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LegalPages

SETTING THE RULES FOR A NEW WORLD ORDER

Professor Dire Tladi on the Impact of the Covid-19 Pandemic on International Law, Human Rights and State Responsibility

Decoding a Human Rights Approach to COVID-19 in Africa

Professor Dan Kuwali
Fellow, Carr Centre for Human Rights Policy, Harvard Kennedy School of Government

Artificial Intelligence in Nigeria's Financial Services Industry: Ethical and Legal Issues

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Dire Tladi

Professor of International Law, University of Pretoria. Member, UN International Law Commission. Member, Institut de Droit International's commission on Pandemics and International Law.

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THE DILEMMA OF TODAY: BALANCING HUMAN RIGHTS PROTECTION, ENABLING THE SURGE OF INNOVATION AND RECOGNIZING THE PLACE FOR REGULATION IN A PANDEMIC-BATTLING WORLD.

JOSEPH ONELE

This is not business as usual. There is simply nothing usual about the business of fighting against the odds of Covid-19, absolutely nothing. These times are unlike any other, and therefore the mind-set, innovation, core considerations and approaches to tackle them must be guided, properly-thought, extensively-analyzed, and definitely, like no other.

Simply shut your eyes, open your mind and imagine that some individual had dared to suggest or merely pre-empt even a full year ago that the global community would today be faced with just one-tenth of the peculiar challenges induced by the grand impact or just the ripple effects of the Covid-19 pandemic unleashed on the world presently, it would have seemed impossible to believe or sounded like a dull, well-crafted fiction marked '*for only babies fresh from breastfeeding*'.

But here we are! The world was brought to its knees but is certainly not off its knees. *Humanity is at war, but humanity battles on*! The Covid-19 pandemic has certainly been a phenomenon that has not only ravaged lives and economies but also shaped the course of laws and policies. Critical issues relating to human rights, labour matters, intellectual property, and more have emerged, many of which several legal regimes across the globe did not anticipate. In our Feature Interview tagged "**Setting the Rules for a New World Order**", we talk to **Professor Dire Tladi** on the impact of the Covid-19 Pandemic on International Law, Human Rights, and State Responsibility. He also shares with us his professional experience, the multifarious roles of international law in these dire times, and much more.

In every sphere and sector of human endeavour, radical realities are setting in; innovation is advancing at a pace certainly not projected by causations relatable to human elements. Governments are pushing policies to save lives, save the economy, and save freedom. But how best do African regimes approach the challenges of this day with the core understanding that Rights must not be denied, even when specific restrictions may be necessitated by an undeniable inevitability to defeat the pandemic or at least stop its rapid strides? **Professor Dan Kuwali** expounds fully on this topical issue in his highly insightful, knowledge-laden, and policy-vital piece "**Decoding COVID-19 and Human Rights in Africa**".

Tolu Olaloye rings her Intellectual Property (IP) expertise as she casts the intellectual beam lights on the convergence point between Indigenous IP Rights and IP Rights in Africa in her study; "**A Factsheet on the Intersection of Indigenous Intellectual Property Rights and Intellectual Property Rights in Africa; Amidst Covid-19 Outbreak**". In determining of what relevance exactly are technology, Artificial Intelligence (AI), and innovation to present-day practice and the 'future of law', **Mark A. Cohen**, in the '**Future Lawyer',** talks to us about how the current global pandemic will reshape legal services and the need for innovation in legal practice. Sports Lawyer & Consultant **Tosin Akinyemi** unrolls his viable legal roadmap to reposition the Nigerian Professional Football League (NPFL) and propel it to the next level of administrative and structural efficiency in "**Repositioning the Nigerian Professional Football League (NPFL), Post Covid-19**".

In the **Legal Pages Lawyer Interview**, we interview Space Law & Aviation Lawyer **Ruvimbo Samanga** on how the legal space is highly promising for disruptive-minded practitioners brave enough to venture into unchartered and unheralded practice areas. We also guarantee that our engaging and intriguing **Legal Pages Law Students Interview** with the victorious **Moot Team from Strathmore Law School**, Winners of the African Regional Rounds, John H. Jackson Moot Court Competition will either inspire or challenge you (we hope both!).

As the world surges forward in the direction of innovation, African countries are equally trudging along (albeit leisurely in most cases), not to be outdone or left behind in the old times while the 'technological new dawn' breezes in. **Damilola Oyebayo** practically puts into proper perspective the relevant issues interrelated with the advent of Artificial Intelligence in Nigeria's Financial Services Industry in his astute research article "**Artificial Intelligence in Nigeria's Financial Services Industry: Ethical and Legal Issues**".

Enough has definitely not been said of the vital place of innovation in the economy of the future, but perhaps, the more critical concern should now be how to create a balance between the pursuit of technological advancement in its variants and the ethical cum legal issues at play in the applause-worthy innovation pursuit. This is exactly why we are convinced you will find **Jeffery Kaddu's "Technology in the fight against Covid-19"** to be a great read, prominently in terms of its sharp expose and critical analysis of the data and privacy issues involved globally with the engagement of technology in the fight against the raging pandemic.

Aminat Yusuf, an outstanding student of the Faculty of Law, Lagos State University, also speaks to the issue of academic excellence and the legal system she expects to be birthed in Nigeria. Finally, to better understand the consequences of the pandemic on Financial Transactions, we commend to you **Destiny Ogedegbe**'s viable and actionable legal commentary "**Revisiting the Implications of a Blasting Pandemic on Financing Arrangements: A Solution Based Evaluation**".

In the end, no matter the dilemma our world may face today and the tough decisions or properly-scrutinized restrictions that must be taken by administrations on the global front, human rights and human lives must continue to matter with the highest levels of priority, innovation and technological advancement should be explored and pursued with the intent to generate positive societal transformation and development- and only within the bounds of recondite legal, ethical and societal considerations. However surreal or odd the global economic, occupational, social and everyday-living terrain we experience today may seem, if the world advances with unity of purpose, conciseness of action and respect for rights with an eye for the future, these trying times can and will be overcome and the pandemic, defeated!

Here at Legal Pages, we will continue to stimulate, steer and support the spate of intellectual discourse, ground-breaking research, interviews, and reviews on contemporary and pressing topical issues of legal relevance that you will certainly find fit, not only to read on the pages of our novel legal publication but also commend for its innovative erudition and transformative dispositions.

Have a great read!

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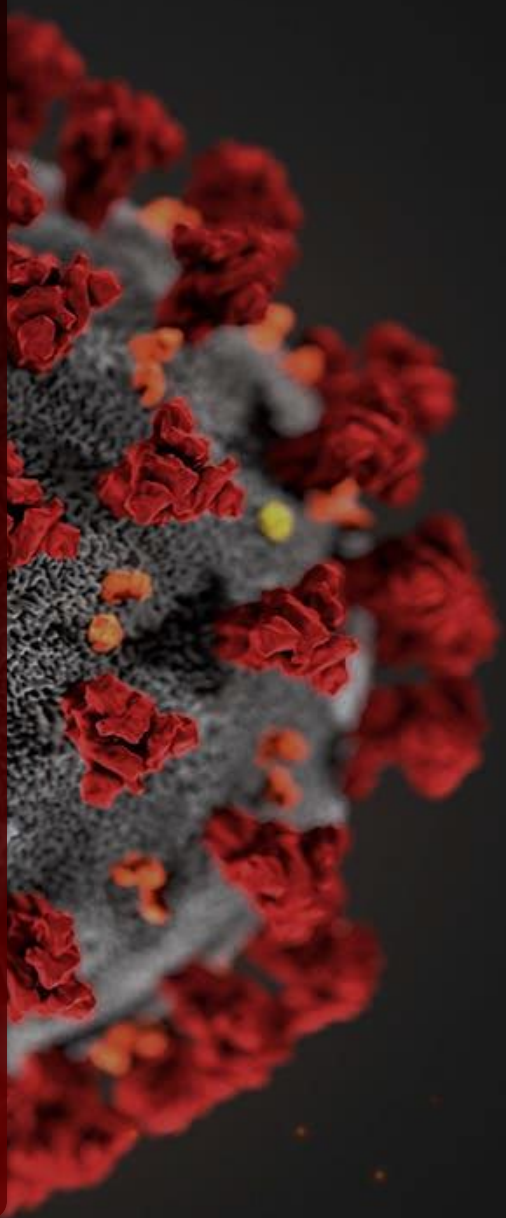

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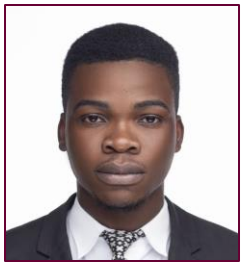

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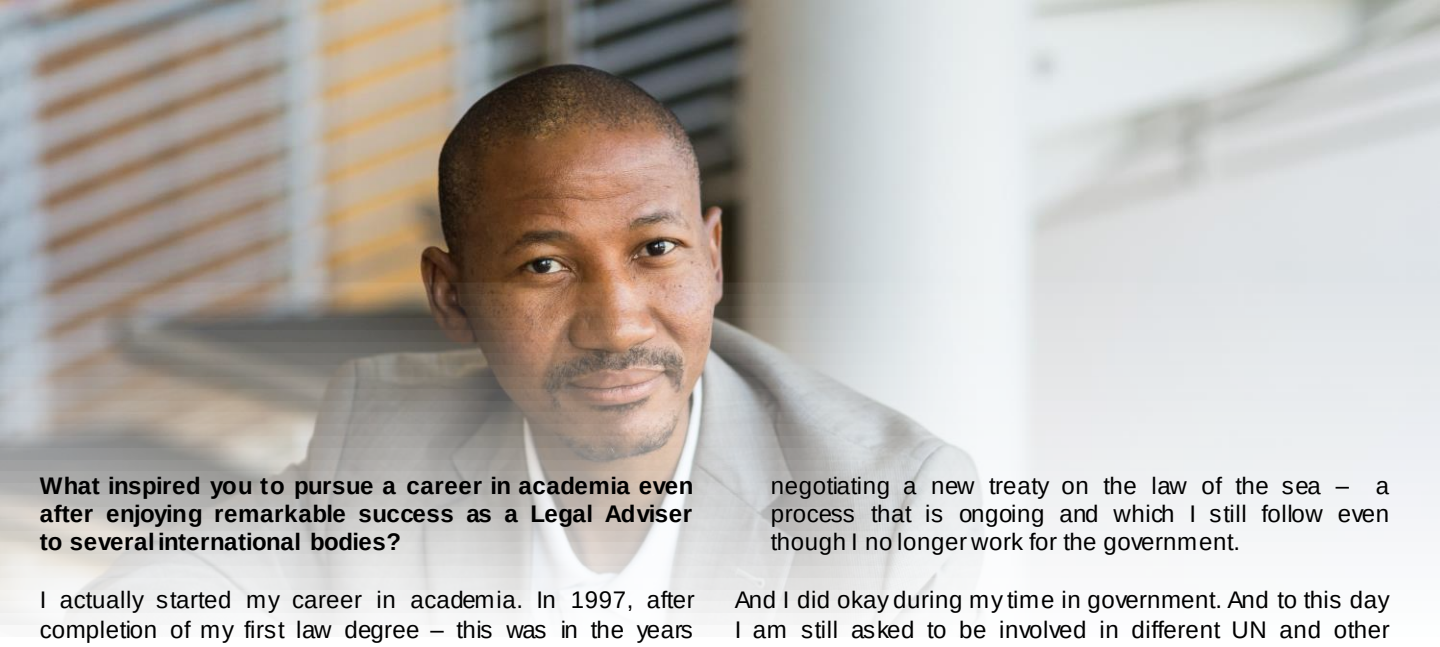
DIRE TLADI

INTERVIEW WITH LEGAL PAGES

The Covid-19 pandemic has been a phenomenon that not only ravaged lives and economies, but also shaped the course of laws and policies. Various issues relating to human rights, labour matters, intellectual property and more have emerged, many of which several legal regimes across the globe did not anticipate. Here, we speak with Dire Tladi, a professor of law at the University of Pretoria, who has been appointed to serve on the Institut de Droit's Commission on Pandemics and International Law. He shares with us his professional experience, the multifarious roles of international law in these dire times, and much more.



What inspired you to pursue a career in academia even after enjoying remarkable success as a Legal Adviser to several international bodies?

I actually started my career in academia. In 1997, after completion of my first law degree – this was in the years when an LLB degree in South Africa was preceded by an undergraduate degree – I was offered a junior lecturer position in the Department of Jurisprudence at the University of Pretoria. I stayed in academia until 2006 when I made the move to government as Principal State Law Adviser in the Department of Foreign Affairs (now Department of International Relations and Cooperation).

At the time I made the move to DFA, I was an associate professor and briefly head of the Department of Constitutional, International, and Indigenous Law at UNISA. But even at that time, I knew that the move from academia was a temporary one. Academia is home. I left only because I was not satisfied with the "book knowledge" of international law. I wanted to go out and experience the making of international law so that it would enrich my teaching and research. I hoped, of course, that in the process I would also contribute to the achievement of my country's foreign policy and the betterment of my continent. And I think I did that. In the eight years that I spent at DFA/DIRCO, I was immensely privileged. Just a few of the things that I was involved in, that I can think of at the top of my head:

- I was South Africa's chief negotiator for several treaties, including the 2008 Statute of the Merged African Court (African Court of Justice and Human Rights) and the Nagoya Kuala Lumpur Protocol on Biosafety.
- I was the lawyer on the team charged with making the case for the extension of South Africa's continental shelf (the landmass below the ocean).
- the legal adviser of South Africa's Permanent Mission to the United Nations in New York (2009-2013) including during our second tenure on the UN Security Council and was intimately involved in many history-making moments, including the Libya and Côte d'Ivoire resolutions (whether the history being made was good is a different story).
- played a small part in moving the United Nations towards negotiating a new treaty on the law of the sea – a process that is ongoing and which I still follow even though I no longer work for the government.

And I did okay during my time in government. And to this day I am still asked to be involved in different UN and other political processes. Again to name a few examples that immediately jump up:

- Just at the beginning of July, I was asked to serve as an expert adviser on international law in the trilateral negotiation between Egypt, Ethiopia and Sudan on the Grand Ethiopia Renaissance Dam.
- As soon as I left government I was invited to join a team of international lawyers advising former Presidents Mbeki, Chissano, and Mogae in mediating the Malawi/Tanzania border dispute
- I have served as Special Adviser to SA's foreign minister, Minister Nkoana-Mashabane
- I remain an adviser to the African group of States on the law of the sea treaty that is being negotiated and I am often requested to facilitate informal discussion.

But home is home. And I knew the time to come back home would come someday. In 2013, the itch came and it came hard. I had gained experience in the international arena. My knowledge of international law was not just book knowledge. I knew it was time to come back home. So I made the jump back to my original home, the University of Pretoria.

What do you relish most about lecturing at the University of Pretoria?

I love that campus. UP has one of the best campuses in the world. In fact, until not so long ago I used to say it has the best campus I have ever been on, but I saw one recently that is more beautiful, but only just.

I only teach at the postgraduate level, and there, the interaction with students can be fascinating. We have some really excellent students and it is a joy to watch them grapple with the concepts and challenge their perceptions about law and the correctness of dominant narratives.

It's 2020 and African Law Schools do not seem to have a place in the top 100 in the world, according to the QS Rankings. Do you think these rankings are a statement of the quality of our legal education? If they are, what should be improved upon?

No. I don't think these rankings are a statement of the quality of legal education. But before elaborating let me just say that there are many different rankings. According to the Times Higher Education rankings of law faculties in 2020, the University of Cape Town is ranked number 77 and the University of Pretoria is ranked one spot higher at number 76. Both of those are higher than some top, well-resourced universities like the University of Leeds, University of California Irvine, University of Zurich, and others.

That said, the question still stands. That is still only two universities out of how many? I would say there are several factors to consider:

- Top 100 is really elite. Depending on the ranking, there may be more African law faculties in the 200, top 300 and given how many law faculties there are in the world, this is nothing to be embarrassed about.
- A lot of this has to do with resources. The best-resourced schools attract the best students and the best faculties, and that makes it hard for Africa law faculties to compete;
- Rankings are what they are. It is good to look at them (especially when they say you are ranked number 76), but in the end, there is a lot of subjectivity and they are influenced by a lot more than quality;
- One gauge is moot courts. The University of Pretoria Centre for Human Rights, together with the UN hosts an annual Nelson Mandela Moot Court in Geneva, in which participants from top schools (read schools with the best reputations) participate. While I only have anecdotal evidence, I think there is often an African university in the finals (and not South African, by the way).

You have gained significant experience with the International Criminal Court and to date, African nations and nationals have accounted for a vast majority of its investigations and indictments. In your opinion, what does this say about the international image of the continent?

This is a tough question. My views have evolved as I have gotten closer to the ICC, and perhaps even entered its belly. I think the idea of an international criminal court to try those most responsible for heinous crimes is irreproachable. And for the most part, the ICC fits the bill for a court to do that.

Yet, as you say, all the indictees of this Court are African. The last time I checked, there had been more than 44 people indicted in total and not a single one was not African. The Court and those that adopt a blind loyalty will offer a number of justifications:

I. most of the African situations were self-referrals
II. the most atrocity crimes are on the continent so it makes sense that most of the cases would be on the continent
III. the ICC does not enjoy jurisdiction in the other situations in which the atrocity crimes are being committed.

I do not want to bore the readers with technical details that I address in some academic articles, but while there is some truth to these propositions, there is also a lot of obfuscation. To give you an example, point two suggests that most of the prosecuted are from the continent, whereas the truth is that all of the prosecuted are from the continent. To point three, the ICC does enjoy jurisdiction in many situations that it has simply feared opening up investigations in. The Office of the Prosecutor has now been given the green light to open investigations into the situation in Afghanistan where there have been countless reports by Human Rights Watch and Amnesty International law concerning war crimes including bombings of schools and clinics. We should all be pleased and jump for joy that perhaps prosecutions will occur but we should also ask ourselves why it has taken nearly fifteen years to open investigations. That situation has been under what the Office of the Prosecutor calls preliminary analysis since 2006 or thereabouts. To put this into context, on 26 February 2011, the UN Security Council referred the situation in Libya to the ICC. By the end of March of that year, not only had investigations been initiated, but there was a full docket with three indictees. In Libya, it took several weeks to investigate and indict. In Afghanistan, the ICC needed close to fifteen years? Only the most naïve of us will believe that it has nothing to do with the fear of reprisals from the big powers. I can make the same point about the situation in Palestine – but I will save that for another day.

I have said all of this, and I have not even mentioned the role of the UNSC in meddling with justice and tilting the scales against the less powerful, and removing the blindfold so that Lady Justice knows where to point her sword.

All of this said, however, it is the case that there are too many atrocity crimes on our continent. Whatever the inequities of the system, as Africans we have a responsibility to end the cycle of violence that has engulfed our continent and has stolen the innocence of so many of our men, women, and children. The flaws of the ICC do not explain why on some parts of our continents, brothers are killing brothers, raping, and maiming our sisters.

You are a prolific author with a vast majority of your writings being academic articles but in 2013, you wrote Blood in the Sand of Justice, non-fiction literature. Can you give some insights into the book and what stirred you to write it?

I love fiction. I have always wanted to write fiction. Blood in the Sand of Justice was not my first attempt. I had had several failed attempts – which is to say I would start a novel but halfway I would realize that it wasn't working. The best advice I ever got, from an accomplished South African novelist, Deon Meyer, was "write about what you know!" And I knew about international law, I knew about the ICC, so I wove Blood in the Sand of Justice around the ICC. It is about a disgraced former Deputy Prosecutor of the ICC who has a chance of redemption when he is asked to investigate the assassination of the ICC Prosecutor. The novel is a rollercoaster ride where his personal life, the politics of the ICC, and the search for the assassin(s) are thrown into the crucible.

You serve as a special rapporteur for peremptory norms of international law for the United Nations International Law Commission. What are your key roles and feats so far in this portfolio?

The work of the UN International Law Commission is concerned with progressive development and codification of international law. In respect of peremptory norms, the work of the Commission is intended to clarify the method by which peremptory norms are identified and the consequences for a norm having such a status. Today, peremptory norms are often invoked in a variety of situations, and yet there isn't a single understanding of the methodology for identifying and adopting peremptoriness. I hope the work of the Commission will be a good resource for lawyers, courts, and States when addressing issues of peremptorynorms.

So far, I have prepared four reports between 2016 and 2019. Based on those reports, the ILC adopted on first reading, a set of 23 draft conclusions on the identification and legal consequences of peremptory norms in international law. The draft conclusions have been transmitted to States for comments and once those comments are received, the Commission will look to adopt a final set of conclusions.

You were recently appointed to serve on the Institut de Droit International's Commission on Pandemics and International Law. Do tell us more about the objectives of this commission and the role it can play in resolving issues arising from the Covid-19 pandemic.

Yes. So, the Institut de Droit International has a similar mandate as the ILC, with the exception that it is a private entity and not an organ of the UN.

In March of this year, the IDI decided to set up a Commission to study Pandemics and International Law and to appoint Shinya Murase from Japan as the Rapporteur for that topic. I was honoured to be invited to serve on this Commission together with several other excellent international lawyers.

Before addressing your question, let me say something about the topic itself. The Institut de Droit established a Commission dealing with Pandemics. The Commission, however, has decided to broaden its scope to deal with epidemics more generally. I agree with that decision but for convenience, I will continue to refer to it as the Commission on Pandemics.

To address one part of your question, I do not see the role of this Commission as being to address issues arising from Covid-19, i.e. this particular pandemic. I must stress that this is my view and not that of every member of the Commission. The link between Covid-19 and the work of this Commission is, for me, two-fold:

I. Covid-19 made us realize that the rules of international law relating to Pandemics are incoherent and in need of greater coherence and systematization;
II. the practice of States (and possibly other entities) in addressing this pandemic will help the Commission in its codification efforts.

