years of experience. Pognon had more than twenty-five years of experience as a judge

Table 3. Background of female judicial leaders and their closest male counterpart in six African countries[18]

Country	Name	Born	University education	Years' experience
Benin	Elisabeth Pognon	1937	Université de Poitiers, Paris Panthéon	Served as a judge starting in 1965
	Robert Dossou (first man to succeed Pognon	1939	Institute d'Etudes Politiques de Boreaux, 1962, Higher degrees from schools in Paris, 1964, 1966, 1968	Worked in law starting in 1967. Taught law starting in 1973
Ghana	George Kingsley Acquah (predecessor)	1942	University of Ghana, Legon, LLB in 1970, Ghana Law School	Called to the bar in 1972
	Georgina Wood	1947	University of Ghana, Legon, LLB in 1970, Ghana Law School	Joined the Judicial Service in 1974
Niger	Abba Moussa Issoufou (predecessor)	NA	NA	Served on the Supreme Court, Minister of Justice, 1997-1999
	Fatimata Bazeye Salifou	NA	École Nationale de la Magistrature, Paris, 1979	Served on the Supreme Court
Nigeria	Dahiru Musdapher (predecessor)	1942	Ahmadu Bello University, University of London, Inns of Court, Nigerian Law School	Called to the English bar in 1967, Nigerian bar in 1968
	Aloma Mariam	1944	Gibson and Weldon Mukhtar College of Law, England	Called to the English bar in absentia in 1966, Nigerian bar in 1967
Rwanda	Simeon Rwagasore (predecessor)	NA	NA	Previously former general prosecutor
	Aloysie Cyanzayire	NA	National University of Rwanda	Previously a vice president of the supreme court
Sierra Leone	Ade Renner Thomas (predecessor)	1945	Fourah Bay College Law School, unknown degree from England	Private practice in late 1970s, lecturer in Law at Fourah Bay College
	Umu Hawa Tejan-Jalloh	1949 (est.)	Fourah Bay College, Columbia University, Gray's Inn, University of London	Called to the bar in 1974, served as state counsel in 1975

when she was appointed to the court and elected its president. Ouinsou had more than twenty years of experience in the profession, as well as a doctorate in law. In Niger, Bazeye had more than twenty-five years of experience as a judge when she was elected by her peers as president of the court. Abdoulaye Diori, appointed to the court by President Issoufou as a person with significant experience in judiciary or administrative matters (Constitution of Niger, article 121), held a doctorate in public law. In Rwanda, the chief justice is required to have a minimum of a bachelor's degree in law, fifteen or more years of legal experience, and a proven aptitude for managing high-level institutions (Constitution of Rwanda, article 147). Cyanzayire possessed a law degree and had overseen the *gacaca* courts, though we could not determine how many years of experience she had in the legal profession when she was appointed chief justice (at least nine).

In common-law countries, women judges in leadership positions also appear to be as qualified as, or even more qualified than, their male counterparts. The requirements for chief justice as stated by Ghana's Constitution of 1992 provide that the candidate must meet the formal requirements of a justice of the supreme court, which include a high moral character and proven integrity, with no less than fifteen years' standing as a lawyer (article 128 (4)). Wood had more than thirty years of experience, having graduated with a bachelor of law in the same year as her predecessor, Acquah. As in Ghana, in Nigeria, "a person shall not be qualified to hold the office of Chief Justice ... unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than fifteen years" (Constitution of Nigeria, Article 231). When Mukhtar was appointed chief justice, she had more than forty years of experience in the legal profession, having been called to the Nigerian bar in 1967. Her predecessor, Dahiru Musdapher, had been called to the Nigerian bar in 1968. In Sierra Leone, Tejan-Jalloh served as state counsel starting in 1975 and exceeded the minimum required twenty years of experience to serve on the bench (Sierra Leone 1991: article 135).

From the comparisons, we see that women leaders in the six countries possessed the necessary qualifications to hold the highest position in the judiciary. When compared with their closest male counterparts, women leaders do not appear to be any less qualified.

Explanations for the Ascent of Women in the Judiciary

What factors explain the rise of women, or lack thereof, to the top of the judiciary? Drawing on the scholarship on judicial politics and women and politics, we identify and tentatively evaluate five possible explanations for why some countries, but not others, have selected women chief justices or constitutional court presidents.

