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ABSTRACTS

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Speaker Abstracts
(in order of appearance in the conference programme)

LDRN 5th Annual Conference – "Beyond the Crisis: Challenges and Opportunities for Law and Development"
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Water as a human right, water as a commodity: Can SDG6 be a compromise?

Author: Imad Antoine Ibrahim, Research Assistant Professor, Center for Law & Development, College of Law, Qatar University & gLAWcal-Global Law Initiative for Sustainable Development

Abstract

The debate over whether water must be considered a human right or a commodity has been ongoing for a few decades. It has led to a conflict between supporters of a human rights approach to water and those who advocate an economic approach. The existing research either legitimizes or criticizes these approaches on the basis of several lessons that are vital to ensuring water access. These lessons are either not mentioned at all when the debate is taking place or are stated independently by the different parties to support their claims. For this reason, this article seeks to answer the following questions. First, what is the relevance of these lessons to ensuring water access? Second, can a compromise be found between viewing water as a human right or a commodity? The author demonstrates that these lessons play a very important role when they are addressed simultaneously because they are interconnected. Considering them at once is vital to addressing the question of water access on a case-by-case basis, with two case studies discussed here. The author also highlights how the use of Sustainable Development Goal 6 at the domestic level is a more practical approach to ensuring water access.

Key words: water; human rights; commodity; unique nature; effective regulations; SDG6

The States' Responses to COVID - 19 Pandemic in Africa: Examination of Food Security in Nigeria

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Abstract

One in nine people are undernourished, the vast majority of the vulnerable live in developing countries such as countries in Africa. COVID-19 pandemic and the states' response by way of lock down in movement of people compound the food crisis. States in Africa joined in the global trend of locking down, with citizens remaining indoors. However, countries in Africa did not have

or simply mismanaged the palliatives to share to vulnerable citizens. Equity and fairness in the distribution of palliatives is attainable with the due application of law. The law assures food security where food is available at all times, in good quantity and quality, such that the health and safety considerations for citizens are not compromised. In Nigeria, The work investigates whether the Covid-19 palliatives, which consisted of "poisonous and expired" rice seized and shared by the Nigerian Customs Service, and other food items that were simply withheld from hungry citizens meet the requirements of food security. The political leadership had its full share of "the commonwealth," just as abuse of public office and corruption influenced the handling of COVID-19 palliatives. Post COVID-19 projections on how the law can be engaged to attain food security is primarily made by establishing that development is not driven at a globalized level, because of diverse cultural inputs that are peculiar to a specific geographical divide. Consequently, Africa's pre-colonial approach to food security which centered on feeding everyone in a community under the *ubuntu* spirit contrasts with the western concept of development, which is the private inclined "winner - takes – all" disposition. As such, global food deficit can only be fixed, if Africa reverts to its indigenous legal system, which affords a conducive environment to produce and distribute food.

Key Terms:

COVID-19 Response; Food Security; Rule of Law; Indigenous Legal System

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Advancing access to social security: Maternity protection for women in the informal economy

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Abstract

Currently, only workers recognised as 'employees' by South Africa's labour law framework (The Unemployment Insurance Act 63 of 2001 (UIA), the Unemployment Insurance Contributions Act 4 of 2002 (UICA), and the Labour Relations Act 66 of 1995 (LRA)), qualify for social security benefits such as unemployment employment insurance, maternity benefits and workers' compensation. As a result, self-employed and other atypical workers have no access to these and other forms of social protection, resulting in financial hardship – particularly for those in informal employment. 'Less than 10% of workers in Sub-Saharan Africa and Asia have access to social security, while in other developing countries between 10% to 50% of workers are able to access social security.'

This paper will argue that the exclusion of this category of workers from the maternity benefits mechanism constitutes a violation of core constitutional rights to equality, dignity, life, health, social security, and those of children. The paper will draw on recent study findings, considering international best practice available for South Africa to draw on, should it seek to extend maternity benefits to self-employed workers, noting the law reform investigation currently underway under the auspices of the South African Law Reform Commission (SALRC).

Through a particular lens that examines practice in countries of similar socio-economic status to South Africa, the study finds that such countries have successfully extended maternity benefits to self-employed workers through affordable, administratively efficient mechanisms. The paper will present law reform considerations to extend a combination of social insurance and social assistance mechanism, to provide the greatest possible coverage and ensure that this most vulnerable category of self-employed workers would be able to access maternity benefits.

Key words: Social security; maternity benefits; informal economy; equality

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Advancing Socio-Economic Rights in Response to Violence against Women in the Global South

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Abstract

There exists a common thread in the manner in which Global South countries respond to violence against women. The general approach is to protect the civil and political rights of those who fall victims to violence. While it is critical to prioritise these rights in governmental responses to violence against women, the COVID-19 outbreak has highlighted the importance of addressing all rights, especially socioeconomic rights. One of the most significant effects of the COVID-19 pandemic on Global South economies is that it has laid bare the scarcity of governments' resources. As most resources are devoted to mitigating the impact of the pandemic on health sectors and key industries that drive economic growth, few are left for the realisation of socioeconomic rights.

Due to the widespread scarcity of resources during the pandemic, important socioeconomic benefits have been inevitably constrained. Citizens have been left with limited access to housing, food, employment and health care. For women, who are generally vulnerable to violence, the absence of these basic needs is detrimental to their safety. Gender-based violence in public places is likely to increase as women seek basic necessities such as food and healthcare services. In private spheres, rising levels of unemployment and lack of affordable housing make it difficult for victims of domestic violence to live independently from their abusers.