This means that I do not see whatever rules we may come up with as being directed at resolving any issues from the pandemic. I pause to mention that I have been slightly embarrassed by the attention this Commission (and my appointment to it) has garnered because there is almost this expectation that the Commission will help with Covid-19. It will not.

What our work might do, is to address issues that may arise in relation to future pandemics. There is an important consequence that flows from this. I believe that our work has to be deliberate, thoughtful, and systematic in order to produce a good quality product that will make a meaningful contribution to international law for decades to come. That was the preface to the question. Now to address the more substantive part of your question – the objectives of the Commission.

The objective of the Commission is to try to make sense of the patchwork of rules that could apply in cases of pandemics. By now, everyone knows that the World Health Organisation has a set of regulations, the International Health Regulations. Yet these regulations are not dispositive of all issues that confront the international community in times of pandemics.

To find answers to some of these questions, you have to go to different areas of law that were developed not with pandemics in mind. It is these other rules that I refer to when I say a patchwork of rules. These patchwork of rules may or may not be coherent or consistent.

The first function of the Commission would be to assess the coherence and consistency of the patchwork of rules. Second, where there is incoherence and inconsistency, or where rules applicable in normal times do not adequately account for circumstances of pandemics, craft rules that promote coherence and consistency and that are fit to address situations of pandemics. Finally, to systematize these rules and present to the States and other entities a comprehensive set of provisions that could either become a treaty or that simply constitutes a statement on the state on international law.

What proposals/resolutions/draft articles have been made so far by the commission. Are they all in consonance with your ideology?

We have so far received three substantive reports and a preliminary report from the Rapporteur – Shinya Murase is very hardworking and it is not surprising that in this short space of time, he has been able to churn out such extensive reports. In the three substantive reports, the Rapporteur has proposed a full set of 24 Draft Articles and members have had the opportunity to comment on these – needless to say, my view that we need to be more deliberate, thoughtful, and systematic has not won the day. I have yet to study the third report but have provided comments on the first two reports, and the fourteen Draft Articles contained therein.

On the text itself, given that we are still working on the text, I think I am not at liberty to share the content but I can comment at a general level.

What do they cover? Everything under the sun, including rules on State responsibility and the responsibility of international organizations, the relationship between health law and trade law, the relationship between health and intellectual property amongst many other provisions – it is as comprehensive as can be.

Are these draft articles consistent with my ideology? I guess so. Well, they are not inconsistent with my ideology at any rate. The ideology isn't the problem. The problem is the working methodology of rushing through the project. The result is a set of draft articles that aren't as deep or detailed as they might be. This also explains why, by and large, I have not been able to find any draft article that offends me. The real problems would only emerge once we start to go deeper. So in short, as they currently stand, the Draft Articles have not gone to sufficient depths to reveal the real difficult questions that can arise. On the plus side, the benefits of superficiality are that the broad principles being proposed are likely to be generally agreeable to most commentators – and they are certainly agreeable to me.

Mandatory quarantines, travel bans, confinement of individuals. These are some of the measures taken by governments to enforce emergency laws. To what extent are these limitations to fundamental human rights justifiable?

These are some of the questions that arise. You have listed very good examples. Other examples of human rights being impacted upon, fake news regulations and their impact on freedom of expression and the acceptability of and limits of force by law enforcement to ensure compliance with mandatory quarantines. As a general rule, in times of public emergency, human rights may be limited. Human rights treaties set forth the rule for such limitations whether in the form of internal limitations of the rights in question, or the rights serving to limit each other or through derogation clauses. There nonetheless remains questions to be answered: given the potentially devastating impacts of pandemics, is there a reason for a larger scope of discretion to authorities when adopting measures that limit human rights? Are the rules, including procedural rules, applicable outside treaty contexts? What are the factors that should be applied in determining whether the limitations of the right in question is justified?

There are also, in the context of human rights, socio-economic rights issues that are rarely raised. We often speak about solidarity as the new driving motif for international law, but is it? What extra duties on States are there to make sure that the most vulnerable are cared for? Is there a stronger case to be made for the extraterritorial application of socio-economic rights during times of pandemics? These are important questions of international law.

In what ways does the Covid-19 pandemic impact environmental laws, if any?

Funny that this is the question that arises the least in the context of pandemics, but it is actually an important one.

First, and foremost, many of the general principles that one would expect to apply to pandemics emerged from the context of international environmental law. These include principles like the due diligence rule, the duty not to permit territory under one's control or jurisdiction to be used to cause harm, etc. I can also imagine that principles such as the precautionary principle might easily be adapted to situations of pandemics.

Second, there is empirically a causal connection between outbreaks and the environment. That means that environmental law has an important role to play in preventing the outbreak of pandemics.

Third, our search for vaccines and medicines relies on the environment and manipulation of aspects of biological diversity. There are rules of international law that are relevant to this area. I have already mentioned in response to one of your earlier questions, the Nagoya-Kuala Lumpur Protocol.

The South African Government in April 2020 called for proposals for the design and procurement of ventilators. What are the intellectual property issues that might arise from this move?

I should begin with a caveat. Intellectual property is not one of my strongest areas, but there is no question that this is a hugely important issue in the context of pandemics. You have asked specifically about ventilators, but often the question is posed in relation to medicines. The issues raised are, however, largely the same. Under normal circumstances, any patents held over the design of a ventilator, or any component thereof, would have to be respected and the making of ventilators or using any component over which a patent is held would be restricted.

Now, a Ministerial Declaration of 2001 under the WTO, however, determined that TRIPS Agreement, which sets out intellectual property protection, "should not prevent members from taking measures to protect health" and that the Agreement should be "interpreted and implemented in a manner supportive of WTO members right to protect health". The Declaration does not, of course, amount to jettisoning of the rights in TRIPS in cases of pandemics, because in this declaration, the members also stress that they maintain the commitment to the IP protections in TRIPS. So it may be possible to argue that the manufacture of ventilators to deal with COVID-19 falls under exclusions from patentability under Articles 27(2) and (3) read with the Declaration. These are certain issues that Pandemics Commission could grapple with.

Looking back at your very successful career, if given a clean slate, what would you have done better, or differently?

I try not to second guess myself. Things always happen for a reason. I have looked back at my life at missed opportunities and found that had those opportunities materialized, I would have missed out on bigger things. So I am pretty content with the decisions I have made, the choices I have made, even those that might seem cringe-worthy right now.

Outside International Law and research, what interests do you actively pursue?

Easy. Two great loves. The first one, due to age, bad knees, and a dearth of talent, I pursue passively! Basketball.

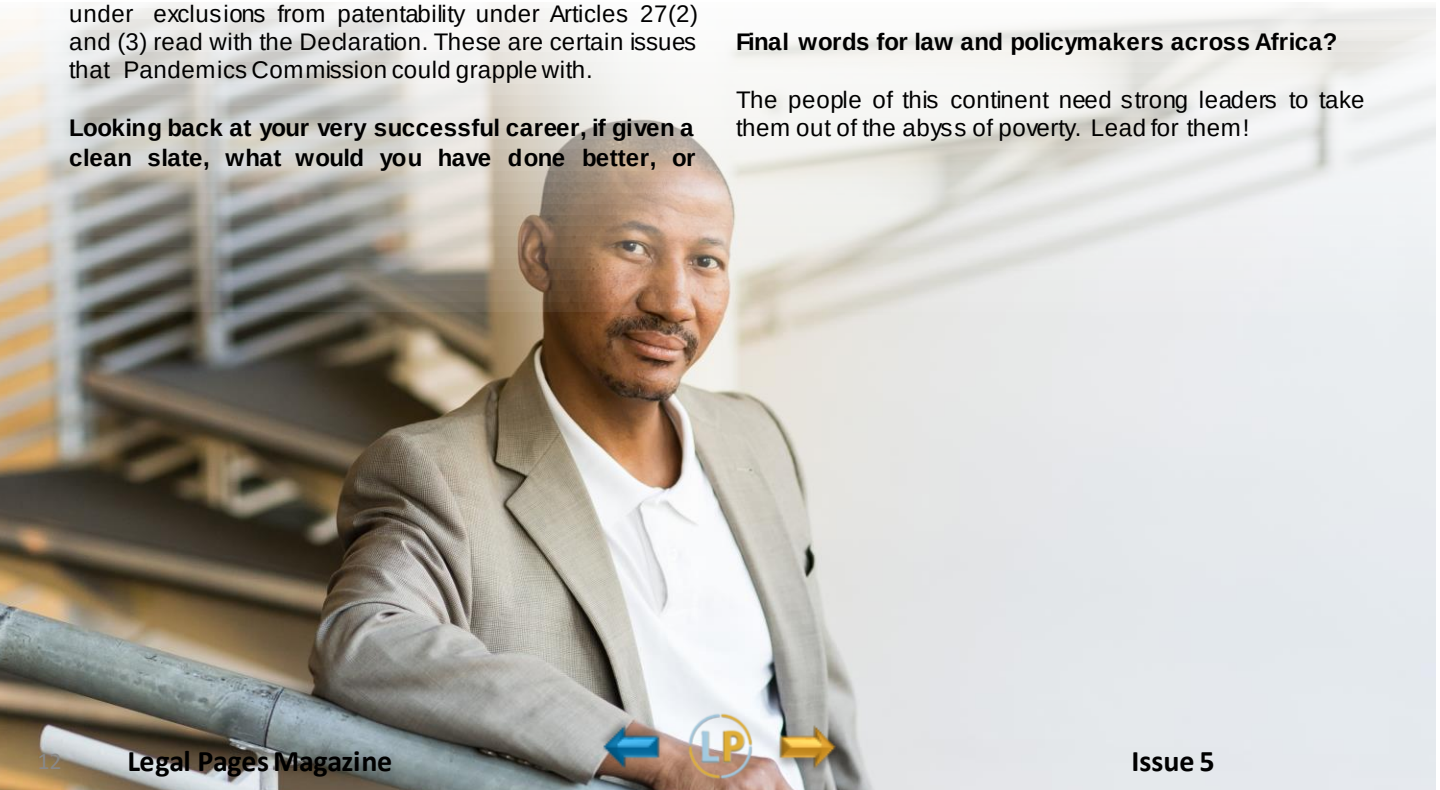
The second is fiction writing. Unlike basketball, my lack of talent has not been a deterrent so far, although the people who have read my book (all ten of them), think it is wonderful. Lots of editorial mistakes they tell me, but a wonderful read. I have just finished a second book, and I am determined that it won't have any editorial mistakes and was lucky when a very meticulous person offered to edit it for me.

You seem to have too many irons in the fire. How you organize, plan, and prioritize your work and schedule?

I am actually the most disorganized person I have ever met. I think there is a method to the mess in my life, but I only think that because somehow I manage to get through the things that need to be done. But there are times when I get a headache just thinking of the things that need my attention.

Final words for law and policymakers across Africa?

The people of this continent need strong leaders to take them out of the abyss of poverty. Lead for them!

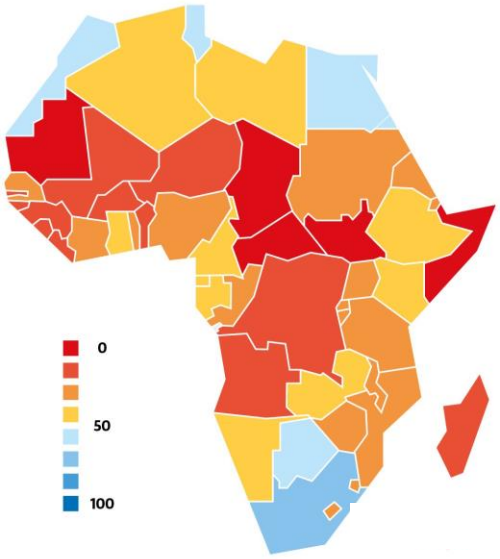


Decoding Covid-19 and Human Rights in Africa

Prof. Dan Kuwali

Dan Kuwali is a Professor of Law at the Centre for Human Rights, Faculty of Law, University of Pretoria. He is a Fellow of the Carr Center for Human Rights Policy, Harvard Kennedy School of Government. He is also an Executive Director and Adjunct Professor at the Centre for Strategic Studies, Malawi University of Science and Technology. A prominent scholar, he has been featured in a host of journals and other publications.

Abstract: Since Corona Virus Disease (Covid-19) has shown the interconnectedness and the indivisibility of human rights, governments should take a human rights approach in all efforts to respond to the pandemic. The responses should be holistic, all-inclusive, equitable and universal to combat a virus that indiscriminately affects everyone. As Covid- 19 disproportionately affects certain communities, governments should protect the most vulnerable and neglected people in society, both medically, socially and economically. Restrictions on rights must be carried out in accordance with the law and subject to review by the courts.



INTRODUCTION

In November 2019, an unprecedented and deadly coronavirus spread in Wuhan, Hubei Province in China. This highly contagious virus causes Corona Virus Disease (Covid-19), characterized by severe acute respiratory syndrome.[1] The virus has spread globally, infecting over 12 million people and killing at least 549 thousand others worldwide, as of July 2020.[2] At the time of writing, Africa alone has over 523 thousand affected cases with at least 12.2 thousand reported deaths and about 254 thousand recoveries.[3] The World Health Organization (WHO) declared Covid-19, which has a mortality rate in excess of three percent, as a pandemic.[4] "The alarming levels of spread and severity" led the WHO to ask governments to take urgent and aggressive action to stop the spread of this virus.[5] Currently, there is no vaccine to prevent Covid-19, and no specific medical treatment for it, other than managing the symptoms.[6] The only way is to contain, manage and prevent the spread of this deadly and highly infectious virus. For this reason, governments are challenged in seeking to protect their populations from Covid-19.

This has led to the regular functioning of society not able to be maintained, particularly in implementing the main protective measure to contain the virus, which is confinement. These protective measures have inevitably encroached on human rights, which are an integral and necessary part of a democratic society governed by the rule of law.[7] Coupled with inadequacy in the healthcare system, governments have failed to consistently uphold human rights obligations in their responses to the Covid-19 pandemic by limiting access to information and implementing restrictions in discriminatory or arbitrary ways.[8] Respect for human rights across the spectrum, including economic and social rights, and civil and political rights, is fundamental to the success of the public health response to this global pandemic. Human rights violations mutate, rather than facilitate, responses to Covid-19 and undercut their efficiency.[9] Drawing on examples of responses by governments, this paper provides an overview of the impact of Covid-19 on human rights and insights on how governments in Africa can respond to the pandemic while protecting human rights.

> "Human rights violations mutate, rather than facilitate, responses to Covid-19 and undercut their efficiency."

The impact of Covid-19 on human rights

The unprecedented public health emergency emanating from the Covid-19 pandemic has forced governments to take drastic measures to contain its transmission. Most governments have ordered extensive lockdowns to prevent the spread of the virus, restrict by necessity freedom of movement and, in the process, freedom to enjoy many other human rights. In view of the exceptional situation and to preserve life, countries have adopted extraordinary measures, which inadvertently infringe upon human rights and personal freedoms, with far-reaching consequences for the economic, social and political lives of the people.[10] This impact comes from the disease itself but also from the measures necessary to combat it coming up against underlying factors like inequalities and weak protection systems. It falls disproportionately on some people, often those least able to protect themselves. The Covid-19 shows a more striking example of the interconnectedness and the indivisibility of human rights. In other cases, governments have ordered cessation of social and economic activity, except for essential services. Such measures can inadvertently affect people's livelihoods and security, their access to health care, to food, water and sanitation, work, education, including leisure. Responses to the Covid-19 have also occasioned human rights violations including censorship, discrimination, arbitrary detention and xenophobia. With the large informal sector and people who survive on subsistence in most countries coupled with a limited welfare system and poor data, most governments have been unable to provide sufficient social support. The lack of social determinants of health has also rendered many in the informal sector more vulnerable due to the absence of social safety nets.[11] Therefore, it is crucial that effective measures should be taken to mitigate any such unintended consequences in response to the pandemic.

The justification for derogation of human rights in responding to Covid-19

The Covid-19 poses a serious public health threat with wide-ranging implications for human rights, peace and security. Although Africa has been far from the epicentre of the pandemic, populations on almost all the countries on the continent have been subjected to restrictions and limitations on their rights including access to health care. Article 16 of the African Charter on Human and Peoples' Rights (the Banjul Charter) guarantees everyone the right to enjoy the best attainable standard of physical and mental health and obligates governments to take necessary measures to protect the health of their people and to provide medical care to those who need attention.[12] Since the Banjul Charter does not provide for derogation of human rights in emergencies, aside from the claw back clauses, recourse is made to international human rights law, notably Article 4 of the International Covenant on Civil and Political Rights (ICCPR) and Article 4 of the International Covenant on Economic Social and Cultural Rights (ICESCR).[13]

Both the ICCPR and the ICESCR, which all African countries have adopted, recognize that in the context of serious public health threats and public emergencies threatening the life of a nation, restrictions on some rights can be justified when they have a legal basis, are strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the objective. The emergency must be officially proclaimed, and such measures must only be taken to the extent strictly required by the exigencies of the situation, not be inconsistent with other obligations under international law; be time-limited, and not discriminate. No derogation is permitted from certain specified rights, including the right to life.[14] Constitutions of most African States also contain provisions for derogation, limitation and restriction of human rights including in cases of state of emergency. However, most governments in Africa have not formally declared states of emergency but have adopted emergency measures to combat the virus.

The severity of the Covid-19 pandemic clearly rises to the level of a public health threat that could justify restrictions on certain rights as those that result from the imposition of lockdown, which amounts to a *de facto* state of emergency limiting freedom of movement. Where restrictive precautionary measures adversely impact human rights, they must not discriminate, be provided for by law and necessary and proportionate to meet the public health crisis. For example, the measures should not be used as a basis to target particular groups, minorities, or individuals nor as a cover for repressive action under the guise of protecting health or used simply to quash dissent.[15] Restrictions such as mandatory quarantine or isolation of symptomatic people must, at a minimum, be carried out in accordance with the law. As decided in *Lin Xiaoxiao and Others* case, emergency measures must be strictly necessary to achieve a legitimate objective, based on scientific evidence, proportionate to achieve that objective, neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, and subject to review by the courts.[16]

Law enforcement has a role to support the response to the Covid-19 pandemic and protect people's lives. For example, over 70,000 troops were deployed to help contain the virus and enforce the lockdown in South Africa.[17] Heavy-handed security responses undermine the health response and can exacerbate existing threats to peace and security or create new ones. The best response is one that aims to respond proportionately to immediate threats whilst protecting human rights under the rule of law. States should ensure that any emergency measures, including states of emergency, are legal, proportionate, necessary and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. It is also required that emergency powers should not be used as a basis to quash dissent, silence human rights defenders or journalists, or any other steps taken that are not strictly necessary to address the health situation.

A Human Rights-Based Approach in Responding to Covid-19

Article 1 of the Banjul Charter enjoins African States to "recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them." In times of the Covid-19 pandemic, the guarantee of human rights is as important as ever and responses to the crisis must be human rights sensitive.[18] The United Nations (UN) Office of the High Commissioner for Human Rights has provided guidance to ensure that States' responses to the Covid-19 pandemic should comply with human rights obligations.[19] Human rights put people centre-stage. Observing the crisis and its impact through a human rights lens and how it is affecting people on the ground, particularly the most vulnerable, there is a critical need for a human rights-based approach (HRBA) to Covid-19. Thus, these efforts should take a holistic approach, by protecting the most vulnerable and neglected people in society, medically, socially and economically.

An HRBA entails that governments should put human rights at the centre of their responses to Covid-19. It also requires that the human rights principles of non- discrimination, participation, empowerment and accountability should be applied to all health-related policies, especially the principle of non-discrimination which is vital in accessing health care, services and life-saving treatment. An all-inclusive approach requires that the responses to Covid-19 should be inclusive, equitable and universal lest they will not beat a virus that affects everyone regardless of status. The reasoning is that if the virus persists in one community, it remains a threat to all communities, so discriminatory practices place everyone at risk. There are indications that the virus, and its impact, are disproportionately affecting certain communities, exposing underlying structural inequalities and pervasive discrimination that need to be addressed in the response and aftermath of this crisis.

Nigeria, Rwanda and Senegal have shown examples of good practice where responses have been shaped by human rights where, within their available resources, fiscal, financial and economic measures have been adopted to mitigate the negative impact of Covid-19 on their populations. For example, Nigeria adopted guidelines that contain human rights guarantees aimed at ensuring access to adequate accommodation, food, water and sanitation, information and communication for patients at Covid-19 treatment centres and facilities.[20] Likewise, Senegal deployed an economic and social resilience programme worth about US$ 1.7 billion to support the economic sectors most affected by the crisis and to provide food aid to the most vulnerable.[21] On its part, Rwanda in particular has provided emergency water supplies to slum areas; suspended housing evictions for unpaid rent during the crisis; preserved jobs and wages through targeted economic measures; among others. Granted, however, not all States have the resources to provide sufficient protection to everyone.

Protect the right to life and livelihoods

By and large, responses to Covid-19 are aimed at protecting the lives of all human beings. Article 4 of the Banjul Charter recognizes that human rights are inviolable and that every human being is entitled to respect for his life and the integrity of his person. The right to life is a broader and fundamental right on which all other rights find their existence.[22] Article 4 of the Banjul Charter places a duty on all African States to protect human life, including by addressing the general conditions in society that give rise to direct threats to life. While protecting people's lives is the priority, protecting livelihoods is a means to protect life. Therefore, States should protect the right to life while also protecting livelihoods. To this end, States are enjoined to use maximum available resources at national and international levels to ensure availability, accessibility and quality of health care as a human right to all without discrimination, including for conditions other than Covid-19 infection; and ensure that the right to life is protected throughout.