Explanation 1: Type of Legal System

One factor that may influence the rise of women to the top of the judiciary is whether the country is based on a common-law, civil-law, or mixed legal system. We suggest that an important distinction lies between countries with a fused legal profession and countries with a split legal profession.

According to the existing scholarship, civil-law countries have a better record than do common-law countries when it comes to selecting women to top judicial positions (Corder 1992; Cowan 2006; Kenney 2013b; Levy 2007). In civil-law countries, women and men typically enter the judiciary by taking an examination and attending a postgraduate judges' school following their undergraduate studies. This means that one may become a judge as early as twenty-five years of age. Career judgeship in civil-law countries, which allows women to join the ranks of the judiciary from an early stage in their career paths, may explain why more than one woman has held the position of president of the constitutional court in Benin and Niger. In most common-law countries, by contrast, judges are generally selected among experienced lawyers or other legal practitioners, and a high premium is placed on the type and size of one's law firm. Some common-law countries provide opportunities for judges to rise through the ranks of the lower courts. In mixed legal systems, at least among those found in Africa, judges are usually selected among experienced practitioners, with the exception of Cameroon. Ostensibly, in the career judgeship model of civil-law countries, the nomination of judges is more transparent and rational than in common-law societies, and therefore may favor the promotion of women judges within the judiciary (Schultz and Shaw 2013:2-3).

Legal textbooks (e.g., Merryman and Pérez-Perdomo 2007:34-38) describe judges as holding more prestige in common-law countries than in civil-law countries—which may influence women's ascent to positions of power in the judiciary. The logic here is that in civil-law countries, judges merely apply the letter of the law. By contrast, in common-law countries, judges enjoy more discretionary power, in that they can make law through case precedent in the higher courts. If the position of chief justice is seen as highly prestigious, more than being president of the constitutional court, then the costs of giving the position to a woman over a man may be perceived to be quite high (Malleson 2006:132). Even if a woman makes it to the upper ranks of the judiciary in a common-law country, she may be, as Malleson (2003:177) suggests, "a sole woman 'trail blazer.'"

Given the exploratory nature of this study, we do not offer a definitive answer as to whether civil-law countries are likelier than common-law countries to have female judicial leaders, but we point out that women are becoming judicial leaders under both kinds of systems. Of the twenty-one civil-law countries with a stand-alone constitutional court, five have had a woman president of the court. The position of constitutional court president, moreover, is new, as stand-alone constitutional courts were created in the 1990s and 2000s. Of twelve common-law countries, six have had a female chief justice. Countries

that use a mix of civil and common law systems have not promoted a woman to the top of the judiciary—a trend that was changed only by Lesotho's appointment of its first female chief justice in 2014. The length of tenure for chief justices and constitutional court presidents also varies, making it difficult to state definitively whether one type of legal system favors the selection of a female judicial leader over others.

We nonetheless are interested in why some common-law countries have had a female chief justice and not others, and why countries with mixed systems have lagged behind in Africa. We suggest that an important differentiation among common-law countries and mixed countries is between those that have a fused legal profession and those that have a split legal profession. Countries with a split legal profession, such as Great Britain, distinguish between barristers and solicitors, where barristers belong to the Inns of Courts and are licensed to appear in court. Solicitors, in contrast, often do in-house legal work, without appearing in courts. Under this system, high court judges are often drawn from the ranks of barristers. Studies of the legal profession in South Africa, which has a split profession, find that men are likelier to be advocates (barristers) than are women (Andrews 2006:571; Bonthuys 2015:133).

The differentiation between fused and split legal professions may help explain why the common-law countries of Canada and Great Britain have had different outcomes for women becoming chief justice. Canada, which in practice has a fused legal profession, had its first female chief justice, Beverley McLachlin, appointed in 2000, while Great Britain has yet to achieve such a feat. Indeed, in Great Britain, Brenda Hale was appointed in 2009 as the first woman out of twelve justices on the high court.

In Africa, the dichotomy between barristers and solicitors has blurred in many inherited common-law systems because of multiple factors, such as changes in postindependence legal education (Ndulo 2002). Among common-law and mixed common-law countries, only Mauritius, South Africa, and Swaziland have a split legal profession, and none of them has had a female chief justice. By contrast, seven of the remaining common-law and mixed common-law countries that have a fused legal profession have had a female chief justice.