Prior to the pandemic, a number of scholars highlighted the potential value of socioeconomic rights in the development of prevention and responsive measures to violence. The increase in socioeconomic rights violations during the pandemic confirms that poverty and violence are intimate bed fellows. Global South countries, therefore, need recognise the socioeconomic antecedents to violence against women and accept that both preventative measures and responsive measures are likely to require the redistribution or reallocation of resources. This paper seeks to advocate for the development of preventative and responsive measures that prioritise socioeconomic rights. Therefore, the primary focus of the paper is on the present-day challenges faced by Global South countries in realising the socio-economic rights of women who are often victims of gender-based violence.

Key words: Socio-economic rights; Violence; Poverty; Responsive measures

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Reconstructing the Rule of Law in Plural Madagascar: Contextualising Justice

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Abstract

Madagascar's fractured past has bred a fragile status quo of recurring institutional crises. Crisis in Madagascar is driven by a complicated state-building project, the nature and set up of its institutions as well as a distorted political space. This has resulted in clientelism, patronage and personalised politics. The 2009 political crisis was simply a reflection and result of years of colonial and neo-colonial manipulation, institutional neglect, citizen isolation and competition involving elite politicians, the military and transnational Malagasy actors.

Madagascar needs a rule of law driven reconstruction, including the reform of its political institutions to ensure inclusive justice. This requires development and reconstruction programmes initiated in Madagascar to strike a balance between the need for economic prosperity and the promotion of social justice, equity, and inclusive poverty-reduction strategies relevant for all Malagasies. For instance, one of the key features of the Malagasy crisis is protracted insecurity in rural/peripheral areas which requires immediate and contextualised solutions. Current responses to cattle raiding (rustling) reflect the complexity of the rights and justice challenge in rural areas. The lack of trust in a corrupt and weak justice system has led rural Malagasies and the police force to summarily and extrajudicially execute the *Dahalos* (Zebu cattle bandits or thieves) they apprehend, breeding a complex web of more conflict, rights violations and further banditry. The above takes place within a plural legal setting reflected through the use of the traditional justice system of *Dina*. This system has heightened capital punishment and extrajudicial sentencing for *Dahalos*, thus violating rights, but it is also the most accessible, reliable and familiar justice avenue in rural areas, therefore key for deescalating conflict.

This paper analyses Madagascar's struggle to capitalise on navigating/regulating its formal and informal justice systems through the *Dahalo* crisis as a limitation of rule of law conceptualisation. In doing so, it demonstrates that the convoluted matrix of conflict, rights and injustice created by insecurity has a negative impact on rule of law building from a social justice perspective, but can also be an opportunity if rule of law building from below (contextual) is embraced. The paper engages the above insecurity, justice complexity and rights violations whilst cognizant of the Malagasy state whose institutions are struggling, whose political space is repressed, and whose legal system is institutionally weak and not well financed or staffed. Institutional legal weaknesses include judicial and police corruption within vague overlapping mandates, inefficiency that has resulted in massive case backlogs, persistent pre-trial detention, and failure of legal due process. This paper thus seeks to engage with the rights and justice discourse by clarifying what "Rights and justice" mean within this context, how they are understood and navigated, and what the role of formal and informal law and actors is and should be.

In doing so, the paper centers Malagasy voices, choices and worldviews. Rule of law building within the plural, post-crisis and fragile Madagascar requires balancing bottom-up and top-down approaches that are cognizant of Madagascar's pluralized realities. The paper highlights Madagascar's need to promote deliberative localized justice whilst strengthening the inclusivity, accessibility and efficiency of formal governance and justice institutions. This involves

acknowledging the limitations that Malagasy justice institutions face in delivering justice in plural and peripheral settings, and thus supports strengthening and revisiting democratic ideals within traditional justice institutions. This is meant to address the impunity, violence, and rights violations, including negative co-optation of these institutions by corrupt officials and mobs seeking justice by any means. The paper also tangentially identifies proper domestication and implementation of international human rights law and principles of constitutionalism. The above will resolve access and institutional trust deficiencies, strengthening the rule of law, including accountability and citizen engagement.

Key words: Pluralism; justice; rights; reconstruction

Title: Law and development in Nepal: the slow road to judicial reform

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Abstract

An independent judiciary capable of delivering fair and equal justice to all is critical to Nepal's ambition to strengthen public access to justice and increase public confidence in the judicial system. Seventy years of law and development initiatives in Nepal have however had mixed results. Reforms to justice, strengthening democracy and rule of law governance have occurred alongside minimal reforms to the judicial system. In turn, good governance, legal empowerment of the poor and disadvantaged, fair access to justice and increased judicial responsiveness remain serious gaps in Nepal's reform program. These gaps in justice delivery form part of a larger challenge posed by Nepal's long history of struggle for rule of law and justice. Embedded structural inequalities and a political culture characterized by strengthened institutional measures 'at the top' and unmet demands for justice 'from the bottom' congeal the gaps to reform in Nepal. This paper focuses on two major areas: firstly, it stimulates a much needed discussion on law and development in Nepal. That is, how has law and development been explained, understood, and implemented? Secondly, it aims to contribute specifically to the discourse on approaches to judicial reform. Specifically, in relation to Nepal it asks how can judicial reform be operationalized in such a way that public trust in the judicial system as a guarantor of justice can be accomplished. The paper proposes that a concerted and more diligent effort in the area of judicial independence is an urgently required step in this direction.