The right to health and access to health

The right to health is inherent in the right to life. Article 16 of the Banjul Charter and Article 12 of the ICESCR guarantee the right to health as a fundamental human right which also provides for a life in dignity. States should take effective steps to prevent, treat and control epidemic, endemic, occupational and other diseases. Covid-19 has tested the limit of States' ability to protect the right to health. States with strong and resilient healthcare systems are better equipped to respond to the pandemic as health-care systems are being stretched, with some at risk of collapse. Underinvestment in health systems has weakened the ability to respond to this pandemic as well as provide other essential health services. Prevention of contacting Covid-19 requires wearing of personal protective equipment (PPE), which are in critical shortage. Aside from patients, health workers have also been infected by the virus and in some cases, governments have failed to provide basic precautionary measures for them. Realization of the right to health in response to Covid-19 requires that governments should take measures so that health care is available to all, accessible without discrimination, affordable, respectful of medical ethics, culturally appropriate, and of good quality. Governments should ensure that all health workers have access to appropriate PPE and establish social protection programmes for the families of workers who die or become ill as a result of their work.

Respecting freedom of movement

The commonly used means to contain the spread of Covid-19 has been restricting freedom of movement. Article 12 of the Banjul Charter recognizes the right to freedom of movement and that "(e)very individual shall have the right to leave any country including his own, and to return to his country." This right may only be restricted "by law for the protection of national security, law and order, public health or morality." Freedom of movement is a crucial right that facilitates the enjoyment of many other rights. As noted in the *Esther Kathumba & Others* case, lockdowns affect jobs, livelihoods, access to services, including health care, food, water, education and social services, safety at home, adequate standards of living and family life can be severe.[23] The availability of effective and generalized testing and tracing, and targeted quarantine measures, can mitigate the need for arbitrary and indiscriminate restrictions.

Governments should avoid sweeping restrictions on movement, and only impose mandatory restrictions when scientifically warranted and after providing social support mechanisms for those affected. Voluntary self-isolation measures, public awareness, widespread screening, and universal access to treatment, are more likely to induce cooperation than coercive measures.[24]

Protect freedom of expression

Article 9 (2) of the Banjul Charter guarantees that "(e)very individual shall have the right to express and disseminate his opinions within the law." Under the guise of fighting the pandemic, the authorities in some countries have taken advantage to prosecute regime's critics, particularly civil activists and social media users, for posting online videos about government's inaction against the crisis. There have been cases where governments have failed to uphold the right to freedom of expression, taking actions against journalists and healthcare workers. For example, three women from the main opposition party in Zimbabwe were reportedly abducted and tortured under the pretext of enforcement of Covid-19 restrictions, after they participated in a citizen demonstration over the lack of government assistance for poor and vulnerable communities during the pandemic.[25] Article 9 of the Banjul Charter obliges governments to protect the right to freedom of expression, including the right to seek, receive, and impart information of all kinds, regardless of frontiers. Permissible restrictions on freedom of expression for reasons of public health, may not put in jeopardy the right itself.[26] Therefore, governments should guarantee freedom of expression, including freedom of the press, so that information can be disseminated without suppression. Governments and communication companies need to counter misinformation with accurate, clear and evidence-based information, and avoid overbroad efforts that could result in censorship of protected speech. Emergency powers had been used to enact repressive measures that may have the effect of silencing dissent.

Ensuring access to health information

Article 9 (1) of the Banjul Charter recognizes that "(e)very individual shall have the right to receive information." However, in responding to Covid-19, governments have taken steps to tackle the rapid spread of false and misleading information which has accompanied the outbreak on social media – labelled by WHO as a massive 'infodemic' – which threatens to undermine efforts to counter the outbreak.[27] Social media companies have also taken steps to tackle false claims and direct users to accurate information. However, there are fears that authorities may be using the threat of infection and disinformation as a pretext to disproportionately increase surveillance capacities, crack down on fundamental freedoms and justify heavy censorship that muzzles independent sources of information, in addition to legitimately harmful content. Therefore, governments must prevent disinformation and provide timely and accurate up-to-date information about the virus and health guidance. This is important for addressing false and misleading information. All information about Covid-19 should be accessible and available in multiple languages, including for those with low or no literacy, the visually and hearing impaired as well as those who lack access to the Internet and usual media sources. Governments are responsible for providing information necessary for the protection and promotion of rights, including the right to health. A good example is what the Senegal National AIDS Control has done to develop messages, press releases and banners on social media on preventive steps to be taken against Covid-19, especially for people living with HIV.[28]

Guarantee the right to privacy

Although there is no explicit recognition of the right to privacy in the Banjul Charter, international and domestic laws guarantee every person the right to privacy.[29] International human rights law prohibits subjecting individuals to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon one's honour and reputation; and guarantees everyone the right to the protection of the law against such interference or attacks. In response to Covid-19, governments worldwide are adopting a host of measures to track and monitor infections and counter disinformation. To contain the outbreak, some countries are deploying sweeping surveillance networks, personal mobile phone tracking, and Artificial Intelligence (AI) and facial recognition technologies. Governments in many countries have been conducting mass surveillance in order to carry out contact tracing of the disease spread and its carriers. Governments should put safeguards where new technologies are used for surveillance in response to Covid-19, including purpose limitations and adequate privacy and data protections.

Provision of social protection

Article 18 (2) of the Banjul Charter places a duty on the State to assist the family which is the custodian of morals and traditional values recognized by the community. Article 18(3) guarantees the elderly persons and persons with disabilities "the right to special measures of protection in keeping with their physical or moral needs." The main purpose of protecting the rights of elderly persons and persons with disabilities under Article 18(3) of the Banjul Charter is to enable elderly persons to remain full members of society. Covid-19 disproportionately affects older people and individuals with underlying illnesses such as cardiovascular disease, diabetes, chronic respiratory disease, and hypertension. The pandemic has also highlighted and exacerbated systemic inequalities. Many governments' responses to Covid-19 had devastating effects on people in poverty, persons with disabilities, older persons, people of African descent and women. Therefore, African States need to take additional social protection measures to support and protect the rights of the elderly who are being disproportionately affected.

Protect the rights of detainees and prisoners

The Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa provide for the right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in police custody.[30] However, Covid-19, like other infectious diseases, poses a higher risk to populations that live in close proximity to each other. People in police custody or prison cells are likely to be more vulnerable to the risks and impacts of Covid-19 because closed conditions of detention make social distancing virtually impossible, especially if access to health care is already poor. States have an obligation to ensure medical care for those in their custody at least equivalent to that available to the general population, and must not deny detainees, including asylum seekers or undocumented migrants, equal access to preventive, curative or palliative health care. Asylum seekers, refugees living in camps, and people experiencing homelessness may also be at increased risk because of their lack of access to adequate water and hygiene facilities. Governments should consider reducing their populations through appropriate supervised or early release of low-risk category of detainees. Detainees at high risk of suffering serious effects from Covid-19 should also be considered for similar release.

Fulfil the right to education

Article 17 (1) of the Banjul Charter dictates that every individual shall have the right to education. Article 28 of the Convention on the Rights of the Child recognizes education as a legal right to every child on the basis of equal opportunity. It states the obligation of the State to take measures regarding school attendance and discipline.[31] Covid-19 has led to the closure of schools, thereby depriving learners their right to education. Widespread closure of schools has interrupted the education of more than 1.4 billion children.[32] Without access to the internet and digital devices, participation in remote lessons is impossible, thus increasing a massive disruption to education access. Online learning should be used to mitigate the immediate impact of lost normal school time. Schools deploying educational technology for online learning should ensure the tools protect child rights and privacy. Therefore, governments should attempt to recover missed in-person class time once schools reopen. The obligation to make education accessible also requires that governments should open Wi-Fi hotspots to all learners who need them. Further steps could be taken to lift data caps, upgrade speeds, and eliminate eligibility requirements for any low-income targeted plans during the pandemic.

Realize the right to economic activity

Article 22 (1) of the Banjul Charter provides that all peoples have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. However, the Covid-19 pandemic has adversely affected the enjoyment of the right to economic activity. More so, as many countries ease out of lockdown, businesses will need to consider how to safely return to work. Implementing protective and preventive measures may require significant changes to work place processes and practices. Over 195 million jobs have been lost worldwide due to the pandemic, occasioning unemployment, underemployment and poverty.[33] In returning to work, apart from observing social distancing rules, companies should ensure that young workers and others who are limited in their ability to give informed consent are not engaged in hazardous working conditions, including exposure to Covid-19. It also provides that companies should prevent child labour from being used to fill gaps resulting from the absence or reduction in the number of healthy adult workers. Importantly, employers should ensure that there is no discrimination between workers, either in rehiring processes or in the provision of health care, medical supplies or PPE.

Address disproportionate impact on women, girls and vulnerable groups

Article 17 (3) of the Banjul Charter requires States to ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. This obligation, therefore, requires that States should mitigate the impact of the crisis on women and girls, including on their access to sexual and reproductive health/rights, and protection from domestic and other forms of gender-based violence and ensure their full and equal representation in all decision-making on short-term mitigation and long-term recovery. In Kenya, for example, there have been reports of a spike in domestic violence during the lockdown.[34] In Angola, Eswatini, Lesotho and Botswana, government resources for Covid-19 have failed to reach women's groups in remote areas.[35] Therefore, African States should ensure that national and local response and recovery plans identify and put in place targeted measures to address the disproportionate impact of Covid-19 on certain groups and individuals, including women, girls and children.

Conclusion

While Covid-19 remains a highly infectious pandemic of worldwide proportions requiring urgent attention to protect populations, its management must not be used to infringe upon human rights. Besides the health implications, the pandemic has also been accompanied by human rights violations including fears regarding increased government surveillance, misinformation, job losses and increased poverty. Given the effects of Covid-19 on the people, economy and its impact on the enjoyment of human rights, there is a critical need for an HRBA to responding to the Covid-19 pandemic. Thus, governments should put human rights at the centre of the pandemic response by applying the principles of non-discrimination, participation, empowerment and accountability needed to be applied to all health-related policies including in accessing health care, services and life-saving treatment. The pandemic has also highlighted and exacerbated systemic inequalities. Many governments' responses to Covid-19 have had devastating effects on people in poverty, persons with disabilities, older persons, people of African descent and women. Therefore, States must take additional social protection measures to reach those disproportionately affected. Governments should also provide access to reliable and accurate information and the protection of the right to privacy, including in the use of technologies to track the spread of the virus.

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Her exploits have contributed to her JEE's recognition as the Firm of the Year under Africa Category at the 15th Annual Managing IP Awards in March 2020; IP and Technology Firm of the Year 2016 by the Africa Law Digest Awards, Intellectual Property Team of the Year by the Nigeria Esquire Legal Awards for 2016, 2018 and 2019.

Tolu Olaloye

A FACTSHEET ON THE INTERSECTION OF INDIGENOUS INTELLECTUAL PROPERTY RIGHTS AND INTELLECTUAL PROPERTY RIGHTS IN AFRICA; AMIDST COVID-19 OUTBREAK.

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

(United Nations Declaration on the Rights of Indigenous Peoples, Article 31, 2007)

INTRODUCTION

"Indigenous Cultural knowledge has always been an open treasure box for the unfettered appropriation of items of value to western Civilization. While we assiduously protect rights to valuable knowledge among ourselves, Indigenous people have never been accorded similar rights over their cultural knowledge. Existing Western Intellectual Property laws support, promote and excuse the wholesale, uninvited appropriation of whichever indigenous item strikes their fancy or promises profit, with no obligation or expectation to allow the originators of the knowledge a say or a share in the proceeds[1].

In the past two decades, biotechnology, pharmaceutical and human healthcare industries have increased their interests in natural products as sources of new biochemicals for drug, chemical and agro-allied product development. The evidence of this is in the sudden and continuing proliferation of alternative healthcare industries, and other organizations that have departed from conventional medicine, wholly or partly, and turned to traditional knowledge and medicine as a source of new and probable solutions to medical problems in areas where conventional western medicine has been perceived as slow, stagnant or ineffective. With the recent global pandemic incidence of Covid-19,[2] alternative medicine has become very necessary, as seen in Madagascar and Nigeria; for the treatment of the virus.

> **"Indigenous Cultural knowledge has always been an open treasure box for the unfettered appropriation of items of value to western Civilization."**

Therefore, it is necessary to analyze some factsheets about Indigenous IP rights.

HOW IS INDIGENOUS INTELLECTUAL PROPERTY (IIP) DEFINED?

IIP is a term used to identify the rights of indigenous people of every race and nationality to protect their specific cultural and traditional knowledge and intellectual property.

It encompasses the rights of indigenous people to systems, inventions, mechanisms and processes, covering but not limited to art, medicine and technology, which have evolved as a function of their cultural heritage, special beliefs, and ancestry which are unique and exclusive to them as a community[3].

WHAT ARE THE VARIOUS KINDS OF INDIGENOUS INTELLECTUAL PROPERTY (IIP)?

There are essentially three kinds of IIP:

1. **Traditional Knowledge:** This is a living body of knowledge that is transmitted from generation to generation within a community, often forming part of its cultural or spiritual identity. It is the knowledge of people within a specified community, developed continuously outside the formal education system, based on experience and often tested over centuries of use. Examples include technical know-how, practices, skills and innovations related to agriculture, health etc.

2. **Traditional Cultural Expressions**: Also called Expressions of Folklore, they refer to the tangible or intangible expression of indigenous people's traditional beliefs, myths, tales and practices. Basically, Intangible Traditional Cultural Expressions are manifestations of cultural heritage not expressed in physical form but by way of non-physical, intangible mediums, while tangible cultural expressions are manifest in physical, ostensible form. Examples include music, stories, sayings, proverbs, names, idioms, lore and dance, art, designs, symbols, performances, ceremonies, handicrafts, tattoos, respectively.
3. **Genetic Resources**: These refer to Genetic Material of actual or potential value. Genetic material is any material of plant, animal, microbial or other origin containing functional units of heredity. Examples include materials of plant, animal or microbial origin including medicinal plants, agricultural crops and animal breeds.

WHO OWNS INDIGENOUS INTELLECTUAL PROPERTY (IIP)?

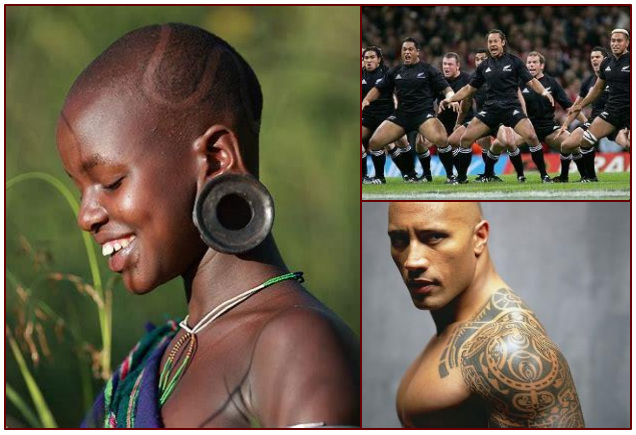
IIP is owned and used by the indigenous or traditional community, to whom such Traditional Knowledge, Traditional Cultural Expression, or Genetic Resource is unique; with whom it has been identified for a substantial period of antiquity and who can rightly lay claim to same as forming part of their traditional and cultural heritage. In most cases, ownership of IIP is communal or collective as opposed to inhering in individuals. In the United States, and some other states, an individual who creates products bearing indigenous symbols might obtain common law trademark rights and indigenous artists might obtain copyright protection for certain types of original expressions derivate from IIP. In addition, Nation-states have begun to step up to the challenge of IIP rights protection amid increasingly intense agitation by indigenous people.[4]

HOW DO THESE RIGHTS MANIFEST?

The manifestation of IIP rights does not strictly conform to the limited provisions of IP laws. IIP rights are manifested through the cultural products, forms and expressions of an Indigenous peoples' cultural or ancestral heritage. These rights find expression not only in material forms but also in the knowledge, innovations and practices that give rise to the cultural products and expressions. These latter categories include language, traditional knowledge, recreational knowledge, medical knowledge, myths and legends, theatrical arts, handicrafts, ceremonial rituals, dances etc.

It is therefore safe to say that the ordinary way of life, culture and heritage of an indigenous people is the very manifestation of their IIP rights.

Examples include the indigenous Samoan *Pe'a* (Figure 1), the Mursi "Body plate" tradition, and the Maori's *Haka*.



CAN SOMEONE OUTSIDE THE COMMUNITY USE THESE IIP RIGHTS? IF YES, ON WHAT TERMS?

Yes; persons outside the community can make use of these IIP rights.

Such use by an "outsider," however, must be subject to the approval of the host/source community and must conform to any relevant statute in force at the time. Usually, the requirement of the source community's approval is stipulated by statute. Where such statute is non-existent, it creates a unique situation whereby a third party may successfully appropriate the IIP rights of the source community for personal gain, without the latter's approval or benefit.

In such situations, the only remedies available to the source community is to take legal action against such third party, or to engage in extensive public awareness campaigns to draw the attention of the public to the 3rd party's breach of their rights. An example is the Australian case of ***Milpurrurru and others v. Indofurn Pty Ltd and others (1995) 30 IPR 209***, in which three members of an indigenous community successfully sued the importers of a particular brand of carpets, whose design infringed the IIP rights of their communities. Another example was an isolated dispute concerning the popular LEGO toy-line "Bionicle" which arose between Danish toymaker Lego Group and several Māori tribal groups (fronted by lawyer Maui Solomon) and members of the on-line discussion forum (Aotearoa Cafe). The members of the tribe contended that several words from their language and several allusions to their culture, imageries and folklore were incorporated in the toy-line without authorization. The parties eventually reached a settlement. Another example is manifest in the consistent appropriation of Aboriginal cultural techniques, art forms and medicine for private commercial benefit over the years. In 2010, the Hudson's Bay Company came under fire during the Vancouver Olympic Games for its decision to make and market non-authentic Cowichan-style sweaters which were essentially knock-offs made utilizing esoteric aboriginal techniques.

IS THERE ANY BENEFIT SHARING WHEN INDIGENOUS INTELLECTUAL PROPERTY IS USED BY THIRD PARTIES?

Benefit sharing is typically a condition of the use of IIP by third parties. It should be noted that this is largely a question
of practice and not statute. Although some states have specific statutes which compel third parties wishing to employ indigenous intellectual property to seek the permission of the indigenous owners of such and to reach possible agreements on mutual benefits. Benefit sharing as it concerns indigenous intellectual property is an integral part of the positive protection of IIP as it reemphasizes the right of the owners over the intellectual property by affirming their exclusive purview in granting rights to a third party to use, exploit and promote their Traditional Knowledge, Traditional Cultural Expressions, and Genetic Resources, in exchange for the community retaining a measure of control over the third party's activities, and also benefiting from the commercial exploitation. This benefit is typically monetary but could also include other advantages like infrastructural development, etc. An example of such instances of monetary benefit sharing is; as was in the Lego Bionicle's case aforementioned where such benefit sharing arrangements are best protected by IIP specific legislation, or by contract.

WHAT KIND OF PROTECTION IS AVAILABLE TO THE COMMUNITY?

Typically, indigenous communities can adopt two kinds of protection for their IIP rights. These are:

I. **Defensive Protection**. This aims to prevent people outside the community from acquiring IP rights over the community's IIP. While this may not suo moto amount to a recognition of actual rights of ownership over the IIP in favour of the Indigenous people, it may be valuable in blocking illegitimate rights to IIP. Examples of defensive protection include the disclosure of origin and legal provenance of Traditional Knowledge and prior informed consent. Another example is the use of databases as evidence of prior art. India for instance has a TKDL – Traditional Knowledge Digital Library which is relied on by several patent offices including the USPTO to check patent prior arts.

II. **Positive Protection**. This refers to the use of IPR, or the development of new types of rights to provide affirmative protection against the infringement of IIP rights. It is the granting of rights that empower communities to promote their IIP, control its uses and benefit from its exploitation. Although the existing IP system may be deployed to this effect, some countries have also developed specific legislation. See, e.g., South Africa's Intellectual Property Law Amendment Act, 2013.

DOES TRADEMARK LAW PROHIBIT THE REGISTRATION OF INDIGENOUS INTELLECTUAL PROPERTY (IIP)?

Trademark law does not prohibit the registration of IIP rights. This statement however must be qualified in this specific context. What this means is not that it actively contemplates and incorporates the option of registration of Indigenous Intellectual property but rather that there are no explicit provisions in the available trademark laws expressly excluding the registration of IIP. In this sense, they are not prohibited. However, Indigenous Intellectual Property rights by their distinct and unique nature and basic character can hardly fit into the delimited definition allowable under most of these laws and for these reasons may not be registrable despite in themselves not being prohibited.

An option however would be to trademark any name, symbol or mark used in commerce to identify and register a trademark against some specific types of ostensible IIP. Trademarks distinguish the goods of one manufacturer from another. On this basis, it is speculated that trademarks can be used to identify authentic indigenous arts; indicating them as unique to a community. Thus, were the Ijebu people of South-Western Nigeria to set up a board to control and manage their IIP rights in the product called "Ijebu Garri," and this board devises a unique certification mark to distinguish Ijebu Garri from all other forms of Garri; the said mark will be registrable under Trademark legislation.

IS THERE A PROHIBITION UNDER ANY KIND OF INTELLECTUAL PROPERTY LAW FOR THE REGISTRATION OF INDIGENOUS INTELLECTUAL PROPERTY?

IP laws do not prohibit the registration of IIP simpliciter. The non-registration of IIP under existing IP laws do not stem from prohibitions, but rather from the aforementioned inability of most forms of IIP to comply with the often strict definitions and registration requirements of IP law. As stated, they are unique and do not fall within the traditional definitions and structures atypical of the various registration processes or options available under orthodox IP Laws and thereby making it difficult to register them.

One of the most distinctive features of IIP that puts it outside the scope of IP legislation is that the former is communally owned (as opposed to individual ownership under IP law) and rarely ever meets the requirement of novelty which is a fundamental condition of most IP legislation.

HOW ARE CONFLICTS MANAGED WHEN INDIGENOUS INTELLECTUAL PROPERTY CLASHES WITH INTELLECTUAL PROPERTY?