Explanation 2: Selection Method

Whether it is through an informal process of internal selection within the supreme court based on years of experience, election among judges, or a formal presidential nomination subject to legislative approval, in each of these different models, women are becoming judicial leaders. Our preliminary finding fits with what scholars of judicial politics in the United States have found: the chances that a woman will become a high court judge do not seem to depend on whether judges are elected or whether judges are appointed (Alozie 1990; Bratton and Spill 2002; Frederick and Streb 2008; Click and Emmert 1987; Hurwitz and Lanier 2003; Martin and Pyle 2002; Williams 2007). Comparative

studies of women's presence on high courts are more mixed, with some finding that judicial elections may favor women and minorities (Driscoll and Nelson 2015) and others finding that high courts are likelier to have more women if appointment is centralized in the presidency (Valdini and Shortell 2014; Williams and Thames 2008).

Women have been selected leaders through internal election. In Benin, the president of the constitutional court is elected by one's peers.[19] The court consists of seven members: four nominated by the executive office of the national assembly and three nominated by the president of the country. All members serve a five-year term, which can be renewed once. Three of the members must be judges with fifteen years or more of experience; the national assembly chooses two of these. Two members must be jurists of high rank or professors or practitioners of law with fifteen or more years of experience; the national assembly chooses one, and the president chooses the other. The remaining two members must be persons with excellent reputations. The president of the court must be a judge or jurist.

In Niger, women have been selected president of the constitutional court through a process of internal election, though the selection method for the court has changed over time. During the fifth and seventh republics, the seven members of the constitutional court were chosen through a process of decentralized selection (Niger 1999:article 104; Niger 2011:article 121). The process involves the nomination of one member by the executive office of the national assembly, one member by the president of the republic, two judges elected by judges, one lawyer elected by a body of lawyers, one member elected by law professors, and one member chosen by the Association de Défense des Droits de l'Homme in the fifth republic and by a collective of civil society organizations in the seventh republic. Members serve a single six-year term. The president of the court is elected by members of the court for a renewable three-year term.[20]

In Niger's sixth republic (2009), the selection of judges on the constitutional court became centralized in the presidency. The court was expanded to include nine members: five nominated by the president, two nominated by the president of the national assembly, and two nominated by the president of the senate. Further, the president of the court was to be nominated by the president of the republic. Under the centralized system, President Tandja selected a man to replace Bazeye as president of the constitutional court.

Women have been selected chief justice in systems that require confirmation by a legislative body. Ghana requires the candidate to be nominated by the president, who makes that nomination in consultation with the council of state, subject to the approval of parliament.[21] Nigeria (1999) requires the appointment of the chief justice to be made by the president upon the recommendation of the National Judicial Council, subject to confirmation by the senate. According to the 1991 Constitution of Sierra Leone, the president appoints the chief justice on the advice of the Judicial and Legal Service Commission, subject to confirmation by parliament.

Notwithstanding formal requirements that take into account the principle of appointing judges based on merit, often quantified by years of service and records of proven integrity, there appears to be an unspoken rule that the judges decide among themselves to put forward the name of the candidate who is the longest-serving judge (Maveety 2010). In the case of Justice Mukhtar, though she was appointed in 2010 and retired in 2014, according to the constitutionally stipulated age for retirement, her rise to the top of the judiciary, having been called to the Nigerian bar in 1967 and appointed to the Supreme Court in 2005 made her the longest-serving among her peers at the time of her nomination, thus giving her the nomination among her peers. The seniority method of selection among peers is also used in Ghana and Sierra Leone.

The seniority principle, by which judges put forward the name of the most senior judge among them, promotes collegiality on the bench but may work either way for women. First, it depends on the pool of judges. Where few women are judges, with fewer years of experience, it may work to women's disadvantage, but where women have the same number of years of service as their male counterparts, it may work in their favor. As we find in this study, the application of the seniority principle appears to have worked to the benefit of Wood and Mukhtar, in Ghana and Nigeria respectively. The seniority principle is not a formal rule: the president has the authority to nominate a candidate other than the one put forward by the judges themselves.

A new stipulation, which may affect the selection of judicial leaders, is gender quotas and constitutional requirements on gender balance in the judiciary. So far, quotas for the judiciary are limited to a handful of countries (Hoekstra 2010). South Africa's constitution of 1996 states in article 174(2), "The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed." In Burundi, article 18(b) of the 1998 Arusha Accord and article 17, section 3(a), of Protocol II call for ethnoregional and gender balancing in the judiciary and other state institutions. In Niger, a law mandates that when promotions to a high-level position in the state are made, no less than 25 percent of the promotions should go to women or men (Kang 2013). According to Niger's 1999 and subsequent constitutions, one-third of the court is to be replaced every two years, with two or three new judges being appointed to the court every two years; of the two or three new judges, at least one must be a woman, according to the quota law.