Key words: Law and development, judicial reform, independent judiciary, access to justice

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Title of the paper: Budding Democracies and Flowering Jurisprudence: Regional Courts and Development in Africa

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Abstract

The challenges of nation-building notwithstanding, there are constituent parts of the supranational governance machinery that are consolidating and flourishing in Africa. In many ways, regional courts have been steadfast in receiving and adjudicating a variety of cases in ways that define their role on a democratising continent. Judgments from these courts have addressed jurisdictional issues, clarified treaty provisions, responded to human rights claims and sometimes voided executive action. The diverse make-up of cases that have come before Africa's regional courts indicates citizens' growing confidence in supranational institutions. This contribution proposes to discuss a selection of cases from the East African Court of Justice and the ECOWAS Court of Justice, highlighting the steady growth of a body of jurisprudence which, while responding to issues that are offshoots of budding democracies, is also charting a course for active citizenship, accountable governance and rights protection. This case overview demonstrates the contribution which Africa's regional courts are increasingly making towards discharging the onerous triple burden of rights advancement, good governance and the rule of law on the continent (a burden now exacerbated by the covid-pandemic).

Four key words: Regional Courts, Democracy, Rule of Law, Governance

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PREVENTING FUTURE STRUGGLES TO PROCURE ESSENTIAL MEDICINE FOR PUBLIC HEALTH: A GLOBAL SOUTH PERSPECTIVE

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Abstract

The COVID-19 pandemic has drastically affected many facets of life since its onset in 2020. As COVID-19 rapidly spread across borders, cultures, and beliefs, and infiltrated prevention measures, the urgency for a vaccine grew. With the development of vaccines, a key issue became access to vaccines and the equitable distribution thereof, as well as navigating the TRIPS agreement and its flexibilities in light of this global public health crisis. This paper seeks to explore ways in which future struggles for access to vaccines necessary for public health, be it permission to produce vaccines or ability to procure vaccines, can be avoided. In examining this, it is necessary to consider what has impaired access to COVID-19 vaccines and what barriers prevented local production of COVID-19 vaccines. It will then be evaluated *why* such lack of access and such barriers are problematic. This can be assessed in light of the international

human rights framework coupled with consideration of intellectual property rights and flexibilities to the TRIPS agreement available under the Doha Declaration. In light of this analysis, I will propose changes that could prevent such issues of access and permission to produce vaccines locally in the future, in case of a future public health crisis such as this. Despite the World Health Organisation seeking to address universal access to vaccines for future epidemics as early as 2017, the COVID-19 pandemic has highlighted the stark reality that universal access faces many barriers, particularly for the global south. Hopefully in examining these barriers faced under the COVID-19 pandemic future challenges can be prevented.

Key words: COVID-19; Vaccines: Access: Human Rights and Intellectual Property

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LGBTI communities in Africa: fragile rights for vulnerable people made even more vulnerable by the pandemic

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Abstract

According to the OHCHR, LGBTI persons are particularly vulnerable in this time of pandemic. As such, in June 2020 the OHCHR has published a report on the impact of the COVID-19 pandemic on the human rights of LGBTI persons.

The situation is even more precarious in Africa where LGBTI organisations are historically viewed by many governments as imposing values contrary to "African values".

In the framework of the Universal Periodic Review (UPR) most recommendations by other UN member states to decriminalise or better protect LGBTI communities were rejected by the African states concerned. Those of them that provide reasons for their rejection, bring up that sexuality is a private matter, or argue that the recommendations are contrary to their nation's values, customs or religions, hence contesting the expression of sexual or gender preferences as a universal human right.

Despite the fact that many African leaders consider LGBTI persons as "un-African" and marginalise them during measures to combat pandemics, the legal framework at the African Union (AU) level is clear on the protection of their rights.

The African Charter on Human and Peoples' Rights (Banjul Charter) in its article 2 provides that the rights and freedoms therein are applicable to 'every individual' without any distinction such as, amongst others, because of sex or 'other status'. The mention of 'other status' makes the list non-exhaustive. Therefore, it could extend to LGBTI persons.

In addition to the treaty provisions, the African Commission on Human and Peoples' Rights (ACHPR) in 2014 adopted resolution no 275 on the 'Protection against Violence and Other Human Rights Violations against Persons because of their real or imputed Sexual Orientation or Gender Identity'. The ACHPR has further released several press statements concerning the protection of human rights during COVID-19 pandemic. Although none of these specifically mentions LGBTI persons, many of them mention 'vulnerable persons'.

Despite the protection framework assured by several African legal instruments and institutions, it is unsurprising that African countries are using COVID-19 regulations as a means to curb the rights of LGBTI communities. Among the specific challenges that African LGBTI persons face during pandemics there are the restricted access to shelters and community centres; restricted access to health services; threats from hostile/homophobic lockdown environments; increased mental health impacts; increased social discrimination and attacks; and potential use of force and misuse of emergency powers by states.

That is why, in my study, I explore the measures the African continent should embrace to ensure that LGBTI communities enjoy their human rights despite pandemics. These measures can be adopted at different level. For example, the ACHPR would need to be very specific about the challenges that LBGTI persons face during pandemics, not limiting itself to release vague press statements. I also investigate the role of African states. Despite the fact that many African states have adopted recently homophobic policies, they need to ensure that they do not use COVID-19 as a shield to further violate the rights of LGBTI communities. On the other hand, they need to take positive steps and set up mechanisms in the form of committees or task forces to ensure that LGBTI persons have access to services that contribute to the realisation of their rights. I also examine the opportunity that African states use due diligence by decriminalising same-sex relationships and ensuring that those impeding the rights of LGBTI persons are held accountable for their acts.