Conflicts between IIP and IP are relatively commonplace, stemming from the fact that both systems seek to confer similar rights over the subject matter which often stands in stark contrast to one another.

While the global IP system is statutory and comprehensive, the system for the protection of IIP is at best, in its infancy and in some jurisdictions, non-existent. The major sources of conflict therefore stem from attempts to use the existing IP legislation to protect IIP. What this does is that it creates an incompatible match – a situation of trying to make a silk purse out of a sow's ear – thereby creating an avoidable technical conundrum. Another conflict arises from the use of IP to poach and misappropriate the IIP of indigenous communities through the registration of ownership rights over IIP by third parties without any acknowledgement of the source community's rights.

Unfortunately, however, there are no systems for conflict management or resolution. Where IIP rights are lost through a third party's registration of the same under IP laws, the only alternatives open to the source community are to sue the third party for reparations or for an injunction to avoid the acquired ownership.

HOW DOES INDIGENOUS INTELLECTUAL PROPERTY INTERSECT WITH INTELLECTUAL PROPERTY, ESPECIALLY WITH RESPECT TO TRADEMARKS?

The intersection of IIP with IP occurs where attempts are made by a legislature or Court to protect IIP using the existing IP system. This is made possible through amendments to existing IP laws to accommodate IIP or through judicial activism in interpreting IP laws in such a manner as to favour IIP. The intersection of Trademarks with IIP is perhaps easier and simpler than any other form of IP.

Trademarks may be used to protect culturally recognized names or symbols, since the lifespan of cultural names or symbols is perpetual in nature and trademark law can accommodate such a scenario. Certification marks may also be used to certify that a product is made in a manner that has certain characteristics which are a result of the efforts of an indigenous group, e.g. the process of making Ijebu Garri.

This intersection is easier under Trademark law than any other compartment of the IP system because; two of the most basic differences between IP and IIP are that the latter exists in perpetuity, and is collectively owned. Trademark law, out of all other branches of IP is most suited to these conditions and is therefore easily deployed in the ad-hoc protection of IIP rights.

1. Greaves, "Tribal Rights" in Brush and Sabinsky (Eds.) "Valuing Local Knowledge: Indigenous peoples and Intellectual Property Rights." (Island Press, 1996)."
2. https://www.who.int/docs/default-source/coronaviruse/key-messages-and-actions-for-covid-19-prevention-and-control-in-schools-march-2020.pdf?sfvrsn=baf81d52_4#:~:text=COVID%2D19%20is%20a,2019%2DnCoV.' COVID- 19 is a disease caused by a new strain of coronavirus. 'CO' stands for corona, 'VI' for virus, and 'D' for disease. Formerly, this disease was referred to as '2019 novel coronavirus' or '2019-nCoV.' The COVID-19 virus is a new virus linked to the same family of viruses as Severe Acute Respiratory Syndrome (SARS) and some types of common cold.
3. Wikipedia: The Free Encyclopaedia. Available at < https://en.wikipedia.org/wiki/Indigenous_intellectual_property> last accessed on (09-08-16)
4. See for example New Zealand, Trade Marks Act 2002; Panama Law on the Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples for the Protection and Defense of their Cultural Identity and their Traditional Knowledge, 2000; Philippines Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, 1997; Republic of Azerbaijan, On Legal Protection of Azerbaijani Expressions of Folklore, 2006; United States of America Database of Native American Insignia, Trademark Law Treaty Implementation Act, 1998.

THE FUTURE LAWYER

Mark A. Cohen

1. What exactly endeared you to Technology and Innovation in Law?
I am interested in improving access to and delivery of legal services. Technology enables that process, but it cannot do so alone. People, culture, and models are the essential ingredients. As to "innovation" it is the end result of efforts to improve the customer/client experience, not an activity. As applied to the legal industry, "innovation" is a grossly exaggerated, hyperbolic term in most instances. Innovation occurs when things are done differently *for the benefit of clients/customers.* It is the result, not an activity.

2. Do describe the model "Future Lawyer."
I have written extensively on this topic. Please check out my regular Forbes columns or go to the "Blog" section of my website, www.legalmosaic.com and type "Future Lawyer" into the search engine. The crux of being a future lawyer is to be client/customer-centric; understand that legal knowledge is table stakes, not all that is required for a lawyer to know; adopt a "learning for life" mindset and be prepared to learn new skills (e.g. project management, business basics, familiarize yourself with data and its applications, etc.); and know that the careers of future lawyers will be more varied than in past generations.

3. How can the African lawyers better position themselves on the world map, in light of present changing times? They should follow industry developments around the world. In the digital age, it's not so much where you live but what competencies you have. Develop a personal brand; focus on learning the basics of legal knowledge and melding that with other skills and passions. There is no one- size- fits- all prescription. This is an exciting time to be a lawyer. Those that can leverage their legal skills with other competencies can do just about anything in the industry anywhere around the globe.

...Mark has also given Legal Pages access to his article published on Forbes.com. In this piece (inserted below), he shed some light on the legal practice of the future.

AFTER-CORONA LEGAL CAREERS: MORE CHOICE AND LESS PRACTICE

(ORIGINALLY PUBLISHED ON FORBES.COM)

Mark A. Cohen is the CEO of Legal Mosaic, a legal business consultancy that provides strategic advice to diverse establishments. He doubles as the Co-founder and Executive Chairman of the Digital Legal Exchange, a global not-for-profit organization created to teach, apply, and scale digital principles to the legal function. He is also a contributor at Forbes.com.

Mark is an illustrious writer and speaker who is passionate about modernizing legal education and bridging the gap between the Academy and the marketplace.

Legal practice—as lawyers have broadly construed it—has long been the touchstone of the profession. That's why non-practicing attorneys often described themselves as "former" or "recovering" lawyers. The profession controlled the supply of legal talent and used self-regulation to blunt "non-lawyer" competition.

The profession carved up practice territories with purposeful provincialism. Each State—and sometimes districts within it—enacted rules designed to discourage "foreign" lawyers from practicing there. Law was a guild comprised of fiefdoms. This fostered the profession's insularity, fueled its hubris, and sustained the myth of legal exceptionalism. Lawyers designed a system designed to suit them, not necessarily their clients or society.

Law was all about lawyers. Legal expertise was what they offered and the moat separating them from the rest of the world. This sustained the profession's "lawyer and 'non-lawyer" ethos. Only lawyers could engage in practice, and that's why it became the profession's presumptive career path.

The alternative—apart from academics, public interest, and a handful of other law-centric career paths—was transitioning to another field. This was by no means the norm, yet the long, illustrious list of "former" lawyers achieving success outside the profession's narrow confines confirms that legal training has always been a valuable skill. Earle Stanley Garner and John Grisham, among others, leveraged legal training to become writers. Sumner Redstone and Lloyd Blankfein transitioned from law to business and finance. Wassily Kandinsky, the famous Russian abstract artist, traded his briefcase for a palette. Howard Cosell applied his legal training, raconteur skills, and bombast to engage and sometimes outrage generations of sports fans. The list of lawyers-turned-politicians is a long one, and the three branches of Government and its agencies are well stocked with lawyers.

100 year-old typewriter with cd/dvd disc drive and computer mouse. Signifies contrast of old world vs 21st century modern technology. GETTY

"Former" Lawyers And Future Lawyers

"Former" lawyers, once outliers within the profession, will soon become mainstream and outnumber their practice peers. In the after-COVID world, legal professionals—of which licensed attorneys are a subset—will handle many functions once considered practice. Many legal services will morph into products, and others will be automated. This will erase many legal jobs but create new ones, too. Legal knowledge will be a plus, but additional skills will be required.

Practice will be narrowed to proscribed to activities requiring legal training and licensure. The UK's Legal Services Act 2007 (LSA) has created a blueprint, enumerating six categories of reserved legal activities. All this translates to fewer pure-practice careers. Most lawyers will engage in a mix of practice and business of law jobs/gigs. They will have multiple positions and/or gigs during their careers.

Agility, fluidity, the ability to collaborate, and cultural awareness will become key lawyer attributes, because the legal function will be more closely aligned with the businesses, individuals, and society it serves. As such, law will cease to be the insular, static profession whose career paths were dictated by the traditional law firm partnership model. As that model erodes, it will impact career paths, education and training, and the perception of what it means to be a lawyer.

Many future lawyers will become what were once self-described as "former lawyers." They will work in a marketplace where legal knowledge is table stakes. Augmented skillsets such as project management, business basics, and a level of tech proficiency will become competency requirements for all lawyers in the digital age. A law degree and licensure will become the start, not the end, of the professional learning process. Upskilling and a learning-for-life mindset will become requisites for future lawyers, no matter their career path.

Qualified legal professionals will have many career options. The future lawyer might be a crisis manager, legal process designer, project manager, supply chain expert, data analyst, risk manager, coder, entrepreneur, or legal technologist, among other things. Many more lawyers will fill positions that have yet to be created.

For most in the profession, legal training will become a skill, not practice. Their legal knowledge will be melded with other competencies and leveraged to the high-end of their client/customer value. There will no longer be a surfeit of over-educated, high-priced lawyers billing astronomical hours for repetitive, low-value tasks. This is good news both for many lawyers and legal consumers. It's bad news for the traditional law firm partnership model. In the post- Corona world, "who does what" will be determined by necessary skills and experience, not titles and idle hands. That decision will often be made by legal buyers, not providers. It's all about the customer in the digital age.

The new legal career will be shaped by legal buyers and providers whose business models respond to client/customer needs. Corporate legal consumers require fast, reliable, data-driven solutions to complex business challenges. They are increasingly indifferent to whether that comes from in-house, outside, or hybrid sources. Nor is the category of service provider—multidisciplinary professional service company, law company, or consultancy— paramount in the new legal buy/sell dynamic. What matters is results, sustained performance, necessary competencies, scale, security, transparency, value, and customer satisfaction. Legal careers will be forged by these criteria, not by provider models.

How Will This Play Out?

How will digital transformation and the reimagination of the legal function impact legal careers? There is no one-size-fits-all answer, of course, but some general trends are already emerging.

The practice herd will be culled, and the ranks of traditional partnership model law firms as well as in-house departments will be thinned. A handful of firms and practitioners with differentiated skills, experience, judgment, track records, and clout will continue to engage in practice careers. They will handle high-value, complex work for which there is a limited supply of qualified talent. That comprises only 1-2% of legal matters but accounts for 12-15% of spend.

The narrow and rarified segment of lawyers with practice-centric careers will be in great demand. Some will practice in elite, brand-differentiated firms that focus on high stakes ("premium") litigation and commercial matters whose importance demands rarified talent, judgment, expertise, and clout. Others will opt to pursue gig careers via platforms that showcase their skills, experience, and customer ratings to consumers and providers across the globe. They will become free agents in a fluid marketplace where brand association no longer matters as much as one's skills, experience, agility, and proven track record.

Platform-driven legal talent management companies like Axiom will expand their already formidable talent pool and customer base in the after-Corona world. Their model, culture, and strong customer base will provide a welcome refuge for legal talent seeking new homes—and models— during the forthcoming thinning of the law firm herd.

There will be an acceleration of disaggregation for many categories of tasks once characterized "legal work." This will disrupt the partnership model as the dominant organizational—and cultural—paradigm for legal service delivery. It will be replaced by a corporate structure and customer-centric/aligned business model that is capitalized, agile, multidisciplinary, and tech-enabled. These providers are fluid in how and with whom they collaborate to answer customer challenges. They will sometimes collaborate with competitors; legal delivery—and culture—will cease to be a zero-sum game.

New-model legal providers will continue to gain market share, expand their footprint, and consolidate. Multidisciplinary professional/legal service companies (e.g. The Big Four), technology and digital transformation companies (UnitedLex), and consultancies (Accenture, McKinsey etc.) and, perhaps, a tech giant will continue to reshape the way legal services are delivered. They will offer a wide range of opportunities for lawyers with augmented skillsets and collaborative, customer-centric mindsets.

These providers will work closely with in-house legal departments to reimagine and transform the legal function so that it better aligns with and advances business needs and expectations. They will operate at the speed and data-backed precision of business.

The retail segment of the legal market has the potential to do good and to do well. Companies like LegalZoom and Rocket Lawyer, among others, have tapped into the enormous need for accessible, affordable, legal services that do not necessarily require formal engagement of an attorney. Young entrepreneurs like Josh Browder, Founder and CEO of DoNotPay, are influencing legal service delivery without a law degree. Browder and his team have created a bundled subscription service of approximately one-hundred consumer-oriented self-help tools for $3 a month. These bold new approaches to legal delivery are an answer to pressing, everyday legal problems for tens of millions of individuals and SME's currently denied access to desperately needed legal services.

The common denominator here is new models and methods of legal delivery that convert labor-intensive, high-priced legal practice to tech-enabled, scalable, easily accessible, and affordable legal products. This is law in the digital age and what will shape legal careers.

Conclusion

Law's incremental pace of change is about to accelerate dramatically. COVID-19 has established digital transformation as an existential imperative from which the legal function has no immunity. As the General Counsel of a leading UK company put it to me recently, "Incrementalism is dead. There's no more nibbling around the edges of change. We are experiencing a paradigm shift, and it will happen faster than people think. I know because I'm living it."

The "death of incrementalism" means, among other things, that the role and function of lawyers will change faster and more profoundly than most could have envisioned. That does not spell, to borrow from my good friend Richard Susskind, the end of lawyers. It does, however, mean that practice careers as we knew them will be rare, and new legal career paths will proliferate.

Lawyers will leverage their legal knowledge and apply it in a myriad of ways across multiple industries. Just as law has opened up to allied legal professionals, business, and technology, so too will other professions, business, and technology engage qualified lawyers for a legion of new roles. There will be many roads leading into and out of the future legal career.

REPOSITIONING THE NIGERIAN PROFESSIONAL FOOTBALL LEAGUE (NPFL), POST COVID-19

Tosin Akinyemi

When news about the Coronavirus surfaced on international news at the end of 2019, majority of people may have felt that it would remain a "China problem". Few months after, it had spread to other countries of the world and brought their industries to their knees.

Unfortunately, the football industry has not been spared from the effects of Covid-19 too. For instance, a lot of clubs in the so-called "top-5 leagues" in Europe have lost millions of Euros in the form of sponsorship revenues, because they could not provide content. It has also been reported that a lot of the clubs in those leagues have made losses of potential revenue from ticket sales and matchday hospitality. For example, ESPN reported that "*all clubs are facing big losses from the loss of income from crowds at games, with Manchester United set to be the biggest loser with games at Old Trafford usually worth at least £3m in matchday revenue.*"[1]

Away from the European leagues, can it be said that the Nigerian Professional Football League (NPFL) has been adversely affected commercially? I would say no. In my view, the effect which the Covid-19 pandemic has had on the NPFL has been little or nothing. This is because prior to the pandemic, the NPFL had not been doing well commercially anyway. Hence, it cannot complain of losing what it did not have.

While European leagues and clubs are lamenting losses being incurred vis-à-vis broadcast deal revenues and matchday incomes; the NPFL was not being broadcast on TV prior to the sudden break, nor were the participating clubs making any significant revenue from sales of match tickets and club merchandise. Also, the league has no official sponsor, just like many of its football clubs. Even though there were reports in November 2019[2] of a broadcast partnership concluded between the LMC and Next TV which was believed to begin from the 2019/2020 NPFL season; little has been heard about it since then.

This means that apart from the disrupted fixtures calendar and the likelihood of reduced '*allawee*' (aka subventions) to state-owned clubs, the NPFL has not suffered from the effects of Covid-19 pandemic, in my view

Be that as it may, as many top football leagues and clubs around the world are utilizing this period to reevaluate and strategize on how to be in good standing after Covid-19, the NPFL should earnestly take such steps too. I am of the view that one of the major areas the administrators of the Nigerian leagues and clubs should focus, is fan attraction which would improve match day attendance. It should be noted that despite the fact that the cost of tickets to watch NPFL matches are quite low and sometimes free, few Nigerians take interest in visiting stadiums to watch live matches. The question then is; why then is that so?

Well, last year, I carried out a poll on Twitter in which I asked participants to choose what they consider the biggest hindrance to attending a live NPFL game. Out of the hundreds of voters, 58% chose "insecurity at stadiums". The poll result was unsurprising because a mere Google search on "NPFL Violence" would reveal how recurrent there have been attacks on players, match officials and even spectators.[3] This makes the concern of the voters quite understandable because while people may love to visit beaches, clubs, casinos, stadiums and other places of leisure, no one would like to visit such places if there have been recurring incidents of violence.

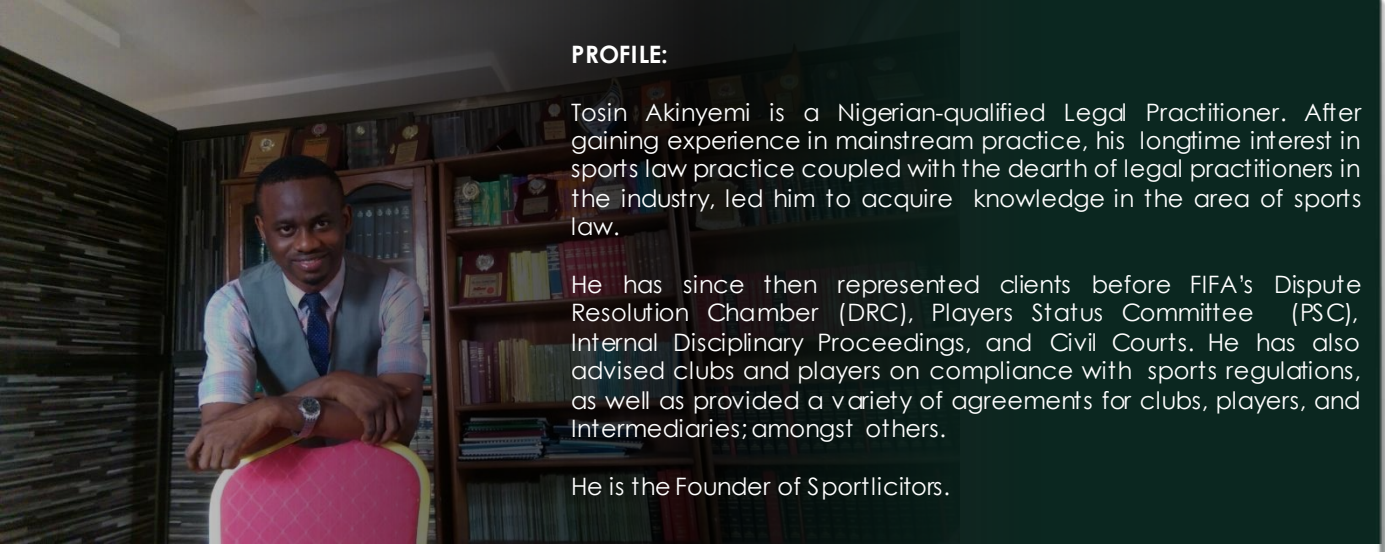
It is my view that if match venues are made safer, there would be an increase in the attendance by fans/spectators. This will consequently improve the revenue of clubs via the sale of match tickets, merchandise and other matchday hospitality packages. Also, the league/clubs will become more attractive to potential sponsors because of the possibility for their brands to be seen by more people.

For crowd violence in the Nigerian Professional Football League to be curbed, the Federal government, Nigerian Football Federation, League Management Company, and participating football clubs all have roles to play.

Three main recommendations which I have are as follows:

A. The enactment of sport-specific criminal laws, and the establishment of a national sports court/Tribunal.

I recognize the fact that some of the offences that are often committed during/around sporting events (such as assault, malicious damage, affray, etc.) are already contained in general criminal laws such as the Criminal Code.



PROFILE:

Tosin Akinyemi is a Nigerian-qualified Legal Practitioner. After gaining experience in mainstream practice, his longtime interest in sports law practice coupled with the dearth of legal practitioners in the industry, led him to acquire knowledge in the area of sports law.

He has since then represented clients before FIFA's Dispute Resolution Chamber (DRC), Players Status Committee (PSC), Internal Disciplinary Proceedings, and Civil Courts. He has also advised clubs and players on compliance with sports regulations, as well as provided a variety of agreements for clubs, players, and Intermediaries; amongst others.

He is the Founder of Sportlicitors.

However, the enactment of sports-specific criminal laws which would criminalize more specific actions that take place during sporting events, and prescribe both regular and sporting punishments, would largely help in maintaining sanity during football matches.

For instance, The United Kingdom has laws such as the Football (Offences) Act, Sporting Events (Control of Alcohol) Act, Football Spectators Act, Football Disorder Act, amongst others. A look at the Football (Offences) Act 1991, for example, shows that throwing of anything at or towards the football pitch (s.2); indecent, racist or tribal chanting (s.3); going into the playing area unlawfully (s.4) e.t.c. are all criminal offences.

It is worthy to note that punishments for such sports-related offences, (apart from fines and/or imprisonment) could be stadium bans, or even an absolute football ban. In the UK, fans found guilty may receive a ban of up to 10 years. It is submitted that Nigeria can equally benefit from a similar approach.

As regards the adjudication process, I recommend that a national sports court/tribunal should not only be established primarily for sports disputes, but also for the criminal trial of such sports-related criminal offences. Just as the National Industrial Court has jurisdiction on criminal offences which arise out of labour matters or the workplace, the national sports court/tribunal should also be conferred with jurisdiction on criminal offences committed in the sports sphere.

Although our data system in Nigeria is not as advanced as those of first-world countries, I am of the view that ensuring compliance with such pronounced bans on offenders may be largely successful through the implementation of the second recommendation below.

b. Introduction of new security measures:

Apart from the above recommendation, It is my view that the Nigerian Football Federation (NFF) and the League Management Company (LMC), should set minimum requirements which should be complied with by participating clubs.