Gender sensitive laws and constitutions do not appear to have been an antidote for gender disparities in the judiciary. In South Africa, as Bonthuys (2015) and Cowan (2006) have remarked, despite the provision in the 1996 constitution that gender should be taken into consideration when making appointments to judicial office, the record has yet to fulfill the promise of the law. Likewise, in Kenya, despite a provision in article 172 (2) of the 2010 constitution, which provides that the Judicial Service Commission "be guided by … the promotion of gender equality," the commission has discriminated against female candidates

in its vetting procedures (Kamau 2013). Moreover, countries such as Ghana and Nigeria do not have constitutionally mandated gender quotas, yet have placed women in the top judicial position. Therefore, we suggest that from the 1990s to the present day, having a gender quota law or a constitutional provision on gender balance in the judiciary has not yet strongly affected the selection of women for the top position in the judiciary.

Explanation 3: Commitment of Gatekeepers

The role of gatekeepers in the appointment and promotion of women to judiciaries generally has been seen as unfavorable to the number of women in judiciaries. Feminist legal studies of the selection process in the United States conclude that gatekeepers, whether consisting of bar associations, law professor organizations, or other nominating commissions, can discriminate against women. These gatekeepers are often made up of men who minimize the professional history of women compared to that of men and often delay or veto women's nominations (Kenney 2013b). Cook (1982) argues that the commitment of gatekeepers to consider women for an open position would have a great impact on providing equal footing for women. Overwhelmingly, the record in Africa is that the presidents of the countries with female chief justices have been men, the composition of the judicial commissions have been majority-male, and a majority of the parliamentary vetting committees have been male.

The outcomes in Africa are in line with Cook's observation. Where the gatekeepers are committed to the application of the merit principle without gender bias, and adhere to the constitutional requirements in evaluating female candidates, we see a positive outcome for women chief justices and presidents of courts. In Nigeria, President Goodluck Jonathan has been reported to have commented on the need for putting women in leadership positions.[22] Mukhtar's appointment may reflect Goodluck's promise to have women occupy at least 30 percent of public office positions in Nigeria, even though no constitutional or other legislative instrument requires that outcome.

The selection of women to the judiciary's top position does not seem to be related to whether the country's president or dominant political party is ideologically leftist or socialist. Hypothetically, leftist executives and ruling parties are more committed to promoting gender equality than are centrist or right-wing politicians. Scholars find that Democratic US presidents are likelier than Republican presidents to nominate women to the federal courts (Diascro and Solberg 2009). In Latin America, left-leaning presidents have been likelier than centrist and right-leaning presidents to appoint women to their cabinets (Escobar-Lemmon and Taylor-Robinson 2005). Yet women have acceded to the highest position in the judiciary in Africa under leftist presidents (as in Niger), centrist presidents (as in Sierra Leone), and center-right presidents (as in Ghana). Similarly, a recent study of women's ministerial appointments in Africa does not find a correlation between the ideology of the

president or dominant party and women's presence in the executive cabinet (Arriola and Johnson 2013],

As discussed above, the selection process involves gatekeepers aside from the president. Another important gatekeeper is the judicial commission or council, whose power and composition may affect the outcome. In Ghana, the Judicial Council plays the role of a gatekeeper in that the president makes the appointment to the position of chief justice acting on the advice of the Judicial Council and in consultation with the Council of State. In Nigeria, similar functions are performed by the National Judicial Council, charged with making recommendations to the president, which are subject to senate approval. The Constitution of Sierra Leone provides that the president, acting on the advice of the Judicial and Legal Services Commission, and subject to parliamentary approval, shall appoint the chief justice from a list of qualified candidates. The powers of the judicial bodies responsible for the selection of judges—whether to advise or recommend—can affect the list of candidates forwarded to the president.