Finally, I analyse the role of civil society. In addition to calling out governments for the non-respect of the rights of LGBTI communities, sensitisation and the provision of services, I consider whether and how civil society should engage in the dialogue with the AU and the ACHPR in bringing this LGBTI communities' situation on the continent to the fore.

Key words: pandemic, LGBTI, rights, healthcare

POOR GOVERNANCE IN KENYA AS SPOTLIGHTED BY COVID-19: CORRUPTION IN THE HEALTH SECTOR

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Abstract

On 16th August 2021, *"Covid-19 Millionaires Corruption and Covid-19 moving at the same pace"*, a News Bulletin, was aired on a local TV station in Kenya causing a frenzy in the Country with many demanding for answers from National leaders on how funds set apart to contain the pandemic had been spent and how medical supplies had been distributed.

Whereas corruption is not a new phenomenon in Kenya, the ongoing Corona virus pandemic has made it clear that the problem is much bigger than has previously been acknowledged.

The said News Bulletin brought to light cracks in the Kenyan health sector. It was revealed that worrying amounts of monies intended for pharmaceutical supplies are diverted or misappropriated in a Country that heavily relies on donor-funding for its intervention models against HIV/Aids, malaria and tuberculosis. Although procurement irregularities were the highlight, it became evident that due to corruption of various forms, Kenya has a dysfunctional health system that makes the realization of the right to the highest attainable standard of health for every Kenyan a mirage.

Kenya's legislation on the human right to health and on corruption is one that could be described as progressive. The right to health, as contained in international instruments is recognised in Kenya. Furthermore, the right is enshrined the Constitution, the highest law of the land. Similarly, the prevention, investigation and punishment of corruption is addressed in various Acts of Parliament and policies. Despite this, corruption is most rampant and continues to negatively affect people's right to health.

The researchers seek to analyse the various forms of corruption and how they impede the full realization of the right to health in Kenya. Key issues to be discussed include: the various forms of corruption; and their effects on the right to health in Kenya.

Key words: Corruption; Right to Health; Covid-19 Pandemic; Poor Governance

Panel Title: Chasing Accountability in International Development Finance's New Frontiers
Panel Proposal for Sub-stream 7 "International economic law and development finance"

Panel Abstract

This panel draws on the work of the New Frontiers in International Development Finance project (NefDef).

The NefDef project brings together research and policy thinking on how the shifting landscape of international development finance impacts on law, regulation and governance of the global economy.

This evolving landscape poses significant challenges to the regulation and governance of the international development architecture and broader transnational economic governance. As new partnerships and modalities of engagement are formed, existing structures of governance and accountability are reconstituted, reshaping the relationships between different actors to a development finance transaction and reconfiguring the regulatory modalities through which these relationships are governed.

This panel seeks to engage in examination of these changes in international development finance policy and practice, drawing from insights from a range of disciplines including law, politics, economics and finance, sociology, and geography.

The first and the second papers look at the latest trends in international development financing and private actors. The third and the fourth papers look at consequences for people and community as result of these trends.

Abstracts of Proposed Panel Papers
Latest Trends

Celine Tan, Warwick University

'Private Investments, Public Goods: Regulating Markets for Sustainable Development*

In the new ecosystem for financing the Sustainable Development Goals (SDGs), private actors are no longer passive bystanders in the development process nor engaged merely as clients or contractors but as co-investors and co-producers in development projects and programmes. This 'private turn' in the financing of international development and other global public goods sees the enmeshment of public and private finance that brings aid and other forms of official development finance into sharp contact with regulatory regimes commonly associated with commercial investments, capital markets and corporate activity. The shift away from public resources for financing (eg multilateral sovereign loans) to leveraging financial markets for development capital (eg equity and portfolio investments) will insert countries into global financial markets and engagements with corporate actors in ways that will change forms of regulation, accountability and transparency of public finance. Zooming in on the creation of markets for sustainable development investments (SDI), this paper explores how this broader 'reengineering of public finance' (Kaul and Conceição, 2006) is establishing new forms of governance that are restructuring the relationship between states and markets and between transnational capital and their host communities.

Specifically, the movement towards private investments and financial markets as key drivers of financing for sustainable development has two critical impacts on transnational governance: a) the use of private markets, in their capital allocation roles, as quasi-regulatory tools for achieving the SDGs and other global public goods; and b) the deployment of private regulatory regimes (eg contracts, codes of conduct, corporate governance codes) as mechanisms to govern the social and environmental externalities of transnational economic activity. These developments have wide-ranging impacts on the domestic legal, political and civic constitution of states that can paradoxically constrain fiscal and policy space for enabling the attainment of the SDGs.