In my view, these are some of the measures which the LMC should ensure clubs put in place:

i. *Installation of surveillance cameras at stadiums*: I am of the view that violent conduct at football matches is likely to reduce if surveillance cameras are installed in/around football stadiums. This is because the awareness that every action around the stadium is being covered and that there is a likelihood for such video evidence to be used for criminal prosecution under the sports-specific criminal laws recommended above is will likely make fans and officials who engage in violence have a rethink.

I have observed that whenever violence occurs during NPFL matches, the LMC often attempts to make clubs fish out the particular fans/spectators that were responsible for the acts, but clubs often fail to. Putting surveillance cameras may largely help solve this problem too.

There may be arguments that the purchase and maintenance of such devices may require a lot of funding by the clubs, however, such an investment is going to be profitable in the long run. I am firmly of the school of thought that sports should begin to be treated as a business in Nigeria, as it truly is. If other entertainment businesses could strive to do that, why should football business be different?

II. *Corresponding numbers for tickets & seats:* I also recommend that the NFF & LMC should implement a system whereby all seats in a club's stadium are numbered, and fans must sit according to the corresponding numbers on their match tickets. As such, home and away ticket holders, as well as neutral spectators are made to sit in their respective sections of the stadium. This would provide for better monitoring since the data of persons who occupy each seat would have been collected when such tickets were sold (See point 'iii' below).

Meanwhile, any part of the stadium which is not fully occupied should be temporarily closed, just as is the practice in European leagues. This would ensure fans stay within the confines of their allocated seats.

III. *Data collection during the sale of tickets*: All participating football clubs should be mandated to have the biometric data of all persons that tickets are sold to. This can be done by linking each ticket to the NationalIdentity Number (NIN) of the ticket holder. Alternatively, the process can be outsourced to specialist companies who would use biometric data machines when tickets are being sold.

In my view, this will help to identify all spectators during a match, and use such data to identify particular persons when necessary. Also, it will help prevent the sale of tickets to persons who may have been convicted and banned by the National Sports Court/Tribunal.

iv. *Use of security stewards*: Often times, NPFL games are usually "decorated" with a few police officers, who are usually not enough to check any possible crowd violence. I suggest that the LMC boosts the number of security personnel present during games. Thus, apart from the police officers that often attend NPFL games, the LMC should personally engage security stewards who can serve during matches. They will be able complement the police with crowd control, and also check any potential violence.

c. Integrity of match officials: One of the major causes of crowd violence during NPFL games is blatant biased officiating by referees, some of whom are often bribed to work a good result in favour of a particular team. For instance, I have personally overheard a club official of an NPFL club speak about how he used to organize money and women for match officials of their

excuse for violence, such gratification-induced officiating will surely cause frustration on the players of a better team and their fans; which often result to assaults and crowd violence.

In essence, the Nigerian Football Federation, the League Management Company and the Nigeria Referees Association need to do more by scrutinizing the reputation of referees appointed to officiate NPFL matches.

Conclusively, if relative safety of spectators is guaranteed at NPFL games, attendance will improve especially since the game play of teams has become better than before. Although some of the above recommendations may take some time to be fully implemented; we need to begin to take real steps towards achieving them so as better sell the product - 'NPFL', after covid-19.

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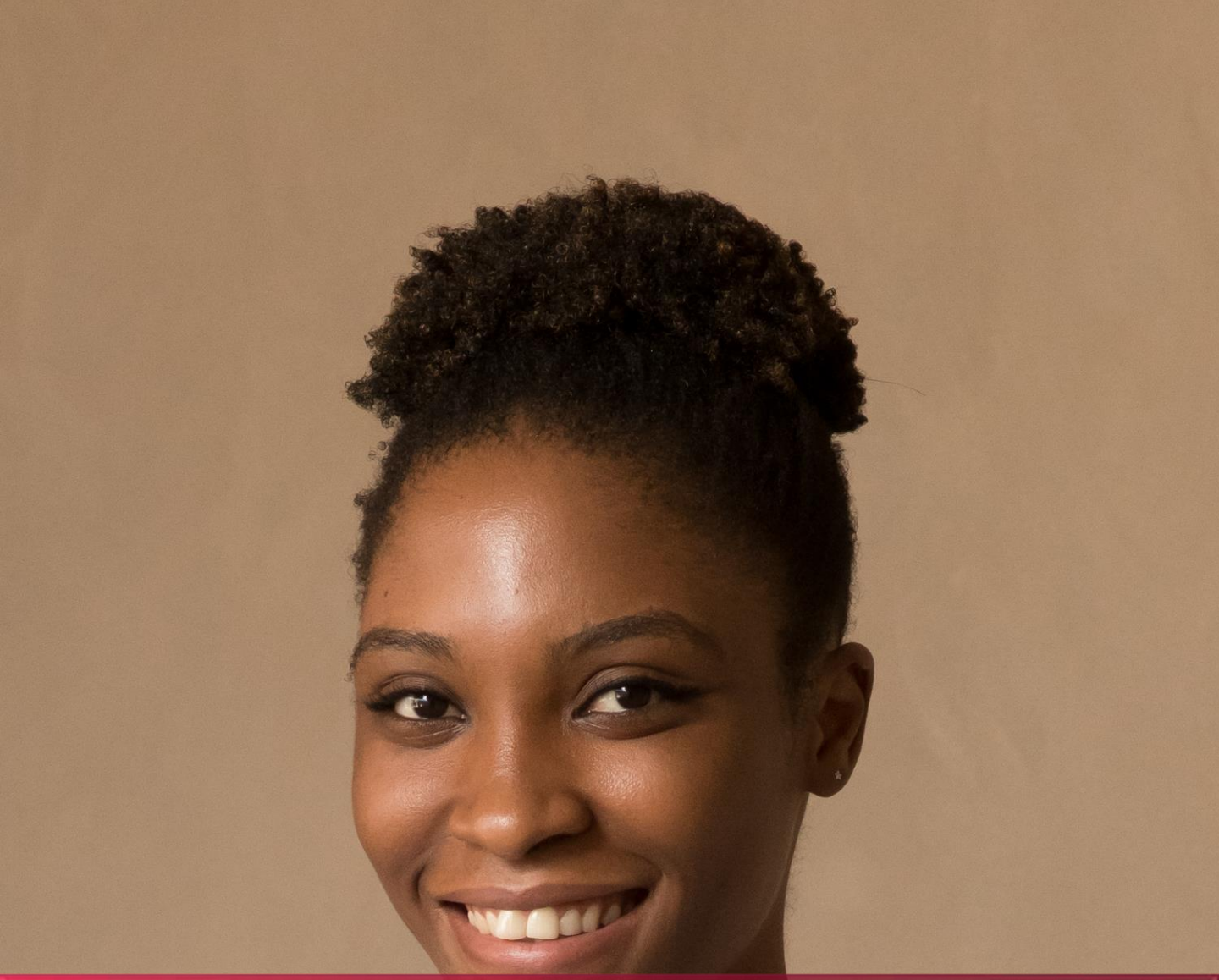

RUVIMBO SAMANGA

INTERVIEW WITH LEGAL PAGES

Can we meet you?

I am a Law graduate from the University of Pretoria with a specialization in Space Law & Policy. I currently work as a Policy Analyst for Space In Africa. I am also the National Point of Contact of Zimbabwe for the Space Generation Advisory Council and the National Representative for Women in Aerospace Africa. I grew up in Bulawayo, Zimbabwe and have further interests in development studies, human rights and technology law.

Kindly give a rundown of your personal and academic background. How much impact have these had on your current successes as an individual?

I grew up in Bulawayo, Zimbabwe and later attended university in Pretoria, South Africa. Despite experiencing my academic journey in two seemingly different places, the common thread has always been the culture of excellence instilled at all the learning institutions I have attended.

Bulawayo is a city of arts and culture. Growing up, I naturally developed a love for writing and public speaking. I carried that with me when I pursued my tertiary education at the University of Pretoria, where I qualified with a Bachelor of Arts in Law, a Bachelor of Laws, and a Master of Laws in International Trade & Investment Law.

The University of Pretoria was a perfect fit for a curious and ambitious mind. My career aspirations were nurtured academically as well as through diverse extra-curricular activities which have undoubtedly had the biggest impact on my personal development. Being a multi-faceted individual required spaces wherein I could thrive equally in and outside of the classroom and I was fortunate enough to have experienced this throughout my developmental phases. My environment indeed has shaped a great deal of how and what I currently pursue.

You seem to have carved a niche for yourself in Space law over the years. What ignited your passion for Space law and what will you consider your first major introduction to this area?

Law can be quite broad and tackles a range of different thematic areas, so it was quite important for me early on to set myself apart, whilst still pursuing a field I am deeply passionate about. I was fortunate to have the above desires converge in a space law career.

Aside from having had a deep fascination with outer space predating my academic career, I had always envisioned specializing in a novel and unique area of the law, of which at the time Space Law was just beginning to gain momentum as a developing field in Africa. Never one to shy away from an opportunity to discover new things, I enrolled in an international Space Law moot. Not only did we win the Africa rounds but I was also recognized as the best speaker.

We went on to compete at the world rounds in Adelaide, Australia, but unfortunately lost out in the semi-finals. I knew then, however, that Space Law was a path I would pursue in the long-term, because even despite our loss, I was still motivated to expand my understanding of the field, and had thoroughly enjoyed both the legal and technical aspects of space science. I even went on to coach the University team in the same competition the following year, which competition we resultantly won. We ended up becoming the first African winners of the Manfred Lachs Space Law Moot Court history, and it was a personal confirmation that I would indeed have the capacity to engage in this field both academically and professionally.

What would you have ventured into if not law? Any other interests?

If not law, I would have ventured into another avenue for public advocacy such as international relations. My other interests include writing and cultural expressions such as art, theatre and dance. I am particularly keen on how these can be used to promote human rights and activist movements.

How instrumental is a graduate degree to helping young lawyers carve their niche in an area of law? In your opinion, does a graduate degree restrict a lawyer from being versatile?

Having a graduate degree plays a significant role in embedding oneself into a specific area of the law. That said, to be especially useful, one must couple it with a few years of practical exposure. Also, one need not always restrict themselves to a career field having attained a graduate degree, because any research exposure given during a graduate program is specially intended to create versatile lawyers. Many international lawyers, especially those that work for international organizations, frequently have to juggle multiple legal sub-topics in their day-to-day work, despite their individual focus areas. Necessarily as a lawyer, you should expect to multi-task.

For this reason, you need not also limit yourself to a graduate program based exclusively on your career aspiration. Gaining different practical expertise can actually add value to your designated career area, such as I have used my Trade & Investment law Masters to bring a commercial perspective to outer space law and the related commercial policies that have a bearing in the space industry, which is particularly relevant given the rise of private companies in outer space.

I ultimately would encourage everyone to, as a first choice, pursue a graduate degree that speaks to your chosen field, and if for any reason you are not able to, still pursue a graduate program with comparable advantages and use your experience to create value. A graduate degree does not make or break a lawyer (practice and exposure ultimately do), but it can definitely be a formidable tool for enriching your research, and giving you a dynamic perspective and skillset for further practice.

How was studying in a different country like for you? Any peculiar challenges? Did you see yourself practicing on an international stage at the onset of your studies at the University of Pretoria?

Studying in a different country has its own unique challenges. You have to prepare to completely unlearn some of your perceptions and be receptive to new experiences and ways of being, and this includes opening up to different legal thoughts.

Developing a sense of autonomy is key in weathering the inevitable cultural, language and even legal value systems divide. With of course the task and desire to belong, you are also met with much kindness when you take steps to integrate yourself authentically and boldly within the legal and broader academic community, even when the urgent need to conform is overwhelming. In being bold and unapologetic about my background, whilst equally being respectful of this new environment, I gradually found my space.

I knew as well that attending the University of Pretoria was a potential career-launching platform. Being a world-renowned university, and having the best law faculty on the continent, I had an awareness from the very start that my career was already predestined for international orientation, and I suppose this had been the goal for both myself and my family when we made that sacrifice. I have not been disappointed in the international exposure I received during my tenure and I made the most of every opportunity graciously afforded to a UP student.

In retrospect, what would you have done differently as a student?

In hindsight, I would have been more intentional about planning my future career. Often as law students it is easy to become complacent and take for granted the many practical opportunities (such as moot), career days and info-sessions afforded to us. But yet it is these spaces that often work best in our favour, as our career is naturally dependent on our capacity to develop and leverage networks which in turn generate referrals.

I am grateful that I happened upon space law at an opportune time, when it was made known to me by colleagues in my network, and I believe our profession is designed to make use of knowledge sharing and strategic connections. Every law student should take the time to explore and learn more about the vast legal possibilities out there before settling, and this means scattering seeds far and wide when it comes to fully immersing yourself during your studies.

With the recent NASA and SpaceX collaboration, there seems to be no end to space exploits. Where exactly does the law come into all of these ground-breaking achievements in the world of Space?

Law is a very important enabler of all human activity. To be viable many endeavours require adherence to regulatory frameworks, and outer space is no different. Law legitimizes human spaceflight into outer space by ensuring that it conforms to predetermined international space law principles such as international cooperation, peaceful use and exploration of space, and that the benefits derived from space be beneficiated to all mankind, most especially considering the needs of developing countries.

Astronauts are presently flown to the International Space Station in order to conduct research on what life in space will entail, and what innovative technologies can be developed for positive benefits on Earth. Living in space allows us to develop methodologies for coping in extreme environments such as outer space, or even Earth, should the effects of climate change not be mitigated in a timely manner.

The launch of Space X's Falcon 9, with NASA astronaut crew members, was a significant milestone, as the first human launch conducted by a private company. This has signaled a new era for privatization of space and accordingly, international space law must now make provisions for the expanding interest and development of private activities in outer space.

Within the body of international space law, there are mandatory provisions requiring space-faring nations to develop national space laws that domesticate international space treaties. This means that states are entrusted with the responsibility of translating international space law into national laws that speak to the particular space needs of the country. For Africa it may mean embedding legislation that promotes investment in satellite manufacturing, while in America, as the recent Artemis Accords have shown, could reflect a desire to commercialize lunar resources.

It is the responsibility then of each country to ensure their space activities conform to international standards. National space laws thus have an important role to play in legitimating a nation's space endeavours in accordance with international space treaties.

You've had the opportunity to lend your voice at several policy making gatherings and leading space organizations. What has been your contribution to the development of this area, particularly in Africa?

My research mainly focuses on advancing space policy as a tool for regional integration and sustainable development. I am presently engaged in the benefits of satellite earth observation data, considering the huge impact of data services in natural disaster and climate-related responses, as well as bridging the technological gaps in mineral mapping, water mapping, regional and urban planning through data-driven decision-making.

The importance of this research is to analyse national space policies and motivate African governments to either draft space policies that establish space programs, or re-evaluate existing space policies in order to tap into to space products as a tool for improving the livelihoods of African citizens.

Do you have any mentors in your field or beyond? Why?

Indeed I look up to Adv. Lulu Makapela as well as Dr. Timiebi Aganaba-Jeanty who are both formidable women in space law and from whom I have drawn much of my inspiration and fortitude to continue along this path. They have both in their own ways shaped the African and world space law field and were both instrumental in establishing the competition that served as the launchpad for my own career and that of many other space law enthusiasts on the continent.

I believe having a mentor eases the anxiety of your professional journey. Learning from a more experienced individual who has gone before can help you develop a more streamlined path. And it doesn't hurt, of course, that they push you and inspire you to achieve things beyond your years, and are instrumental in introducing you to spaces you may have otherwise not entered. Having a life mentor is the most valuable career investment you can ever make and it has helped me exceedingly to navigate this niche area of the law.

Do you think Africa is ready for a space revolution where it can have a say in the community of nations?

Unequivocally yes! More than ever Africa has seen a rise in the new space industry, a growing number of active space professionals, and a rapidly expanding network of national space programs falling under the umbrella of the recently established African Space Agency. All of these developments demonstrate a willingness to contribute to humanity's growing expansion in space and with it, a desire to tap into international space discourse that will impact life for all humankind.

African countries have in the last year launched an additional 8 satellites, bringing the total to 41 satellites launched since 1988. 19 space agencies have been established and a highly robust African space strategy and space policy was drafted to inform future African space discourse, with measurable success. These steps have been bolstered by the establishment of a governance structure in the form of the African Space Agency, the organizing of various high-level scientific and legal forums such as the African Space Leadership Congress, and the steady proliferation of satellite launches and manufacturing, the latter especially from within the continent, as well as through international partnerships and collaboration. These are all semblances of a continent that is gearing up to embrace the space age and make a meaningful, concerted and collaborative contribution to the community of nations.

What do you consider your greatest achievement in your field to date?

As an aspiring space lawyer, I still maintain that my greatest achievement was winning the Space Law Moot and demonstrating Africa's competency to engage in space law. Second to this, I would probably add my recognition as the Zimbabwean young achiever of the year and one of the Top 10 Under 30 in the African space industry in 2019.

What has been the impact of the COVID-19 pandemic on the development of space and aeronautics, especially as it relates to technology and the law?

Covid-19 will undoubtedly challenge our conceptions of normal everyday life, and urges us to tap into new thinking and innovative ideas to cope in a post-Covid world. That said, the use of space products has gained much credence especially in the manner in which satellite tracking, imagery and services will revolutionise how we monitor the Covid spread.

This pandemic has also normalized collaboration at a distance, and some lessons can be learned on how we will boost Africa's connectivity in order to adjust to our new digital economy. Space technology provides disruptive innovation in the form of high-speed internet broadband from satellite constellations launched into earth's lower orbit, and having African governments invest in these programs would promote Africa's integration into the future knowledge economy. Space products hold a very alluring 4th Industrial Revolution appeal which goes hand in hand with the future of human interaction, business and learning in the age to come.

Having been in academia for sometime, how equipped is the African legal educational structure for the training of international legal practitioners?

I find the African legal structure to be fairly competent in developing legal practitioners who are competent and conversant on international legal affairs in general. Hindrances to achieving full competency would be the failure to acquire resources needed to implement the necessary changes to legal curricula to align with current developments, as well as the ability to retain highly qualified international law practitioners.

The question as to the competency of space education and legal training is of course another matter, one in which I would echo the same sentiment in stating that reference materials for these new and emerging fields of international law are often quite scant in law faculty libraries.

What is undisputed however in African legal education, is the quality of practical exposure and mastering of domestic and regional legal principles, however some reformation is required to expose law students to the greater body of international law (technology law, space law etc.), to truly meet international muster.

How would you describe your story? Would you say your achievements are a culmination of successful efforts or you rode on a big break?

I would say it has been a slow but sure culmination of successful efforts. My career to date has always been quite premeditated, and I have often considered thoughtfully my career progression and endeavoured to be as intentional as could be about my networks and opportunities.

My story is really one of much trial and error, but also equal parts determination and grit. While I have always had deep-seated aspirations of pursuing an internationally oriented career, it has taken a lot of soul searching and even failure to flesh out what exactly such a career would constitute. Never in my wildest dreams would my younger self have pictured that it would finally culminate in a space law career, but the resolution to trust the process of discovery has been my guiding principle. It's a classic tale of shooting for the moon and hoping to at least land amongst the stars.

It has in fact become a life philosophy to constantly remind myself that I stand to gain way more than I would lose, by taking risks. My father has a quote I like to draw inspiration from every now and again which sums this up perfectly.
"Our doubts are traitors, and make us lose the good we oft might win, by fearing to attempt." ~ William Shakespeare.

What parting words do you have for individuals who are considering a career path in law generally?

Identify and be tenacious about the end goal for your legal career, and make sure to do this early on. When doing so, be completely open to pushing the boundaries, and not allowing your local context to limit your aspirations. Remember that you are more than capable of steering a narrative that has not even been envisioned yet, and recognize that setback and failure are temporary. Always strive to do your best, and when moments of confusion inevitably arise, understand that it is because you are a trailblazer, and you are forging a path that has never been travelled before. I leave you with a popular, motivational phrase amongst space enthusiasts "Per aspera ad astra", "From hardship to the stars". It means that while your disadvantage may seem to be holding you back, in actual fact, the farther back a bow is pulled, the further the arrow will go. Your past will never define your future, instead, let it push you forward.

"Our doubts are traitors, and make us lose the good we oft might win, by fearing to attempt."

William Shakespeare.

THE ROLE OF LAWS AND POLICIES IN CUSHIONING THE NEGATIVE ECONOMIC EFFECT OF GLOBAL EMERGENCIES

KOMOLAFE OYINKANSOLA

A cursory flip through the world's history books would immediately divulge the fact that the global stage is not entirely immune to emergencies and quite interestingly, these emergencies could easily be labelled as frequent occurrences. Although global emergencies are triggered by distinct causes — such as wars and pandemics — the ripple effects of these emergencies on the economy are strikingly similar. Price gouging, rising debt levels and crumbling financial systems, often become the order of the day.

However, amid these disturbing economic indicators, the position of the law as the major tool which governs human conduct, largely suggests that the role of the law is indispensable in mitigating the economic effects of these emergencies. Following this backdrop, this essay establishes a linkage between the negative economic effects occasioned by global emergencies, and the role of laws and policies as functional tools for cushioning these negative impacts.

Undoubtedly, scarcity and inflation are twin concepts which almost never miss their place in cases of global emergencies. As a result of the growing need to hedge against perceived outcomes of global health or security crises, consumers often indulge in panic buying of essential goods, thereby, creating a demand that far exceeds supply. However, scarcity and inflation are not always induced by the natural forces of demand and supply. In a bid to make more profit during emergencies, sellers often indulge in anti-competitive practices such as price gouging and the hoarding of goods. This strips the poor population of the ability to afford basic necessities. As such, competition laws serve as a viable buffer against such practices, as they protect vulnerable consumers through the prohibition of price fixing or gouging. A case in point is Nigeria's Federal Competition and Consumer Protection Act,[1] which empowered the Federal Competition and Consumer Protection Commission (FCCPC) to institute legal actions against a number of pharmacies on the allegation that these drug stores were exploiting the economic situation occasioned by the coronavirus pandemic, by placing ridiculously high prices on essential medical products.[2]

Similarly, there is no gainsaying the fact that the first victims of economic shocks occasioned by global emergencies are usually individuals who make up the informal sector. These people— like the petty trader in Obalende and the local artisan in Puerto Rico—are largely excluded from benefits such as social and employment security, welfare packages and corporate tax incentives. As a result, they are highly vulnerable to market fluctuations, and even at a much higher risk of impoverishment in cases of full-blown economic downturns, as is usually the case with global emergencies.