In some countries, such as Kenya and South Africa, these judicial bodies are called judicial services commissions (JSC). Cowan has argued that South Africa's JSC, established to provide more-equal opportunity for blacks and women after the postapartheid era, has been gender biased. Likewise, Kamau (2013) finds in Kenya that the open recruitment process for judges mandated under the 2010 Constitution and the use of a JSC have not yielded the positive results for increasing the gender diversity of the Kenyan judiciary that most gender equality advocates want to see. Two out of seven judges are women, but this ratio falls short of the one-third minimum specified by the constitution. The lines of questioning female candidates are subjected to often tend to minimize their professional experiences and make them appear as tokens who are being fast-tracked to the top of the judicial ladder. Kenya's JSC, which similarly vets judicial candidates for office, was, until the constitutional reforms of 2010, composed only of men (Kamau 2013). Overall, in the case of Kenya's constitutional and legislative changes, some improvements are being made in achieving a gender balanced judiciary, and this can be partly attributed to the positive changes that have occurred in the JSC as a gatekeeper of a gender balanced bench.

We are not arguing that appointment commissions are sexist in nature. If they are reformed, they can be important in promoting women's appointments to the bench, as in Canada (Morton 2003). Such commitment, however, must be followed through. The judicial appointment commission in the United Kingdom appointed more women judges in its first year, but did not do so thereafter (Iyer 2013).

Another potentially important gatekeeper in the selection process is the legislature. As seen in the three civil-law country scenarios, parliament's involvement is to approve or disapprove the president's nominee. These approvals take the form of vetting the candidates to establish their qualifications and other requirements. In Ghana, Georgina Wood, after answering thirty-one questions posed by the vetting committee, was approved unanimously by parliament.[23]

The high percentage in favor, if not unanimous votes, by the vetting committees in their respective parliaments suggests that selection can be a nonadversarial process—which, provided that the candidate has support, may smooth the path to women's advancement in the judiciary.

Explanation 4: End of Major Armed Conflict

The broader political context may also be important. By political context, we refer to whether countries recently experienced an end to major armed conflict. Scholars of women and politics find that countries that came out of intense conflict in the 1990s and 2000s have more women in parliament and have been likelier to adopt sweeping pro-women legislation than have others (Ballington 2004; G. Bauer and Britton 2006; Lowe-Morna 2004; Tripp et al. 2009; Waylen 2007). During an intense militarized conflict of long duration, women may take on new or greater social responsibilities, and they may mobilize for peace. Aili Mari Tripp (2015) finds that women's increased responsibilities and peace movements alter gender norms, making women's presence in formal politics thinkable for the political elite and general public. Similarly, the post-conflict context, coupled with the women's movement, facilitated the election of Ellen Johnson Sirleaf in Liberia (Adams 2008; J. Bauer 2009). By contrast, in the absence of a major conflict, women's movements may lack unity, and women's numerical presence in politics may remain flat or even decline, as Gretchen Bauer (2010) argues in her research on Botswana's women's movement and the low numbers of women in the national assembly.

Our list of women leaders in the judiciary suggests that a strong women's movement, combined with the end of armed conflict, may help explain the rise of women to the highest judicial position in three countries: Burundi, Rwanda, and Sierra Leone, where women rose to the highest position near or after the end of war, during which women mounted concerted campaigns for peace and participated in the peace process. In Burundi, multiple women held the top post. In Liberia, Frances Johnson-Morris and Gloria Musu-Scott were appointed chief justice in wartime; however, women have risen to the top of the judiciary in countries that did not experience major armed conflict, such as Benin, Ghana, Niger, and Zambia.

Explanation 5: Regional Diffusion

A woman's promotion to the top of the judiciary in a neighboring country or country that is considered a peer may factor in the promotion of women in the judiciary. Gatekeepers may be aware of the selection of women to high profile positions in neighboring or peer countries and use the information they have about other countries when making their own decisions. Additionally, women's activists may be inspired to mobilize for more women in the judiciary if they see women rise to the top in neighboring or peer countries. Further, female

judges may be inspired to put their names up for consideration or be likelier to accept encouragement from others if they see women in high-ranking positions in neighboring or peer countries. Thus, the selection of a female leader may cause a snowball effect, in which the promotion of one woman to a top post may influence the advancement of women in other countries' judiciaries, even countries with different legal systems and selection methods.

African states seem to be learning from their peers and selecting qualified women to hold the top position in the judiciary. Among countries with a woman in the highest post, we can identify four pairs of neighboring or peer countries. Benin and Niger, neighboring countries, have had two women at the top of their constitutional courts. Burundi and Rwanda are neighboring countries that have selected women for leadership positions in the judiciary. Third, Sierra Leone has promoted a woman to be chief justice following the end of major armed conflict and may have seen Rwanda, a country that also emerged out of major armed conflict, as a peer country, with Rwanda serving as a model of increased women's presence in politics. For instance, a 2008 *Concord Times* news article on Tejan-Jalloh's appointment as chief justice points out that Rwanda and Ghana were the first and second countries in Africa to do so, respectively.[24] Fourth, Ghana and Nigeria, being anglophone and in West Africa, may see each other as peer countries, and both countries have had women chief justices.