Gamze Erdem Türkelli – University of Antwerp

Transnational multistakeholder partnerships and the Financialisation of Development Assistance

Multistakeholder partnerships (MSPs) for development are being revitalized in the post-2015 era as essential vehicles in financing and realizing sustainable development. This article argues that MSPs for development play a central role as new financial actors in shaping the legal and ideational structures of development assistance, pushing for a financialized development assistance model that relies on the steady multiplication of new financial markets and instruments. The article tracks the trajectory of MSPs and their transition over time into key actors in the financialization of development assistance. After summarizing the key axes of this financialization, the article describes how MSPs have become new financial actors by offering to play a four-in-one role (gap-filling, catalysing, brokering and optimizing) in development financing. To do so, they use private legal mechanisms to create and roll-out so-called 'innovative' financial instruments and mechanisms such as up-front incentives and subsidies, frontloading mechanisms, results-based instruments and debt swaps. The resulting financialized development assistance model has amplified the power and influence of MSPs and their private donors over development governance and led to accountability shortcomings by downplaying the possible socioeconomic impacts of new proposed instruments and by creating risks of increased development assistance policy fragmentation.

Consequences

Stéphanie de Moerloose – Universidad Austral (Buenos Aires) and Universität Humboldt (Berlin) Indigenous Peoples' Free, Prior and Informed Consent (FPIC): what is free in FPIC?

The right to accept, refuse or design interventions in their own territory has been denied to Indigenous Peoples for centuries. The fairly recent recognition of their right to Free, Prior and Informed Consent (FPIC) in international law seems to open for resistance to certain power asymmetries. Indeed, in cases such as resettlement, their consent must now be obtained beforehand. The World Bank's "Forest and Community Project" (the Project) unfolds in Argentina since 2015, with the objective to improve forest sustainable management. The project documents requires Argentina to implement the FPIC in the Project, contrary to the Argentine State's and provinces' laws and practices. Through the analysis of the concept of consent and free will in this case, the presentation analyzes to what extent this kind of process can allow Indigenous Peoples to resist domination and marginalization. This complex situation is replicable in a number of

development projects over the world, where the free will of affected population is a blurred notion.

Daria Davitti – Lund University
Refugee Finance: External(ized) Protection and Investments for Refugees
This article examines the emergence of refugee finance (i.e. the mobilization of private capital to fund refugee responses) as a key migration control tool for the containment, externalization and management of racialized bodies. The project challenges the humanitarian narrative of refugee finance by tracing its racial ordering structures and analyzing the legal and economic forms of expropriation, violence and exploitation that it sustains and reproduces. To do so, it studies how some of the projects funded by refugee financial instruments may counter precarity or indeed reinforce it. By applying the theoretical lens of racial capitalism to the processes of racialization unique to the specific contexts of such projects, the article traces the way in which refugee finance is key to migration containment and externalization, to the management of 'superfluous' population, and to the end of asylum options in the Global North.

Title: 'The draft Convention on the Right to Development: a new dawn to the recognition of the right to development as a human right?'

Author: Roman Girma Teshome

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Abstract

The draft Convention on the Right to Development, a binding treaty drafted and proposed under the auspices of the Human Rights Council in 2020, is being reviewed and negotiated. The draft not only solidifies the interdependence between human rights and development but also eliminates one of the hurdles to the full realization of the right to development, i.e. the lack of a binding framework at the international level. The question, however, is whether and to what extent the draft introduces concrete and implementable norms compared to its soft-law predecessor- the Declaration on the right to development. In other words, to what extent does the draft address the gaps and limitations of the Declaration in terms of its normative contents. This paper aims to address these questions. The paper seeks to explore the merits and the added value of the draft in terms of its normative contents particularly compared to the Declaration. It argues that the draft is a momentous step in the recognition of the right to development as a human right not only because it is binding, if adopted, but also contains concrete, detailed, and implementable norms. While it maintained the abstract and aspirational formulation of norms under the Declaration to a certain extent, the draft also addresses some of the prevailing gaps and limitations of the Declaration.

Key words: the right to development; the Draft Convention on the Right to Development; sustainable development; duty to cooperate

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Title: Decolonial Epistemologies for Energy Planning in the Global South

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Abstract

This abstract is submitted for the first track. Taking a critical Southern perspective, the paper brings theoretical grounds to propose decolonial epistemologies for energy planning for the consideration of energy futures. Energy planning, as part of the relationship between transnational corporations and states, has been historically and epistemically detached from local capacities to manage resources. Decolonial energy planning presents epistemological challenges of the legal nature of energy in the modern-colonial world system, that is, a set of studies to underpin and justify capital expansion regardless and to the detriment of the existence of life. By acknowledging the colonialities of power, being and knowledge entrenched in energy epistemologies, the paper addresses the impossibility of facing the current challenges of climate change, struggle for land, poverty and economic collapses, inequality and the governance crisis without considering the co-constitution and co-evolution of Transnational Corporations and capitalist states in the course of colonisation, and their co-production of knowledge of colonial governance (D'Souza 2021). The theoretical analysis is proposed from the standpoint of the colonial difference as a methodological pathway. In this sense, research is conducted by acknowledging the androcentric and racist character of publications and contributions in the fields of energy and management, governance, and energy planning, addressing their violence; by contextualising historically and geopolitically the approaches to energy in the Global South; and by acknowledging that the elements of colonial violence are co-constitutive and undetachable.

Key words: Energy planning; decolonial epistemologies; colonial difference; Third World governance.