Yet, this sector is germane to the economic health of the globe, as it accounts for over half of global employment.[3] Essentially, the fall of the informal sector would inevitably trigger a severe unemployment crisis. This is where strategic fiscal policies come into play. Fiscal policies such as a reduction of market taxes as well as ticket fees in the transportation sector, would go a long way in promoting the ease of doing business in the informal sector. This is because these taxes are one of the few which the informal sector actually gets to pay.[4] A reduction in these tax payments would be largely felt by the sector, thereby, salvaging any imminent unemployment crisis threatened by a global emergency. This is similar to the approach taken by the Cross-River state government with the enactment of a tax exemption law to exclude informal workers from paying tax, as a response to the economic scourge caused by the coronavirus pandemic.[5]

Furthermore, owing to the stunted economic growth ratings occasioned by health and financial emergencies, the financial system usually takes a major hit. Credit crunches persist, and financial institutions such as banks and insurance companies, suffer from the proliferation of non-performing loans, delayed payment of premiums and crumbling investment portfolios.[6] This negative outcome largely impairs prospects for economic recovery, as the financial system is essentially the blood that courses through the veins of the economy. Banks ease burdens on the necks of citizens by issuing moratoriums on debt repayment, whilst insurance companies usually have to deal with a plethora of claims arising from cases of business interruption and life assurance coverages occasioned by global emergencies. However, where these financial institutions are on the brink of insolvency, prospects for fresh lending are locked in, and economic growth essentially stagnates. A case in point is the global financial crisis of 2007-2008, which led to the insolvency of 28 banks[7] and the subsequent stagnation of the United States' economy.[8]

The threats of economic recession which this state of affairs holds, is nonetheless, cushioned by laws which provide for toxic asset relief programs. Under these asset relief programs, the law establishes a government-sponsored buyer of last resort, which purchases troubled assets—such as non-performing loans(NPLs)— from distressed financial institutions. Through this process, recapitalisation would be fostered, thereby, opening up prospects for increased lending and wider insurance coverage. This is similar to the Troubled Assets Relief Program implemented by the United States' government under the Emergency Economic Stabilization Act (EESA) enacted during the 2007 global financial crisis.[9] The program was recorded to have saved over a million jobs and restored economic growth to pre-crisis levels.[10] However, the financial system is not the only entity severely impacted by the economic woes of global emergencies.

Shifting the focus of the discourse to debtors, sovereign states take the central focus. Not only do global emergencies trigger national revenue shortfalls, but they also bore large holes in the pockets of sovereign states. This is because states often have to increase expenditure on economic stimulus plans and health response packages, especially in cases of global pandemics. As a result of this diversion of funds, these states often risk massive defaults on loans and subsequent rising levels of debt burden. These gory economic outlooks often pose a perfect situation for vulture funds to crash in.

Vulture funds are predatory investment funds which purchase poor states' debt— usually during financial crises— at the lowest possible prices, then rigorously pursue legal actions for the full recovery of the original face value of the debt whilst adamantly refusing any attempts at debt restructuring.[11] Argentina was a victim of this predatory economic investment. In 2001, due to a deep financial crisis, the country defaulted on its debts and as a result, NML Capital purchased the distressed debts, and pursued full recovery in court. The fund got $2.28 billion for a debt it had purchased for $117 million— a ridiculously exorbitant profit of almost 1,180 percent.[12] As such, in order to shield poor countries from a repeat of occurrences like this, especially during global emergencies, anti-vulture fund laws need to be enacted. Currently, countries like Belgium and France have enacted laws which limit the activities of vulture funds.[13] However, now more than ever, African countries need to place a limit the claiming rights of vulture funds especially in cases where it is established that illegitimate advantage was pursued in acquiring the debt. This way, African countries can comfortably release funds directed at improving their citizens' standards of living during periods of global emergencies, without fears of being ripped off huge amounts of money by predatory investment funds, under the guise of debt recovery.

Flowing from the economic impacts related above, it is as clear as day that national economies are practically in a disarray, during periods of global emergencies. This lends credence to the fact that for countries to be pulled out of the economic quagmire occasioned by emergencies, the help of other countries at the international stage is quite important. This is where liberalised international trade comes into play as a mitigation strategy. With the free movement of goods and services, national economies have wide opportunities to comfortably tap into foreign markets. This access, in turn, fosters economies of scale for national producers, reduces costs for consumers, and creates more jobs. International laws on free trade areas, are the major driver of this economically beneficial initiative. An example is the North American Free Trade Agreement (NAFTA) (now USMCA[14]), which increased Foreign Direct Investment in Mexico by about 85 percent, from its first year of coming into force.[15] The world has also recently turned its attention to the African Continental Free Trade Agreement(AfCFTA) and its seemingly endless potentials of boosting the African economy, post-coronavirus pandemic.

In conclusion, evidently, there are numerous premises from which one can safely conclude that laws indeed, serve as a functional tool for cushioning the negative economic impact of global emergencies. However, these laws, regardless of whatever potentials they might hold, would continue to exist as mere words and letters on gazetted papers, should implementation be either inadequate or non-existent. As such, it is pertinent for national governments to establish strong implementation frameworks for the purpose of the law to be fully pursued. This way, the benefits of these laws would not only be analysed and acknowledged, but they would also be equally felt by the entire citizenry.

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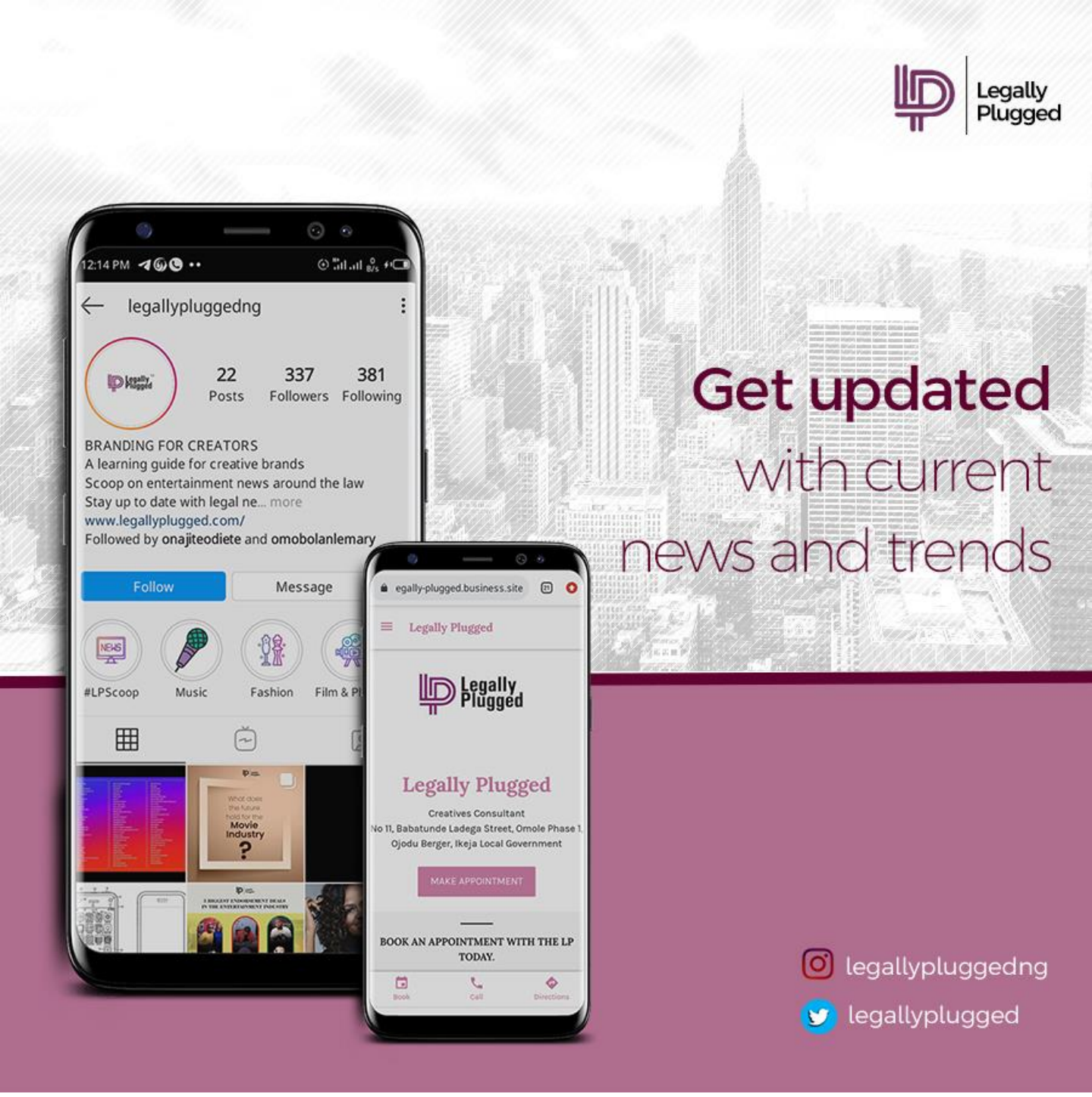

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LEGAL PAGES INTERVIEW: STUDENTS OF STRATHMORE UNIVERSITY, WINNERS OF THE AFRICAN REGIONAL ROUNDS, JOHN H. JACKSON MOOT COURT COMPETITION

This year, the Strathmore Law School (SLS) team won the African Regional Rounds of the 18th John H. Jackson Moot Court Competition. For finishing top in the competition, all four students won a one-week tuition fee waiver to the 2020 or 2021 World Trade Institute Winter or Summer Academy. In this interview, Legal Pages speaks with the team about their experience from the competition, the state of legal education in Africa as well as their plan for the future.

Legal Pages is glad to interview the current African champions of the John H. Jackson Moot Competition and the erstwhile World Champions. Let's meet the members of the team, shall we?

Joy: My name is Joy Mvatie, a final year law student at theStrathmore Law School.
Kiai: My name is Kiai Gachanja, a third-year law student at the Strathmore Law School.
Kelly: My name is Kelly Nyaga, a final year law student at the Strathmore Law School with a keen interest in mooting and poetry.
Tracey:My name is Tracey Andere. I am a Law student and I am currently preparing to join fourth year in July 2020.

Last year, your University went all out to dominate top schools from Europe and America to clinch the first position. How much of a morale boost was this preparing for this year's edition?

Joy: It was a morale booster to some extent but admittedly it was also a pressure point. At the beginning of the process, it was often emphasized (explicitly or implicitly) that we had big shoes to fill. However, that factor also helped push us through since the team figured that if our university was able to clinch the top prize in the previous year then there is little stopping us from doing the same.

Given the effects of the pandemic, the oral rounds of competition were made virtual. What effects, positive or negative, did this have on your team and preparations?

Kiai: We had to change the way we trained. We began training virtually. Admittedly, this came with its own challenges such as poor video clarity, poor network connections and the risk of power outages. We had to plan for any eventuality and respond accordingly should any problem arise.

Coming first place in Africa, what will you say your team did differently?

Kelly: The short and fast answer is intense preparation. However, the reality is that each team member sacrificed a lot of themselves to the process which is what any moot court requires. We ensured we practiced at a minimum of four times a week and in the weeks leading up to the Africa Regional Rounds these sessions became daily. Moreover, we really tried to become part of the moot problem such that we were not just participants in a competition but legal counsels representing our countries - Astor and Taikon - in an ongoing dispute.

Finally, we participated in the Gujarat International Moot Competition 2020 as a form of preparation for the JHJMCC. The experience increased our knowledge in the field of international trade law given the similarities of the two moots. Most importantly, it allowed us to work better as a team.

How would you describe your experience at the World Rounds? Were there any new challenges?

Tracey: We were all very nervous and excited about the World Rounds. Mostly because we had prepared for that moment for such a long time and we wanted to make sure we put our best foot forward. The World Rounds presented some newer and tougher questions from the panelists than those that we faced during the Regional Rounds. We also got to hear some innovative arguments from our counterparts which were very interesting. Even though we did not proceed past the preliminaries in the World Rounds, I am happy that we were part of the experience. Just as Kelly once said, we were eliminated among champions, so we are still champions at the end of the day.

Joy and Kelly, you made a name for yourselves as the Best Oralists at the continental stage of the competition. How did mooting start for you and what tips would you give to students who want to excel in moot court competitions?

Joy: Mooting was a late experience for me. Unlike my peers who began in 1st or 2nd year at law school, I began mine in the 2nd semester of my 3rd year. My first real experience was participating in my university's internal competitive rounds. Fortunately, my team won. This victory pushed me to continue pursuing the experience.

As for advice…I do not like to wax poetic about the usual clichés, but I know this rings true: Always Keep Trying Your Best. The mooting opportunities that I was fortunate to obtain had come from the lowest point in my attempts; my first moot competition that I had enrolled in did not materialize because we didn't have the funds to travel. However, a coach who had listened to our arguments as we practiced took a chance on me and picked me for my later two mooting competitions which have been my best experiences yet. So even when it seems impossible at that moment, keep on trying.

Kelly: For me, mooting has been a journey close to my heart. It began from my first year in law school where my university holds internal moots to select the participants for international competitions. This mooting culture really instilled in me the desire to moot. Unfortunately, I tried and failed to qualify in both my first and second year, yet I was still eager to try again. In my final year, I was selected to participate in my first ever moot court, the Extractive Baraza Moot Court. I can say that this is where mooting really took off for me. Since then, I have participated in three other international moot court competitions (Foreign Direct Investment Arbitration Moot 2019, Gujarat International Moot Competition 2020) including this year's JHJMCC. Additionally, I have been teammates with the team in two of these competitions and with Joy Mvatie in three, a fact that greatly aided the teamwork.

My advice to aspiring mooters is to have an end goal in mind. This goal should be above and beyond winning a title or position in a competition. Remember that mooting is a wholesome experience with a lot to be gained. Therefore, the end keeps you going even when the process becomes rough and unclear. To paraphrase Viktor Frankl, with a 'why' you can survive almost any 'how.'

Do you think legal education in Africa is anywhere near attaining its fullest potential?

Kiai: Not yet, however, we are making positive strides to get there. This moot is one such example. Also, we have a vibrant community at Strathmore Law School with establishments such as the Strathmore Law Review and the Strathmore Law Clinic that seek to offer a wholesome experience of the legal profession.

Tracey: Yes. The fact that there were several other African teams that made it to the World Rounds shows that Africa is willing to go beyond the set boundaries in terms of legal education. These African teams had valuable and well thought out arguments meaning that Africans can produce great talent in the legal sector.

The John H. Jackson Moot is over and the world is still faced with the challenge of the Coronavirus pandemic. What's next for you? All things being equal, where do you see yourselves in 5 years?

Joy: Coronavirus has shown us that uncertainty is a consideration but all things constant (hopefully), each of us will achieve a starting ground in the various fields that we want. Personally, mooting has instilled a passion for international law generally and international economic law in particular. If the stars align, then I would be grateful to be working in this field either in academia or in legal practice. Although there is an awareness that, as an individual from the global south, the opportunities to enter and succeed in this area are limited compared to my peers who hail from the global north.

Tracey: Hopefully, I will be having a great job that I love. I really want to explore all the options that are there or that are available to me. I want to open myself up to all the opportunities that may come my way in the future. Whether it is as a result of the experience that this moot has given me or not. I want to work my way to the top and be really competent in whatever I am doing. This moot experience has shown me that I need to open up myself to as many chances as possible. I am simply ready to go where passion leads me.

Kiai: I see myself having completed my LLM and pursuing a career in International Law.

Kelly: The new normal has indisputably shifted the plans I had for the near future. At the time of responding to these questions, I have just wound up my final examinations which means graduation. Therefore, the next step is to have a graduation party. Professionally, all things kept constant, my next step is self-development in the area of international trade and investment law. Such development may take the form of an LLM in the field or a few years of legal practice on the same. In the next five years, I see myself having a foot in the door to the room of these fields of law in whatever form that may take.

The fact that there were several other African teams that made it to the World Rounds shows that Africa is willing to go beyond the set boundaries in terms of legal education.

ARTIFICIAL INTELLIGENCE IN NIGERIA'S FINANCIAL SERVICES INDUSTRY: ETHICAL AND LEGAL ISSUES

Damilola Oyebayo

Damilola Oyebayo is a Technology Attorney and he provides specialized legal, regulatory, transactional, and operational advisory services to payments companies, fintech companies, technology companies and startups. He routinely supports these companies on legal issues arising from their business operations and products. He also advises on legislations/regulations applicable to technology, payments and fintech products in Nigeria and, where necessary, advises on the procurement of licenses from the relevant regulatory authorities. In addition, Damilola works with tech companies in negotiating, documenting, and executing strategic partnerships and investment deals.

A. INTRODUCTION.

Artificial Intelligence (**AI**) can simply be described as systems that can process and analyze large data sets, enabling better, faster and even automated decision making in real time empowering people and businesses to gain access to services and experiences never attainable before. Considering its capability to seamlessly change the way humans live, do business, and interact with one another, AI is being deployed by players in several industry segments and participants, including the financial services industry.

Accentuating the importance of AI in the financial services sector, Enhancing Financial Innovation Access (**EFInA**) reported[1] in 2018 that AI is one of the four main technologies being deployed in the Fintech sector globally, the others are Distributed Ledgers (DLT), Application Programming Interface (API) and Biometrics. As at 2018, cumulative equity funding in firms deploying AI in the financial services sector stood at USD$49.5b, the most equity funding in comparison to the other three technologies[2]. The foregoing indicates that AI is increasingly being leveraged in the financial services sector for several use cases and undoubtedly, as with any new technology, the use of AI in the financial services sector has its attendant legal risks.

Therefore, this paper examines the relevance of AI (as a tool) in the financial services sector while groping the legal and ethical risks associated with the use of AI. This paper proceeds as follows, **Section B** examines the description of AI and the components of the technology; **Section C** considers the key use cases of AI in the financial services sector including the supply and demand factors driving the adoption of AI; **Section D** analyzes the legal and ethical risks, issues and considerations associated with the use of AI in the financial services sector; and **Section E** concludes.

B. DESCRIPTION AND COMPONENTS OF AI

One of the direct implications of technology advancements is the creation and abundance of data from numerous sources (including blogs, social media, sensor networks, transaction records, image data, etc.) and in different formats (structured and unstructured). Expectedly, this has engendered the increasing demand for faster, reliable, and advanced computing tools required for the analysis of the large data sets (which are often described as '**Big Data**'[3]) with the aim of discovering meaning and insights from the data. Therefore, broadly speaking, AI is a computing tool[4] that allows machines make intelligent decisions; it is also a theory and development of computer systems able to perform tasks that traditionally have required human intelligence. In other words, through AI, machines/computers systems can perform tasks that would ordinarily require human intelligence, some of these tasks include, perception, speech and facial recognition, decision-making, translation between languages, etc.[5]

AI as a broad field comprises other sub-categories, including natural language processing (NLP), used for machine translation; and machine learning which is a method of designing a sequence of actions to solve a problem, known as algorithms[6], which optimize automatically through experience and with limited or no human intervention[7].

Given the ability of AI tools to parse large databases, it is not surprising that its use has become ubiquitous and attractive in the financial services sector where participants on a day to day basis have to contend with huge volumes of data (including transaction records, customer data, regulatory compliance records, etc.) from different data points (customers, market analysis, trading points, etc.). Therefore, AI continues to gain more relevance in the financial services industry in relation to the improvement of delivery of services to customers and optimization of the business operations, amongst other use cases which are considered in the subsequent Section.

C. USE CASES OF AI IN THE FINANCIAL SERVICES INDUSTRY

According to the Central Bank of Nigeria (**CBN**), AI is poised to save the financial industry more than US$1 trillion by 2030[8], and the CBN further recognizes that increased AI adoption would cause more personalized services to ensure customer satisfaction, improve efficiency, maintain customer loyalty, and assist financial institutions become more efficient in the process of detecting fraud and money laundering. The CBN also listed Big Data and AI as some of the technology trends changing the payment landscape globally and has included AI as a critical component of the CBN Payment System Vision (PSV) 2030[9].

Relatedly, according to the EFInA Report, as at 2018, total equity funding in companies leveraging AI in the financial industry in Nigeria stood at USD$28m, only API based companies received more funding (in the sum of US$56m) than AI firms in Nigeria. Clearly, AI has become an essential component of Nigeria's financial industry and the participants continue to deploy AI solutions both at the back-office (non-customer facing) and front-office (customer facing).

Arguably, many of the factors that have impacted the growth and adoption of Fintech globally are also responsible for the adoption of AI in the financial industry. On the supply side, the industry has benefited from the availability of AI and machine learning tools developed for use and applications in other fields, such as the improved computing power, attributable to faster processor speeds, lower hardware costs, and better access to computing power via cloud services.[10]

Also, in the automobile industry, significant progress has been made in the use of AI to develop self-driving and autonomous vehicles, this venture relies heavily on advanced computing power and cloud computing technologies which have all become relevant in the financial industry. Relatedly, there is cheaper storage, parsing and analysis of data through the availability of targeted databases, software, and algorithms.

On the demand side, financial institutions have several incentives to use AI and machine learning including opportunities for cost reduction, risk management gains, and productivity improvements. These factors have encouraged adoption and they all contribute to greater profitability. In a recent study, industry sources describe priorities for using AI and machine learning as follows: optimizing processes on behalf of clients; working to create interactions between systems and staff applying AI to enhance decision-making; and developing new products to offer to clients[11].