Conclusion

Little attention has been paid to the ascent of women across judiciaries in Africa. This study has focused on the selection of women to the position of chief justice or president of the constitutional court. Comparing female leaders with the closest selected male leaders in six countries, we found that women are qualified, with some women having twice as many years of legal experience as required for the position. These are not token women. In this regard, the constitutional provisions for the selection of chief justices and constitutional court presidents are respected, at least in the six countries that we examined. We also found that women acceded to the highest office in the judicial branch in both common-law and civil-law countries, and that the absence of a distinction between barristers and solicitors may help explain why some African countries have shown more progress in getting women to the top position than others. The commitment of gatekeepers, the end of major armed conflict, and regional diffusion may also factor in the rise of women to leadership positions in the judiciary.

More research needs to be done about the paths to the highest position in the judiciary. We suggest a closer and comparative examination of the stages in the selection process and the roles of different actors, including the judicial service commission, civil society, and parliament. Differences in access to legal education and postgraduate legal opportunities, including judgeships,

across countries and time, may be important to explore. Further research can help assess to what extent gatekeepers, activists, and judges are aware of the rise of women in the judiciary in peer countries. An often overlooked factor is the precolonial roles of women as leaders—especially as chiefs and queen mothers, who had powers in dispute resolution. Giving attention to precolonial antecedents may help explain the rise of women to leadership positions in the judiciary.

A factor that we do not discuss in this study that may limit women's access to leadership positions is how gatekeepers and the legal profession understand who deserves to hold positions of authority. In contexts such as Great Britain, South Africa, and the United States, legal professionals often argue that judges should be selected on the basis of merit; feminist legal scholars, however, point out that bias may be inherent in the criteria upon which merit is built (Bonthuys 2013; Malleson 2003, 2006; Rackley 2013). Feminist critics argue that subjecting female candidates to the scrutiny of the type of legal practice they engaged in and whether they worked as clerks for senior judges has the effect of weeding out women who are equally qualified as men but who, for whatever bottlenecks they may have faced in their careers, are presumed to lack the necessary qualifications to serve as judges at the highest level (Kenney 2012).

One unanswered question concerns the effects, if any, of having a woman chief justice or president of the constitutional court. Anecdotes suggest that some women leaders are making an impact in the judiciary, not just for women, but for the delivery of justice. Since taking office in 2007, Chief Justice Wood has openly advocated for the rights of women in the country. One of many programs undertaken under her administration has been the creation of gender-based violence courts to address issues of violence against women. Chief Justice Mukhtar has been widely hailed for addressing the endemic issue of judicial corruption in Nigeria, yet we follow Kenney (2013a) and caution against making assumptions about how women or men in leadership positions think or behave. Future research on the impact of female judicial leaders, then, ought to avoid essentializing men and women while examining the impact of female (and male) chief justices, once in power.