Studying rule-of-law 'donors' and 'recipients' as entangled entities in the same space: A case study of 'transnational' rule of law promotion in East Timor

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Abstract

So far, the scholarship that investigated internationally led rule-of-law initiatives has either focused on the rule-of-law donors (within the comparative scholarship, referred to as 'transferors') or the 'recipients. Scholars who have examined the role of international development donors in local settings through a socio-legal or historical lens have classified international interventions as "imposing" (Tamanaha, 2011; Trubek and Galanter, 1974); "neo-colonial" (Mattei and Nader, 2008; Humphreys, 2010) and "overlooking local contexts and

interests" (Trubek and Galanter, 1974; McClymont and Golub, 2000). On the other hand, those studying rule-of-law donors have examined the varying strategies (Heupel, 2010) and institutional arrangements (Schimmelfennig, 2012) of rule-of-law donors. These accounts provide us with dichotomous narratives of international rule-of-law engagements in local contexts where local and international interests are represented as 'opposition to each other.

With the proliferation of transnational networks and increasingly consolidating consensus on the relevance of the rule of law, human rights, equality (to list a few transnationally recognised legal values), on the ground, many local and international stakeholders are in 'alignment' to adopt and adapt to rule-of-law standards (Simion, 2021). Relying on data collected from the field in 2018, I illustrate how international and local stakeholders worked together to strengthen anti-corruption norms and the rule of law in East Timor. At the outset, I argue that considering the 'international' and 'local' stakeholders in the same space as 'entangled entities' pursuing the same ends has implications in how scholars and practitioners have studied 'success' and 'failures' of international rule-of-law engagements in particular settings so far, as well as and how these actors navigate their divergent interests to pursue the rule-of-law ends.

Right to Development: Nonpareil for Sustainable Development

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Abstract

Development is an oft repeated term in the academic, policy making, private sector, and civil society circles with varying perspectives around it. The plurality exists not only with respect to 'what development is or should be' but, also 'how to achieve development'. This diversity both at conceptual and operational levels makes 'development' unique. An area within this milieu which is under-researched is the legal background and implication of/on development. In this space, Right to Development (RtD) can be that legal instrument which bridges the conceptual versus operational development debate. This paper will delve deeper into the conceptual understanding of development from the human rights perspective as detailed in the declaration on the RtD along with discussion on the operationality of achieving development. The paper will further discuss the domestic and global elements of operationalising development within the principles of the RtD. The paper will also have a section which would deliberate as to how the RtD as a Legally Binding Instrument will go a long way in making development sustainable especially in times of ongoing pandemic and in the era of Sustainable Development Goals.

Key Words: Development, Right to Development, Sustainable Development

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Title: The justiciability of the right to shelter in Zimbabwe: The case of *Zimbabwe Homeless Peoples Federation v Minister of Local Government and National Housing*.

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Abstract

The Constitution of Zimbabwe, 2013 ("Constitution") does not expressly guarantee every person the right of access to adequate housing, however, it provides for access to adequate shelter as a national objective which requires the state to adopt legislative and other measures within the limits of resources to ensure that every person has access to adequate shelter. This article describes and analyses the decision of the Supreme Court of Appeal of Zimbabwe in *Zimbabwe Homeless Peoples Federation v Minister of Local Government and National Housing* (SC 78-21, Civil Appeal No. SC 118/19) [2021] ZWSC 78 where the Court held that there was no justiciable right to shelter under the Zimbabwean Constitution. This decision is analysed in light of the country's acute housing crisis and the fact that Zimbabwe is a member to international agreements such as the International Covenant on Economic, Social and Cultural Rights that expressly guarantee the right to adequate housing.

It is argued that, the court was correct in finding that the right to adequate shelter was not a right contained in section 85 of the Constitution but rather a national objective. However, it is further argued that this decision presented an opportunity for the court to develop the law in manner that is consistent with international law. The court adopted a restrictive approach which is inconsistent with international law.

Keywords: Housing, shelter, access, Zimbabwe

The stomach knows no pandemic: An examination of the *Equal Education and others v the Department of Basic Education and others (EE v DBE)*

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Abstract

It has been put to rest that socio-economic rights including those of vulnerable groups such as children are justiciable rights and sometimes subject to immediate realisation. Whether courts prefer the reasonableness measures or minimum core approach is still to be settled by our courts.

In 2020 the world faced a life threatening pandemic called COVID -19 which was first discovered in Wuhan Province China. The pandemic soon spread across the nations of the world with many countries taking drastic measures such as hard lock downs, school closures among others. It is inevitable that the developing world which is rife with poverty and inequality was hard hit as many are dependent on government social protection measures.

South Africa in the same vein was not spared from all these troubles and was forced to close schools in order to stop the spread of the virus and save lives including those of leaners. About 9 million children in the country are on a nutrition programme which ensures that children have at least one nutritious meal per day. Thus the decision to close schools seriously impacted on the socio-economic rights of children in particular the right to food (nutrition which is interdependent and interrelated to many other rights such as the right to basic education. While the government did put in place social protection measures, these measures remained far short of the needs especially children who were thus subjected to hunger which has an adverse effect on their development, growth and health.

It is thus at heart of this paper through jurisprudential and literature analyse the impact of the ***Equal Education and others v the Department of Basic Education and others (EE v DBE)*** on the interrelatedness and interdependence of rights and the need of the government not to take any deliberate retrogressive that undermine the realisation of socio-economic rights of children. It is without any doubt that the approach to open schools in staggering fashion meant that a number of learners were to stay at home without access to at least one decent meal a day. This is not only against the Constitution but the obligations undertaken by the government under the global and African human rights system.

Key concepts: Children's rights; Nutrition; Pandemic; Rule of law.