Furthermore, changes in consumer expectations have forced many financial industry participants to constantly innovate and leverage technology such as AI to improve customer and user experience; in a digital economy, a number of solutions and contents compete for the attention of the consumers, hence the popular saying that 'the firm that is able to capture the attention of the consumer the most would ultimately win in the global market'. In addition, the democratization of financial services and lateral competition posed by Fintechs and non-financial institutions (including social media and e-commerce giants and platforms such as Facebook, Google, and Amazon) with better access to large data sets also threaten the overall existence of traditional financial institutions thereby creating incentives to adopt emerging technologies.

Therefore, the use cases of AI in the financial industry can be divided into four broad categories scilicet; (i) customer-focused or front-office (credit scoring[12], insurance[13], and client-facing chatbots[14], Know Your Customer (KYC) checks); (ii) operations- focused or back-office (fraud prevention, capital optimization, model risk management and market impact analysis); (iii) trading and portfolio management in financial markets; and (iv) use of AI for regulatory compliance by financial institutions ('**RegTech**') or by regulatory authorities for supervision ('**SupTech**').

Related to the above, the CBN identifies[15] some of the positive implications of adopting AI in the financial industry to include:

Fraud Prevention: with AI, financial institutions can monitor and detect irregular and anomalous behaviours in transactions and purchases and flag them to be checked by experts. The advantage being that AI can parse transactions faster than humans while learning on-the-go to help reduce the occurrence of "false-positives".

Determine Credit Worthiness: through AI, financial institutions can easily determine which customers or businesses are safe to provide loans to and which are not.

Regulatory Compliance: AI systems can be used to develop a framework to help ensure that regulatory requirements and rules are met and followed. AI systems can be programmed with regulations and rules to serve as watchdogs to help spot transactions that fail to adhere to set regulatory practices and procedures.

Better Trading Information: AI systems are capable of trawling large amounts of customer-related data faster and more efficiently and this enables financial service providers to better understand behaviour traits of customers and prospects, enabling them to quickly predict and determine trends and outcomes.

Risk Assessment and Minimisation: AI is also useful for reviewing large data caches and financial histories of companies and the market at large. This is useful in assessing and identifying business and investment risks.

The adoption of AI in the financial industry in Nigeria can only get better with more accessible data and improved participation in the financial sector by the consumers.[16] However, typical of emerging and new technologies, AI also poses certain concerns to the financial industry, some of which are examined below.

D. ETHICAL AND LEGAL RISKS ASSOCIATED WITH THE USE OF AI IN THE FINANCIAL SERVICES INDUSTRY

The Joint Committee of the European Supervisory Authorities in its report on Big Data identified certain risks associated with the use of AI in the finance industry, to wit; the potential for errors in big data tools, which may lead to incorrect decisions being taken by financial service providers. Also, the increasing level of segmentation of customers, enabled by Big Data, may potentially influence the discriminatory access to and availability of certain financial products or services[17].

The risks set out above are more specifically divided into; (i) ethical; and (ii) legal and are considered below[18].

Ethical Risks

AI machines or computer systems have the ability to lead or make decisions independently based on available or analysed personal data of customers and customary to any system designed by humans, if not properly designed, monitored, or controlled, AI may serve as a tool for unfair, unethical or unlawful practices in the financial services sector.

In other words, given that AI can be trained by flawed or bias data, it can potentially lead to biased or discriminatory results in the financial industry. For instance, an AI that has been designed to assess the creditworthiness/eligibility of customers may end up being used as a tool to discriminate against or exclude customers of certain ethnic background, age, sex or religion by bad actors. This risk is even more important in Nigeria where individuals often act along ethnic lines or based on one bias or the other. Furthermore, any discriminatory or bias use of AI in the financial industry would make the already elusive financial inclusion target of the CBN[19] an even more arduous task.

Therefore, it is important that AI tools in Nigeria's financial services industry are designed in compliance with high ethical standards. While the CBN is yet to publish any standards or framework for the use of AI in the financial industry, industry participants can in the interim develop and deploy AI tools that comply with the EU

Ethics Guidelines for Trustworthy AI published in 2019 (the **Guidelines**) which at the moment is considered the global best practice on the adoption and use of AI.
According to the Guidelines, trustworthy AI should be:

- Lawful- respecting all applicable laws and regulations;
- Ethical – respecting ethical principles and values; and
- Robust- both from a technical perspective while considering its social environment.

The Guidelines further set out 7 key requirements that AI systems should meet to be deemed trustworthy, in relation to ethics, the relevant requirement is 'diversity, non-discrimination, and fairness'.

Unfair bias must be avoided, as it could have multiple negative implications, from the marginalization of vulnerable groups, to the exacerbation of prejudice and discrimination. Fostering diversity, AI systems should be accessible to all, regardless of any disability and involve relevant stakeholders throughout their entire lifecycle.

Legal Risks

As indicated in the Guidelines, AI systems should be designed and deployed to respect and conform to all laws and regulations[20]. Some of the key legal considerations in the use of AI include accountability, liability, data protection and competition. This sub-section focuses on liability and data protection.

In relation to liability, just like many other computer systems, software or programs, AI tools are also not infallible in that computer errors can lead to undesired results, this is critical for the financial industry as any error arising from AI tools can potentially lead to financial or economic loss both for the customers and the financial institutions and can even go as far as causing a systemic loss to a country's economy or financial system.

By the Guidelines, AI systems are required to be technically robust and safe, however, the issue of liability arising from AI systems is still a controversial and evolving debate globally, one which many have advocated different legal approaches. For instance, will traditional legal methods for resolving liabilities (i.e. contracts or torts) be applicable to AI systems or regulators need to develop a new liability regime?

Typically, financial institutions use contracts or terms and conditions to expressly set out their obligations and exclude or limit their liabilities to their customers, this is common with technology products deployed by financial institutions and Fintech companies in Nigeria. It is not unusual to find *Disclaimer of Warranties* and *Limitation of Liability* clauses that potentially leave the customers with little or no recourse contractually.

Although it is arguable whether such contracts would be enforceable in the face of robust and consumer friendly protection laws and regulations, e.g. the Federal Competition and Consumer Act 2018 which sets out the rights of consumers and remediation mechanisms[21]; and the general agency relationship between financial service providers and their customers, which gives rise to a duty of care (i.e. the financial institutions as the agent of the customers must also use reasonable care and skill in carrying out instructions related to the customers to protect the customers and their funds); this duty may be the basis of a tortious claim where it can be established that a financial institution has been negligent.

In addition to the above, data protection is also central to the use of AI in the financial industry given the heavy reliance of AI on data (in this case customers data and transaction records). According to the Guidelines, a trustworthy AI must comply with privacy and data governance requirements; beyond ensuring full respect for privacy and data protection, adequate data governance mechanisms must also be ensured, taking into account the quality and integrity of the data and ensuring legitimized access to data. Importantly, AI tools should comply with the principles of Nigeria's Data Protection Regulations (NDPR), 2019 especially in relation to seeking the express consent of the consumers for the automated processing of their data[22].

Furthermore, the data, system, and AI business models should be transparent; traceability mechanisms can help in achieving this. Moreover, AI systems and their decisions should be explained in a manner adapted to the stakeholder concerned. Humans need to be aware that they are interacting with an AI system, and must be informed of the system's capabilities and limitations.

E. CONCLUSION

While it is expected that AI tools would remain relevant in Nigeria's financial services industry and perhaps by 2030, the industry would be proliferated by AI services and products, however, before such gains could be achieved, there is need for a clear regulatory framework, or standard for the use of AI in the industry and the CBN is expected to step in this regard as some of its counterparts in developed jurisdictions have done[23].

Conclusively, there is an opportunity for Nigeria to position itself as the leading market and hub for AI solutions in Africa, the direct benefit of such endeavour would be seen in increased; (i) investments/funding in AI ventures in Nigeria with the potential to create economic prospects for participants and individuals; (ii) research and development efforts in AI solutions and products; and (iii) AI driven solutions that make delivery of financial services efficient and insightful.

1. Enhancing Financial Innovation & Access, *Overview and Lessons Learnt from Global and Nigerian Fintech Landscape*, (EFInA Report, December 2018), page 8.
2. Equity funding in; (i) DLT firms stood at US$10.9b; (ii) API based firms stood at US$5b; and (iii) Biometrics firms stood at USD$0.6b.
3. Microsoft defines Big Data as the term increasingly used to describe the process of applying serious computing power- the latest in machine learning and artificial intelligence – to seriously massive and often highly complex sets of information. See Microsoft UK Enterprise Insights, *The Big Bang: How the*
4. *Big Data Explosion is Changing the World,* https://news.microsoft.com/2013/02/11/the-big-bang-how- the-big-data-explosion-is-changing-the-world/ accessed 4 June 2020.
5. Other computing tools used in the analysis of Big Data are e.g. MapReduce, text mining, information visualization and statistical programming.
6. AI refers to systems that display intelligent behaviour by analysing their environment and taking actions
7. – with some degree of autonomy- to achieve specific goals. AI- based systems can be purely software- based, acting in the virtual world, or can be embedded in hardware devices. See the EU Independent
8. High-Level Expert Group on Artificial Intelligence, *A Definition of AI: Main Capabilities and Disciplines* (8 April 2019), page 1.
9. Generally described as a set of steps to be performed or rules to be followed to solve a mathematical problem or a process to be followed by a computer.
10. Other sub-categories of AI include neural networks (e.g. brain modelling, classification), evolutionary computation (genetic programming), robotics (autonomous exploration, intelligent control), speech
11. processing (speech recognition), vision (object recognition), expert systems. Nigeria Financial Services (**NFS**) Industry IT Standards Blueprint, 2019, clause 6.1.6.
12. CBN, *Request for Information on Payments System Vision 2030,* (15 May 2019), page 7.
13. International Organization of Securities Commissions (IOSCO), *Research Report on Financial Technologies (Fintech),* (February 2017) page 6.
14. Finextra and Intel, *The Next Big Wave: How Financial Institutions Can Stay Ahead of the AI Revolutions*
15. (May 2017), chapter 4.
16. E.g. Lidya, Kudi Ai, Mines
17. E.g. Curacel
18. E.g. UBA Leo, Nigerian Stock Exchange X-Bot NFS Industry IT Standards Blueprint, clause 6.1.6
19. In a survey of nearly 200 firms in Q3 2019 on the adoption of AI in the financial services sector, the UK's Financial Conduct Authority (FCA) reported that; (i) firms take a strategic but cautious view on AI
20. adoption and implementation; (ii) many firms are currently in the process of building the infrastructure to deploy large-scale AI; (iii) 80% of responding firms reported using AI technologies in some form; (iv) the typical firm expects to make, build or deploy close to 20 applications within the next 4 years; and
21. (v) barriers to adoption seem to be internal rather than stemming from regulation. See the UK Financial Conduct Authority, *Machine Learning in UK Financial Services,* (October 2019) page chapter 4.
22. Joint Committee of the European Supervisory Authorities, *Joint Committee Final Report on Big Data* (15 March 2018), page 7.
23. The CBN in the NFS Industry IT Standards Blueprint identified other risks in adopting AI, to wit; (i) cost of operation; and (ii) Bad calls.
24. According to the CBN, as of 2018, 36.8% of eligible Nigerian adults are still financially excluded. CBN,
25. *Annual Report on the National Financial Inclusion Strategy*, (2018), page 8.
26. These laws include all known primary and secondary laws in Nigeria including other regulations, guidelines and circulars published by the CBN and are applicable to the financial services sector.
27. The CBN has also published the Consumer Protection Framework (2016) and the Consumer Protection Regulations 2019.
28. Nigeria Data Protection Regulations (2019), clause 2.13.6 (L)
29. In May 2019, the OECD published the first intergovernmental standard for AI policies (OECD Recommendations of the Council on AI) which was endorsed by 42 countries. The Guidelines is also applicable in the EU, and governments in more than 20 countries have published national strategies on AI. In the UK, the government has set up the three organisations to support the adoption and use of AI namely; the Centre for Data Ethics and Innovation; the AI Council and the Office for AI and AI is a strategic priority for the Information Commissioner's Office. In the US, President Trump in 2019 launched the American AI Initiative, while in China, the government launched its New Generation AI Development Plan.

TECHNOLOGY IN THE FIGHT AGAINST COVID-19.

Jeffery Kaddu

Technology has been central to revolutionizing our world, ushering us into the digital universe, creating innovative solutions to the world's problems like the novel Coronavirus that has crippled the world exerting unprecedented constraints on the global economy.

With the world adjusting to this new way of life, governments and health authorities are crafting modern solutions to counter the pandemic. Data usages forming a core component of the strategies states adopt to combat this virus.

China is at the forefront of this struggle, with the aid of Alipay Health Code, the Chinese Government is assigning colors to different individuals to determine whether they should be subjected to mandatory quarantine or allowed into public areas to interact with other unaffected individuals. Users' physical addresses and city names are freely fed to the Chinese tech giant that is working closely with the government. After users fill in a form on Ali-pay with personal details, the software generates a QR code in one of three colours. A green code enables its holder to move about unrestricted. Someone with a yellow code may be asked to stay home for seven days. A red code mandates two-week quarantine.

The ramifications of this unfettered access, though "voluntary" and for many people, convenient, go to the core of vital freedoms enjoyed by the people of China, crucially, the right to privacy and other equally pertinent rights such as liberty. Many train stations, and residential neighbourhoods, require passengers and residents to provide such information as a way of verifying whether they had been to areas hard-hit by the virus (such as Hubei Province) before allowing them to enter, it is close to impossible to move around without showing your AliPay code in states like Hangzhou.

> "Coronavirus need not provide authoritarian governments an avenue to normalize unchecked surveillance measures"

With successes registered in China, evidenced by the steadily reducing infection levels in the country, this module of contact tracing has registered positive results and encouraged liberalized Western economies to propose reliance on this model to fight the novel virus. A recent study by Oxford University showed that Germany, the United Kingdom and the United States are some of the countries where this has been suggested.

Some months ago, Google and Apple announced that they are integrating changes into Android and iOS to enable Bluetooth-based Covid-19 contact tracing similar to the model used in China. Apple and Google say that starting next month they'll add new features to their mobile operating systems that make it possible for certain approved apps, run by government health agencies, to use Bluetooth radios to track physical proximity. The system is Bluetooth-only, fully opt-in, relying on Application Programming Interfaces (APIs) and operating system-level technology to enable contact tracing. The tech giants maintain that there shall be no collection of location data from users, and no data at all from anyone without a positive Covid-19 diagnosis.

However, despite the initiative to adopt a less stringent model, carefully navigating relevant privacy laws, there remain concerns by the public about the possibility of gross unethical data breaches. These could provide vital data available to various individuals for manipulation for big data marketing, fuelling propaganda or other sinister motives.

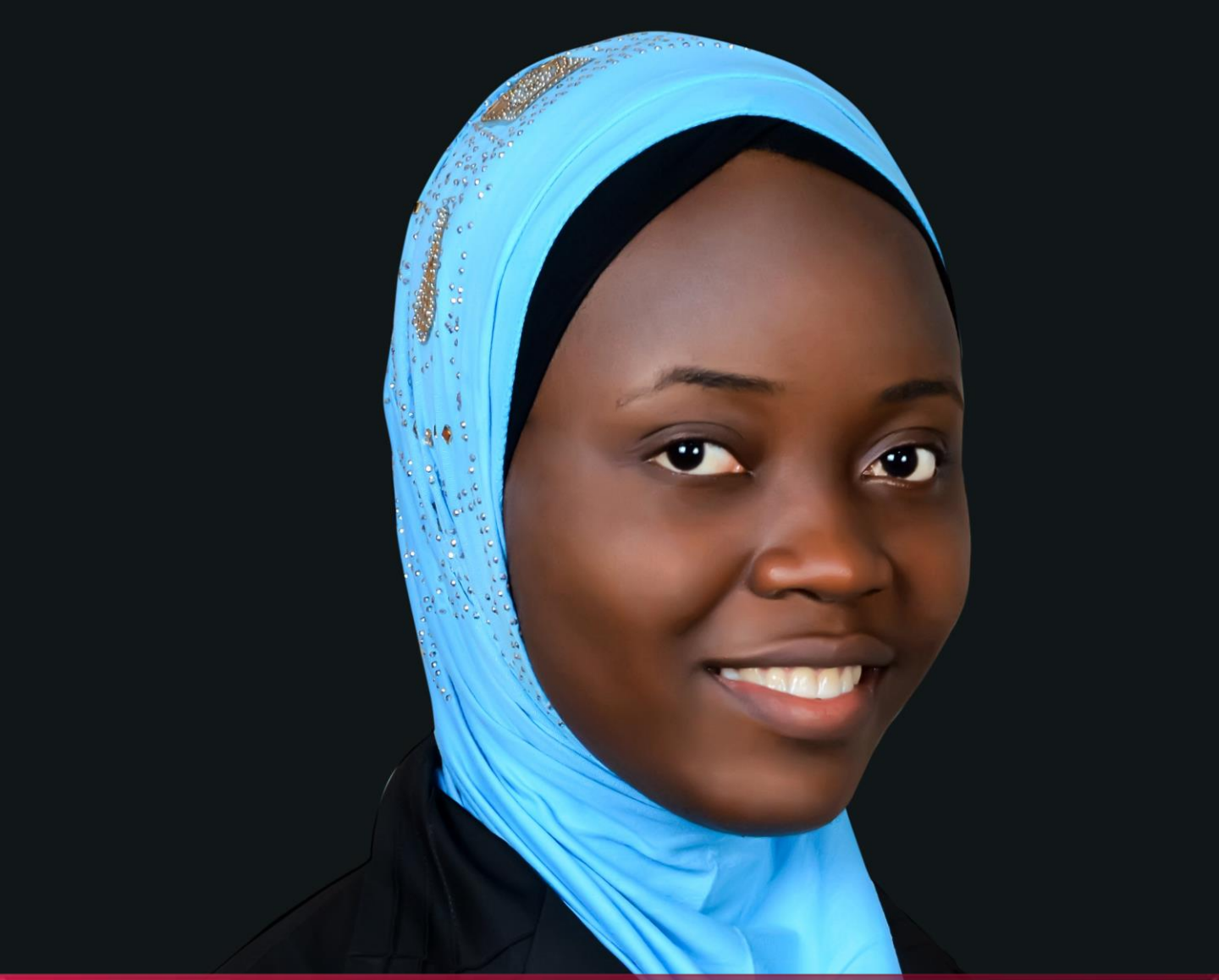
To alleviate the privacy concerns, a robust encryption system of data storage need be adopted with data subjects having an understanding of what their data shall be used for taking precaution to ensure that access is not extended to third parties without prior approval. Additionally, viable destruction and disposal after use methods need be adopted by governments and other stake holders with approval being sought from subjects through revised terms and conditions of use.

Beyond the privacy constraints, there are concerns of the practicality of the approach. Being a completely opt-in service, the model suggested by Google and Apple excludes non-smart phone users, who world over, constitute majority of the population. This, together with the revamped testing needed to make the project viable, shall greatly inhibit the success of the programme, especially with the cross-cutting and indiscriminate mode of spread of the virus.

In the unique unprecedented times humanity is facing; data users and third parties exercise precaution in light of ethical and health issues. Coronavirus need not provide authoritarian governments an avenue to normalize unchecked surveillance measures or allow the adoption of stringent policies that limit citizen's freedoms.

Through close cooperation and transparency with developers, governments and public health providers; need ensure data is collected in a privacy-respecting way, carefully ensuring legal, organisational and computational safeguards are in place to manage the risks of data misuse while curbing the spread of the corona virus worldwide.

PROFILE:
Jeffery Kaddu is a Ugandan lawyer, focusing his career on Intellectual Property and Technology, Media and Telecommunications (TMT). Jeffery holds a Bachelors Degree from Makerere University, Kampala, Uganda and he is currently completing his diploma in legal practice. He is currently the co-founder of LawBOT, a legal technology start up.



AMINAT YUSUF

CELEBRATING ACADEMIC EXCELLENCE

Aminat is a 300L student of Law at the Lagos State University (LASU), who is currently on a CGPA of 5.0/5.0. Before starting out her undergraduate degree, Aminat had graduated with a grade point of 4.8/5.0 in her Diploma in Law from LASU. She currently interns with the Primus Grace International Arbitration team. In this interview, she talks about how she maintains her outstanding feats, her engagements in extracurriculars, and plans for the future.

Hello, Aminat. Can we meet you?

I am Aminat Yusuf, a part III law student running a combined law degree program at Lagos State University.

Can you let us in on your background? How were the stages of education like for you?

I had my primary education at Al-Barr Montessori School and thereafter proceeded to Al-Hikmat College for my secondary education. Attending these schools has helped build a strong foundation for me and I am one of the lucky few who, at the early stages of life, have been instilled with the value of education.

You are currently on a perfect grade. What factors will you say contributed to this outstanding feat?

The divine grace of the Almighty and the support of my wonderful parents are the most important factors. Additionally, I've always had a passion for law and falling into the category of "children of the common man" (as we are mostly called), I knew that I needed to be exceptionally good to succeed in the legal profession. So far, I have really studied hard and had to make a lot of sacrifices, not because I aimed to have such good grades but because I needed to have a core understanding of the law and build a solid foundation to fit into the legal world. Honestly, the grades are incidental to that.

Also, prior to gaining admission to study law, I graduated with a distinction in my diploma in the law program at Lagos State University and we offered compulsory law courses from 100 to 400 level and a 500-level elective (tax law). This has really helped me. Now, I attend most lectures for the second or third time which has provided me with a better understanding of law. Also, this has, to an extent, aided my understanding of what lecturers look out for in their assessments. I'm also very privileged to have been mentored by highly reputable professionals in the field of law, who are kind enough to help define and redefine my focus in this quest for success.