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Notes

1. In this article, we focus on Africa south of the Sahara and use the terms *sub-Saharan Africa* and *Africa* interchangeably.
2. In our review of the materials that we could obtain, we are unaware of any female chief justices or female supreme court or constitutional court presidents in Africa before 1990, but more research is needed to confirm. To ensure accuracy, we limit ourselves to the post-1990 period.
3. We use the term *selection* as an umbrella category, under which appointment and election fall as subcategories.
4. We set aside the question of whether or to what degree countries use other types of law (e.g., customary and religious).
5. "Aucune femme dans la liste des membres de la Cour Constitutionnelle publiée par la présidence," *Voice of Congo,* July 9, 2014, http://www.voiceofcongo.net/rdc-aucune-femme-dans-la-liste-des-membres-de-la-cour-constitutionnelle-publiee-par-la-presidence
6. As new chief justices come to power, the list will change. For instance, Irene Mambilima was appointed chief justice of Zambia and Manassa Danioko was selected president of the Constitutional Court of Mali in February 2015.
7. The approximate year of birth is based on Christophe Boisbouvier, "Salifou Fatimata Bazeye" *Jeune Afrique,* 9 June 2009, http://www.jeuneafrique.com/203041/politique/salifou-fatimata-bazeye
8. "Nominations des membres du Conseil Constitutionnel de transition et de l'ONC," *Le Sahel,* April 20, 2010, http://nigerdiaspora.net/les-infos-du-pays/politique-niger/politique-niger/item/2539-nominations-des-membres-du-conseil-constitutionnel-de-transition-et-de-l%E2%80%99onc
9. "Sam Rugege Nominated Supreme Court President," *New Times,* December 8, 2011, http://allafrica.com/stories/201112080282.html
10. AnneGuion,"'Si le Rwanda existe encore, c'est grâce à Dieu,'" *La Vie,* April 4, 2014, http://www.lavie.fr/actualite/monde/si-le-rwanda-existe-encore-c-est-grace-a-dieu-04-04-2014-51648_5.php
11. Fondation Hirondelle, "Le parlement élit un responsible des juridictions traditionnelles gacaca,"June 14, 2000, http://www.hirondellenews.com/fr/tpirrwanda/169-justice/10567-le-parlement-elit-un-responsable-des-juridictions-traditionnelles-gacaca4382
12. Biographical information on Justice Wood is available at "Biography of Georgina Wood," http://www.africansuccess.org/visuFiche.php?id=864&lang=en
13. "Biography of Georgina Wood," http://www.africansuccess.org/visuFiche.php?id=864&lang=en
14. For more information, see Carolyn Dubay, "Justice in Profile: Georgina Wood," *International Judicial Monitor,* Fall 2009, http://www.judicialmonitor.org/archive_fall2009/justiceinprofile.html
15. "Mrs. Aloma Mariam Mukhtar nominated as first female chief justice," http://elombah.com/index.php/latest-news/11797-mrs-aloma-mariam-mukhtar-nominated-as-nigeria-first-female-chief-justice
16. For detailed reports on her background, see Morenike Taire, "First Female Chief Justice of Nigeria Flits the Ground Running," *Vanguard,* August 10, 2012, http://www.vanguardngr.com/2012/08/first-female-chief-justice-of-nigeria-hits-the-ground-running
17. "Hon. Justice Umu Hawa Tejan-Jalloh Is Awol's Personality of the Year 2008 in the Justice and Legal Sector,"*Concord Times,* January 9,2009, http://allafrica.eom/stories/200901090690.html
18. Additional government and news sources used to compile this table are listed above in the text or here: *Benin,* "Robert S. M. Dossou," http://pres-robertdossou.org/

decouvrir-lhomme/cv-robert-dossou.pdf ; *Ghana,* "Kufuor Picks Georgina Wood," *Daily Guide,* April 30, 2007, http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=123257 ; "Justice George Kingsley Acquah Profile," http://www.ghanaweb.com/GhanaHomePage/people/person.php?ID=217 ; *Niger: Republic of Niger,* "Liste des ministers de la justice, garde des sceaux du Niger de 1960 d 2011," http://www.justice.gouv.ne/?q=node/67 ; *Republic of Niger,* Supreme Court decision of March 29, 1990, 1990 CS 23 (JN), http://www.juricaf.org/arret/niger-coursupreme-19900329-1990CS23JN ; *Nigeria:* Court of Appeal, "The Hon. Justice Dahiru Masdapher(GCON)," http://www.courtofappeal.gov.ng/index.php?option=com_content&view=article&id=102:the-hon-justice-dahiru-musdapher-gcon&catid=82&Itemid=510 ; *Nigeria,* Federal Judicial Service Commission, "About Us," http://www.flsc.gov.ng/index.php/option=com_content&view=article&id=156&Itemid=310 ; *Sierra Leone;* Fyle (2006:61); Steady (2011).

19. See articles 115 and 116 of the 1990 Constitution of Benin.
20. During all three republics, the court was granted the power to rule on the constitutionality of laws and ordinances, as well as international treaties and accords.
21. 1992 Constitution of Ghana.
22. MorenikeTaire, "Africa's First Female Chief Justice of Nigeria Hits the Ground Running."
23. Ghanaweb, "Georgina Wood Exuding Confidence," http://www.ghanaweb.com/GhanaHomePage/NewsArchive/photo.day.php?ID=124955
24. Ibrahim Tarawallie, "Country Gets First Female Chief Justice," *Concord Times,* December 11, 2008, http://allafrica.com/stories/200812110571 .html

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