Paper Title: Right to Development: Localizing SDGs 4 and 5 to Address the Challenges to Female Education in Northern Nigeria

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Abstract

The human right to development (RTD), continues to gain global recognition. For women, the UN Declaration on the Right to Development emphasizes the adoption of measures that will guarantee participation in development. Capacity, both in knowledge and skills, makes education a pre-requisite for proper participation in development processes. This means that women's RTD necessarily implies a right and access to quality education. Also, while there are various dimensions to RTD, the aspect concerned with sustainable development is no doubt a fundamental one since, issues of social justice, participation and duties of states and the international community to promote it, find expression in sustainable development principles. In

this regard, the sustainable development goals (SDGs) provide an enabling framework worthy of implementation. For Nigeria, the RTD remains a mirage with women bearing most of the brunt of the abysmal state of social, economic, political and cultural well-being. This has everything to do with the poor state of female education; a phenomenon that has remained the hallmark of northern Nigeria.

Hence, this paper analyses the challenges to female education, which is an essential ingredient for actualizing women's right to development, in northern Nigeria. To this end, the paper begins by examining the RTD as enshrined in relevant international, regional and national legal instruments. It proceeds to discuss the challenges, both legal and non-legal, to female education in northern Nigeria, including the peculiar role of the state and its institutions. The paper explores the SDGs, with particular reference to SDGs 4 (Quality Education) and 5 (Gender Equality) and makes a case for their effective implementation in Nigeria. It is hoped that this will serve as a panacea to the challenges to female education and hence, enjoyment of the RTD for women in northern Nigeria.

Key words: Right to development, Female Education, SDGs, Nigeria

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Kenya's Evolving Jurisprudence on the Right to Dignity and Socio Economic Rights: Two Sides of the Same Coin?

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Abstract

Kenya's nascent 2010 constitution has considerably broadened the realm of enforceability of socio-economic rights. This has been arguably bolstered by the inclusion of dignity as a foundational value as well as a right in the constitution.

Scholarly debates on the efficacy of dignity as a concept are predicated on questions ranging from the meaning of dignity, whether it is best expressed as a value or a right in constitutions and its utility in being included in constitutions in the first place. On one hand, dignity has been argued to be a 'superfluous' and 'amorphous' concept — that it tries to be all things to all people and ends up being little in so far its concretization is concerned. The corollary is said to be the unfastening of judicial portals of discretion on interpreting dignity while skirting development of its normative content. On the other hand, dignity is argued to play an integral function in constitutions, serving to anchor and enable judicial interpretation of other rights and freedoms.

This paper examines the trajectory of Kenya's jurisprudence on the right to dignity with respect to socio economic rights. It aims to evaluate the significance of dignity as a value and enforceable right in the constitution. The paper will focus on the right to adequate housing and the right to health affecting 'slum-dwellers' and indigent members of society. The paper seeks to demonstrate the extent to which judicial interpretation of the right to dignity has reinforced the interdependence of socio-economic rights and civil and political rights. Further, that the right to dignity has breathed life into these interpretations particularly with regard to protecting the

rights of disempowered groups. The critique on the reticence by courts to develop normative content towards advancing understanding on the right to dignity is one that will be considered whilst assessing this trajectory.

Key words: Dignity | Socio-economic rights | Constitution | Judicial interpretation

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Social License and the promotion of Socio-Economic Rights in the Extractive Sector in Nigeria

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Abstract

The extractive industry is a significant aspect of the Nigerian economy, and it is the major source of revenue to the Nigerian state. The oil Multinational Corporations (MNCs) operating in the Niger Delta region have been accused of exacerbating the environmental pollution issues in the Niger Delta and this has led to the incessant conflict pervading the region. Also, the activities of the oil MNCs have impacted negatively on the socio-economic rights of the people including the right to environment, right to water, right to food and right to housing amongst others.

Due to the negative consequences arising from arising from MNCs presence in the extractive industry in Nigeria, some oil MNCs have been said to have lost their 'social license' to operate in the Niger Delta. For more than twenty years, Shell has not operated any of its facilities in Ogoniland. Ogoniland community 'revoked' the social license of Shell to operate in its area notwithstanding that under Nigerian laws, Shell has the right to operate in the region. Thus, an MNC with a social license is deemed to be legitimate and accountable to the government and other relevant stakeholders (including the local community where it operates) in the society.

This paper argues that social license is one of the strategies that has been utilised by oil communities and other stakeholders to improve access to environmental justice and to entrench the promotion of socio-economic rights by oil MINCS in the oil and gas sector in Nigeria. This paper suggests that notwithstanding the non-justiciability and non-enforceability of socio-economic rights in Nigeria, different strategies have been adopted to make them justiciable and enforceable. Finally, this paper discusses some of the international mechanisms on MNCs and how some of them have embedded the promotion of socio-economic rights into their various codes of conduct in the oil industry in Nigeria.

Keywords: Nigeria, Socio-Economic Rights, Niger Delta, African Charter

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The rise and fall(ing) behind of the African city?

Recent international climate change and urban law and policy trends

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Abstract

In response to unprecedented urban growth in many parts of the world, the international urban policy agenda and the Paris Climate Change Agreement make for interesting new understandings of the role of cities (sub-national authorities) in sustainability. The years 2015 and 2016 have seen the adoption of several international instruments with a clear pronouncement on cities as actors in global governance. This role is most pronounced in relation to climate change mitigation and adaptation while Sustainable Development Goal 11 extends the role of cities to issues of social inclusivity, safety, resilience and sustainability. The work of international city networks such as ICLEI, C40 and UCLG has helped to push an international agenda that welcomes cities as influential partners in a sphere of decision-making and planning that was traditionally reserved for "states".