There's the opinion that book smart students are generally unprepared for success at the workplace. While that statement may be largely untrue, what steps are you taking to consolidate your academic success in a way that perfectly prepares you for the 21st-century legal profession?

Asides from being sound academically, I'm actively involved in extracurricular activities. For instance, I participate in moot and mock competitions and I belong to some organisations and clubs where I take up roles and volunteering works for increased efficiency in legal writing, research, technology and other technical skills which are indispensable tools for the 21st-century legal practice.
In view of the relevance of Alternative Dispute Resolution in today's legal system, I'm an ADR enthusiast and a student member of the Chartered Institute of Arbitration and ADR Society Lagos State University. I'm also very passionate about technology law and I belong to the TechSavvyLaw Network Club, a club initiated by a top law firm in Lagos to help bridge the gap between Nigerian legal education and technology law. Finally, I am positioned for national and international internship opportunities to help master the culture and operational standards of the legal profession.

You were one of the few applicants to gain an internship placement into Primus Grace LP Virtual Arbitration Internship. Quite noteworthy, you were the only sophomore student to get the position. What factors contributed to your successful application?

Having an outstanding CGPA and graduating as the best student in diploma contributed to my successful application. But considering the large number of applicants, I would say that it was more of God's grace.

How has the experience been and how will you describe the firm's work culture?

The experience for me was a great one. Working with a team of dignified and prominent experts as a virtual intern at Primus Grace LP was a very rare opportunity and I remain incredibly grateful to the Senior Team Lead, Joseph Onele for trusting me with challenging tasks that helped develop my analytical skills. Being a virtual internship program, tasks, assessments and meetings were scheduled via social media platforms. It's amazing how I came to learn so much about international commercial arbitration within the four walls of my study room and very conveniently too. My interest in arbitration has now grown deeper and I'm currently taking online courses on ADR and International Arbitration.

The Firm has a positive and encouraging workplace culture that prepares interns for the challenging future of the legal profession. To match its standards, in addition to being exceptionally good, top-notch research, writing and time management skills are highly necessary. From experience, I can say that learning colleagues who desire to be thoroughly and properly nurtured for the 21st century Legal Practice should be on the lookout for internship opportunities in this law firm and rest assured that this would have a positive impact on your professional journey.

Outside law, what extracurricular activities are you actively involved in, and if not law, what another career path will you have chosen?

I am not actively engaged in other activities outside law. For now, my whole devotion is to studying law and continually upgrading my skills. Other than law, I would have pursued a career in accounting.

The Independent Electoral Commission maintained a stand that elections will be held in spite of the pandemic. What legal or socio-political issues do you think that will raise for Nigeria as a country?

In fairness, I must acknowledge the fact that the Independent National Electoral Commission, in collaboration with health agencies and authorities, has adopted precautionary measures and policies to ensure that voters and political parties comply with existing Covid-19 regulations and to guarantee health securities during this electoral processes.

The above notwithstanding, it is my considered view that with the pandemic still raging, there exist certain factors likely to hamper the effective actualization of the very essence of an election in a democratic society which, rather than gaining political power, is to ensure the emergence of a government that represents the choice and desire of the sovereign people in whom absolute power resides (Section 14 Constitution of the Federal Republic of Nigeria 1999 as amended).

Significantly, due to the restrictions imposed on interstate movement, a considerable portion of electorates, who are keen to exercise their political rights, are stranded in different parts of the country and would not be effectively represented during these elections. This definitely is not a case of political apathy because apparently many of these interested voters are incapacitated by reasons of government restraint orders. In the same vein, given the threat this pandemic poses to human life, many eligible voters within the relevant constituencies are already completely discouraged from exercising their franchise.

Consequently, more than ever, Nigeria would most likely witness the lowest turnout of voters during these elections and, as a result, unpopular candidates might emerge. Recently conducted elections within and outside the African diaspora lend credence to this fact. This further exposes the fact that Nigeria's electoral system is fast becoming a shadow of true constitutional democracy, where people's choices and power are lost to political parties and their candidates. Notably, the Commission's hands are tied here in view of its obligation to comply strictly with the constitutionally stipulated procedures for conducting an election (Section 178 CFRN 1999 as amended).

Hence, to guarantee social justice and ensure true constitutional democracy, it is my humble submission that the Nigerian Constitution be amended to the effect that the National Assembly is authorized with the power, by way of a resolution, to extend the four years tenure of government where the President considers it impracticable to conduct an election due to threatening contingencies of this nature; and for the purpose of exercising the powers granted to INEC under Section 178 of the Constitution, the period of such extension should not be taken into account (this is very similar to the provisions of Section 180 (3) of the Constitution). Alternatively, the National Assembly should enact an Act for proper and comprehensive regulation of online voting and electoral processes.

What are your mid to long term goals? Should we expect to see you in the Academia, Litigation or Corporate Law practice?

My midterm goal is to build a solid foundation for myself in preparation for the legal business world with specializations in the areas of banking and finance law, Islamic finance law, Fintech law and tax practice. All things being equal, I intend to become a chartered accountant in the coming years. I look forward to being a part of corporate law practice and working with outstanding practitioners in order to improve the financial state of productive Nigerians.

Are there any challenges you have faced as a law student? How have you been able to overcome them?

Of course, I've had my fair share of challenges, but the most challenging part of my student life is having to manage my academics and all other commitments I have. As a direct entry and combined law student, there are a lot of technical courses I need to offer both in common law and Islamic law departments. I can only offer these courses by requesting for extra units every semester, managing this and all other extra-curricular activities have been really tasking for me. To strike a balance, I try to schedule my priorities and ensure that my time is very well managed in the best way that I can. I believe in the truism that *"if man were to be accountable for every minute of his life, he would be astonished by how much he can actually achieve"*.

Just like many law students, particularly in my early days as a diploma student, I found some of these courses so difficult to understand. For this, there is practically no office I have not been to and lecturers were always willing to clarify my doubts. The thing is: sometimes what you read and think you understand is really not what the law is and I must say that but for meetings with these lecturers personally, I would have really flopped with some of my exams.

On a final note, how do you visualize the model Nigerian legal system and legal education? What needs to change and how do you think the change can come about?

Strictly speaking, for me, the Nigerian legal system and legal education are in dire need of reform particularly in today's revolutionary age of ICT.

As society evolves, the law must be dynamic to suit the evolving needs of its people. Unfortunately, Nigerian laws are fast losing their relevance in some sectors of this country. Similarly, the Nigerian legal educational system is fashioned such that law students channel a lot of hard work into studying archaic laws which have little or no bearings in modern day society.

University syllabuses are not very well structured and we lack adequate facilities and, as such, some law students take up courses in music, theatre arts and language departments and other so called *"free five courses"* in place of electives like Entertainment law, Fintech law, Internet law, Artificial Intelligence law, E-commerce law, Energy law and other very relevant courses essential to building a career in 21st Century legal practice. Moreover, more emphasis is laid on theoretical rather than the practical aspect of legal studies.

The system is also not very favourable for lecturers. To state the least, the emoluments and standard of living for this tasking job are not so encouraging; some of our lecturers lack specialization and the worst part is that universities are so under staffed that two or three lecturers train over 250 law students. To top it all up, lecturers are denied adequate financial support and facilities to conduct effective research needed to fully train budding lawyers and the fact remains *"nemo dat quod non abet"* (you cannot give what you don't have). These factors have deeply affected the Nigerian legal education so badly that a larger percentage of about 5000 law graduates produced yearly are not employable, appearing as aliens in the labour market of the legal world; and because WE ARE THE FUTURE OF THIS PROFESSION, it definitely has a negative impact on the Nigerian legal system.

In a bid to filling this gaping void, I suggest that the whole academic system be restructured to accommodate emerging areas of law and law trainees should be groomed in analytical and technological skills at the early years of their studentship. For maximum efficiency in the academic system, we should have one lecturer to thirty students, this is very practicable even in some African countries. A classic example is the University of Cape Town, South Africa. Financial support for lecturers and law students is also important considering the expensive nature of legal education.

Very significantly, electricity failure has deeply frustrated research capacity and, as a result, projects meant for a day or two are concluded after several days and perhaps weeks. Adequate power supply is essential particularly in this innovative time of ICT. It is very alarming that in spite of the excessive revenue allocated for electricity development over time, the Federal Government is projecting 11000 megawatts by 2023. We are blessed with the resources needed to ensure maximum electricity supply, but the government needs to provide adequate infrastructural development to leverage on these sources.

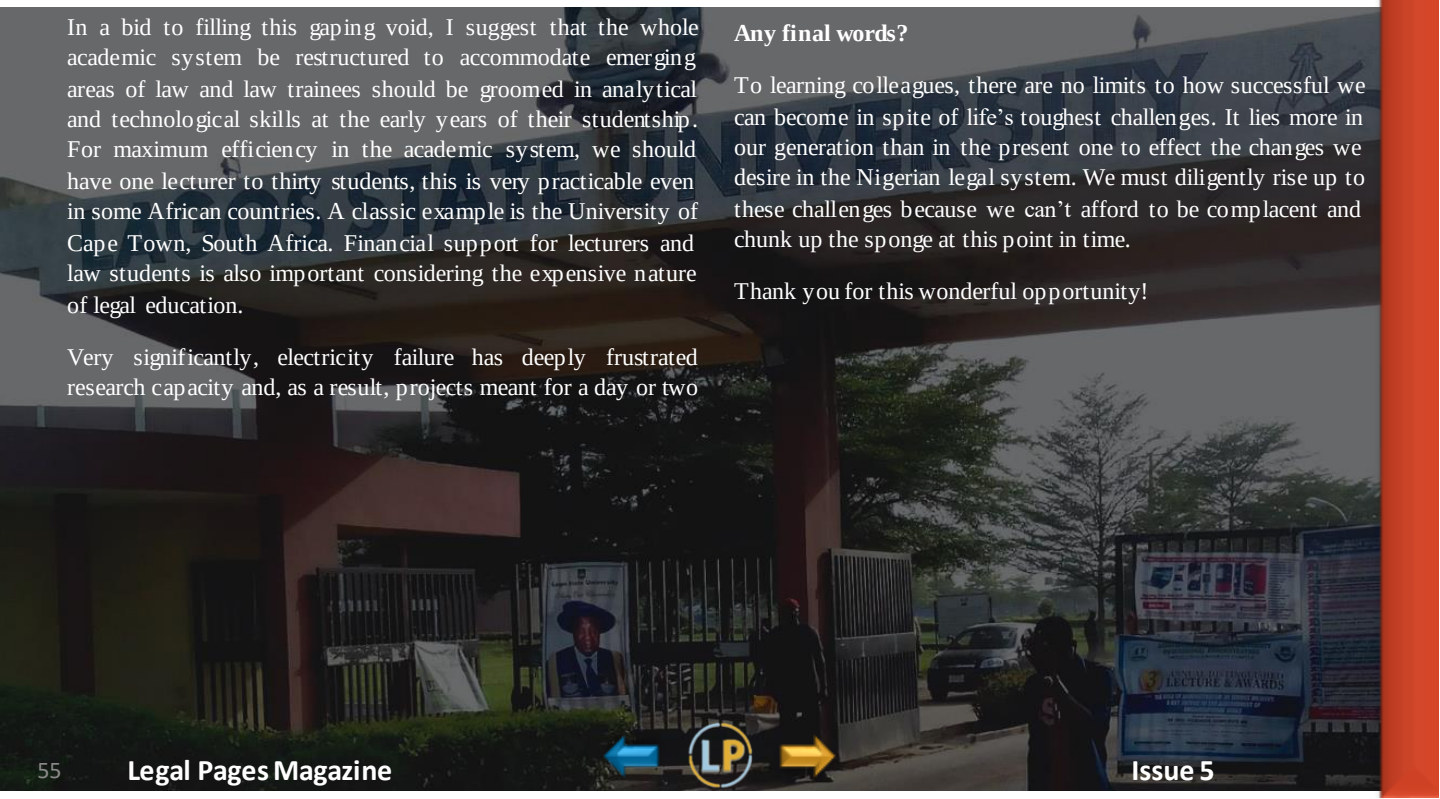
As is the case in civil law countries, I suggest a collaboration between the judiciary, legislature and well-researched professionals in academic and practical fields to ensure the development of our laws in order to meet the standard of today's societal existence. For quick dispensation of justice, it remains the role of the judiciary, as the last resort for justice, to avoid unnecessary delay in our judicial system. However, it is important that the Nigerian Constitution be amended to avoid similar occurrences as the case of ORJI UZO KALU v FRN & ORS. [2016] NGSCI34. In this case, the Apex Court cited denovo, a case of about 12 years (which would ordinarily have lasted for a couple of months), declaring the conviction null and void on the ground that the proceeding judge had been elevated as a judge of the Court of Appeal, prior to his delivery of the judgement. This inter alia, weakens the confidence in our judicial system.

Finally, the Constitution needs to be amended to make justiciable social and economic rights, in order that it may truly reflect the will and desire of patriotic Nigerians. It is no gainsaying that we have the financial capacity to make this a reality. What we need are selfless leaders in all tiers and arms of government to responsibly channel the nation's resources for effective utilization.

Any final words?

To learning colleagues, there are no limits to how successful we can become in spite of life's toughest challenges. It lies more in our generation than in the present one to effect the changes we desire in the Nigerian legal system. We must diligently rise up to these challenges because we can't afford to be complacent and chunk up the sponge at this point in time.

Thank you for this wonderful opportunity!

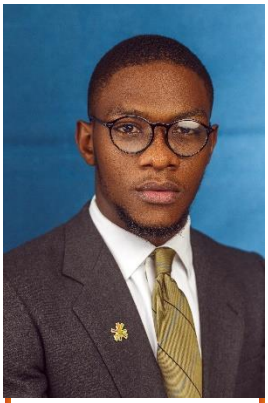


REVISITING THE IMPLICATIONS OF A BLASTING PANDEMIC ON FINANCING ARRANGEMENTS: A SOLUTION BASED EVALUATION

Destiny Ogedegbe

INTRODUCTION

The world has to go on eventually. Despite being wounded by the blasting Covid-19 pandemic, people all over the world are instinctively getting used to the constraining effects enforced on them by the said pandemic. This instinctive acceptance/resistance includes adjusting to and making routines out of the several governmental policies having financial implications on their businesses. It is impossible to consider the effects of the pandemic from a financial perspective without considering the several financial arrangements to which millions of individuals are parties, and the way forward for these individuals. This is because the finances of a lot of individuals and entities are a result of loan transactions and financing arrangements. SMEs, corporate entities and even government agencies have to deal with the reality that the pandemic has devastated either their abilities as debtors to service loan obligations and covenants or their role as lenders; severely worried about cash flow and how to effectively deal with the dilemma of enhanced credit risks and keeping up with funding obligations. Imagine a lender whose borrower's ability to repay is strongly contingent on activities that have been hindered by the grim pandemic. These loans can morph from performing into underperforming or even distressed loans all within the last couple of months and the financial repercussions definitely do not augur well for the lender.



> "Human rights violations mutate, undercut their efficiency."

The situation is more unsettling because even after the gradual ease back into the normal activities, parties to financing arrangements have to be on the *qui vive;* they must vigilantly monitor and analyze specific provisions of their finance documentation especially the key provisions (depending on the nature of the deal and how it is structured; some financing arrangements have clauses as typically structured in Loan Markets Association Facility Agreements) such as clauses on events of defaults, material adverse changes/force majeure, representations and warranties, covenants and restrictions, termination provisions, methods of servicing – satisfied tranches or lump sum funding obligations, what-have-you? These analyses are geared towards helping to ascertain the level of impact caused by the and also to help identify the potential short-term or long-term solutions to the difficulties they currently face in meeting their contractual obligations.

This short article is to quickly spell out from current industry practice, solution-based and practical approaches that may be explored or adopted by parties to financing arrangements in trying to either minimize, avert or prevent direct negative impact as a result of the forced recalibration of normal activities engendered by the Covid-19 pandemic.

PROFILE:
Destiny Ogedegbe is a scholarly law professional. A two-time achiever of the coveted First Class Honours from the University of Benin and the Nigerian Law School, Destiny demonstrates a unique obsession with diligence, consistency and a mind for excellence. Away from his academic feats, he is an efficient lawyer whose skills have been commended by clients and colleagues.

As a trainee Associate in Nigeria's foremost corporate law firm, he advises and assists with projects and transactions ranging from lending transactions, M&A, corporate investments and finance, project finance, and intellectual property rights protection. His interests include Disputes Resolution Practice, Private Equity and Banking & Finance.

He is the Co-Founder of the Young Professionals Hub - a non-profit dedicated to providing information to young professionals on career projections, job and internship opportunities and general insights. He is also the Head of the Capacity Building Team of the Innovation Law Club Africa. He currently sits on the board of two Non-Governmental organizations and assists several other non-profits and institutions with legal advice including the National Law Students Association. At his leisure, he enjoys mentoring people, teaching and writing papers for publication or fiction.

PROPOSING APPROACHES

Before anything is proposed, it is important to first state that nothing could be more efficient in all of these than reinforcing established communication links since at this point, a lot of negotiations will have to take place in order to re-align the intentions or agreements of the parties under the financial arrangements and the corresponding exigencies of the times such as liquidity issues, available commitments and contractual obligations. Of course, it goes without saying that communications of these nature will have to involve complete disclosures with respect to the extent of impacts already or potentially occasioned by the pandemic as this will inform the parties' resolve on the most effective solutions to adopt. Below are some of the solution-based approaches parties can adopt:

1. **Moratoriums on Interest Payments and Amortizations**: This is perhaps the simplest option anyone may consider. While it is simple, it is however not simplistic. This entails a situation where lenders and borrowers agree that interests to be paid on existing loans and/or amortization payments that are otherwise due and payable should be relaxed for a while and deferred till a later date. It is simple because, if willing, the parties can easily conclude on this arrangement and it could be both a short- and long-term solution. However, it is not simplistic because there is usually a catch for lenders here. Most lenders begrudgingly accept this option, after all, this is not an outfit of charity. Usually, the moratorium (relaxation) on interest payments and debt sum due to the pandemic will be in exchange for the provision of additional credit enhancement and/or stiffer undertaking, covenants, and reporting obligations. Lenders put the borrowers to other heavy tasks to compensate for the latitude.

2. **Restructuring Existing Facility and Financing Arrangements**: By restructuring, it is meant that the nature of the existing transaction could be altered to be more eminently suited to the times. For instance, in a simple loan agreement, a guarantor may be introduced by the borrower. A facility agreement may introduce more creditors in which case an inter-creditor agreement may be added to the now syndicated facility arrangement. A pandemic of this nature would definitely present the Parties with the option of undertaking a full restructuring which could obliterate ineffectual clauses and accommodate more relevant clauses as will be required by the Parties to withstand the inclement economic realities. Although a restructuring may equal more stringent covenant packages and reporting obligations as well as credit enhancements and it is also possible that while a restructuring may favour a borrower as a better negotiation can be put forward, it is also very likely that a new facility may be granted at a higher pricing by the lender. Notwithstanding, this is a great option for parties to financing arrangements.

3. **Lender's Consents and Waivers**: In a typical financing arrangement, there are certain conditions precedent or subsequent to a number of benefits usually in the form of access or more access to funding by the lender to the borrower. However, with a constraining pandemic, the borrower's ability to access additional funding under an existing facility arrangement may be impaired by the fact that there have been some defaults, or some events have or are beginning to occur potentially giving rise to defaults. These events are usually called Events of Defaults ("EoDs"). To solve this, borrowers may request, and the lenders may consider granting waivers in relation to the fulfilment of such further conditions precedent on such terms and conditions as the lenders may deem fit. Other contractual obligations which may not be met by the borrower due to the crisis may also be dealt with, in the meantime, through amendment and waiver letters.

4. **Revisiting and Negotiation Financial Covenants**: Financial covenants are covenants that relate to the borrower's financial ratios. These covenants inform and reasonably assure the lender that the financial projections of the borrower are such that can reasonably guarantee that the borrower can repay the loan, other things being equal. Unfortunately, the pandemic has really paralyzed many businesses and borrowers are experiencing or expect to experience a significant drop in revenues thereby impairing their ability to meet specified financial ratios under their respective financing arrangements. Accordingly, borrowers may approach lenders to amend the financial covenants in the facility agreement or the basis of the calculation of same, putting into consideration current realities and business/revenue projections. Such respite may be granted by the lenders as a short-term solution via amendment letters or such term may be included in the documentation for a restructured facility.

5. **Triggering the Utility of Undrawn Commitments and Accordion Facilities**: In many financing arrangements, there are provisions that allow a borrower to activate further funding by complying with certain conditions precedent. The lender can refuse to provide further commitments where the borrower has either refused to comply with those conditions precedent or has triggered other events that affect his (the borrower's) ability to repay. These events are technically termed "Drawstops".

Now, due to the effect of the pandemic, a borrower may need to pump in more money into business in order to be buoyant enough to service existing debt obligations under the facility arrangements. The Parties can agree that the borrower gets access to utilise undrawn commitments or accordion (reserved) facilities. This can even be beneficial to the lender in the long run – more money for the borrower to channel into his business for more profit/liquidity usually means higher chances of recouping full loans. However, parties must have to be generally mindful of the terms and conditions on which such accordion facilities can be made available under the facility agreement, in the wake of these uncertain economic times. It is possible that this backfires, and the lender is forced do deal with more problems of unperforming loans, but notwithstanding, this remains a good option for parties to financing transactions.

CONCLUSION

Not all financing or facility arrangements have been negatively impacted by the global pandemic. For some affected transactions, re-negotiations on certain provisions such as force majeure clauses and the sort, have restored the parties' quandaries. Indeed, whilst the practical steps spelt out above are instructive to currently disrupted facility arrangements, they are also intended to guide prospective lenders and borrowers on likely head rooms and compromises that can perpetuate their agreements in the event that the pandemic threatens the ability of the parties to respectively satisfy their obligations.

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