The international law and policy instruments on sustainable urban development and climate change mitigation and adaptation set ambitious objectives (targets) for cities and their authorities. These objectives are conceptually appealing considering the socio-economic and environmental impacts of the Anthropocene, the Urban Age and the global environmental crisis. However, many of these objectives have been conceptualised and framed from a Northern understanding of the state, processes and development trajectories of cities. Many of the objectives speak to well-resourced megacities and local economies that have already embarked on a development trajectory that is resource and investment intensive, albeit less reliant on coal-based energy.

The proposed paper critically engages with the extent to which the African city (and other cities in the global South) may be left behind, despite the progressive way in which 'cities' are permeating the international climate change law and urban policy development arenas. The paper considers some of the factors that seem to be disregarded at an international level as far as it concerns urban politics, urban economics, urban financing and the constitutional recognition of municipalities ('cities') in South Africa, specifically.

Keywords: Cities, sustainability, international urban policy; international climate change law

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Effectiveness of The International Legal Instruments on Climate Change Mitigation

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Abstract

The climate is definitely changing with widespread adverse impacts on human and natural systems. For this reason, the international community has recognised the need to keep global

warming below 2°C. This Paper seeks to analyze the effectiveness of the International Legal Instruments on Climate Change Mitigation. The method adopted is the doctrinal approach, based on both primary and secondary sources of data collection. The primary source includes statutes, while the secondary sources include books, journal articles and internet materials. This Paper is significant as it shows that climate change mitigation lies at the heart of the international agreements on climate change and can be achieved by reducing anthropogenic Greenhouse Gases (GHGs) emissions by sources and by enhancing sinks. Findings reveal that the difference between the developed and the developing countries is particularly because consumption of fossil fuel and the release of GHGs are linked to economic development. Whereas, the developed countries argue that all countries should protect their environments and enact policies to reduce the growth of GHG emissions. The developing countries on the other hand, argue that it should not be asked to undertake measures that could slow its economic growth and development. However, as environmental protection demands international co-operation, we recommend that Parties stick to the Climate Agreements and ensure participation and compliance of the general public. We conclude that the choice between climate change adaptation and mitigation is in fact, in many ways, a false choice - we will most likely have to do both, as a combination of both adaptation and mitigation could reduce vulnerability to modest levels for most parts of the world.

Key words: UNFCCC, MITIGATION, CLIMATE CHANGE, PARIS AGREEMENT

Towards climate resilient cities: an assessment of recent legal developments

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Abstract

The adoption of the *Paris Climate Agreement*, Agenda 2030, the *New Urban Agenda* and the *Sendai Framework for Disaster Risk Reduction 2015-2030* affirms international policy acknowledgment of the crucial role of cities and sub-national governments towards making cities safe, sustainable, resilient and inclusive. One of the sub-targets of the Sustainable Development Goal (SDG) 11 is to substantially increase the number of cities adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change and resilience to disasters. SDG 13 also aims for urgent (global) action to combat climate change and its impacts. As part of its global vision, cities need to adopt and implement disaster risk reduction and management strategies, reduce vulnerability, build resilience and responsiveness to natural and human-made hazards and foster mitigation of and adaptation to climate change. The transition to 'climate-resilient cities' therefore calls for new urban governance arrangements. Against this background, this presentation assesses the legal responses of South African municipalities in addressing climate change, in line with the implementation of SDGs 11 and 13. The discussion aims to look at specifically the laws and policies implemented in South African municipalities.

Key words: Climate Change, Local Government, Climate Resilience, SDGs

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Title of the paper: Climate-Induced Migration and Citizenship (Amendment) Act, 2019 in India

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Abstract

Climate-induced cross-border population migration in South Asia is evident, and state actors cannot ignore, evade, or bypass this severe problem. The National Register of Citizens (NRC) is a database of all Indian citizens, whose establishment was mandated by the 2003 amendment of the Citizenship Act of 1955. Its goal is to record all of India's lawful residents so that illegal immigrants may be tracked down and deported. The Citizenship Amendment Act, 2019 (CAA) modifies the Indian citizenship statute to allow Hindu, Sikh, Jain, Parsi, Buddhist, and Christian illegal migrants from Afghanistan, Bangladesh, and Pakistan who arrived in India before 2014 as a result of religious persecution to stay. The amendment has been highly criticized as discriminatory based on religion, particularly because it excludes Muslims.

With its population diversity, geographical sensitivity, economical fragility, and administrative complexity, Assam — a border state – becomes a very intriguing place to examine the legality of climate-induced migration and citizenship. The researcher poses two critical questions: (a) what are the normative frameworks available for safeguarding the rights and status of people migrating as a result of climate change? and (b) Why is there a lack of consistency and sufficiency in the state's provision of support services?

To address these issues, the researcher looks at how, first and foremost, the sub-national government views climate-related migrations as a developmental concern. Second, elite actors' framing of climate change migration as a developmental concern differs from how street-level administrative players see the issue. Rather, street-level actors' everyday judgments and discretionary powers are intricately linked to the political and socioeconomic realities of their communities. Finally, what legal framework will suit the best for the immigrants whose official documents are demolished by the natural disaster (especially hydro-meteorological changes which is common in the state of Assam).

Key words: climate change, climate migration, citizenship, south-Asia

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Sea-ing Persons: Personhood, Human Rights, and the Future of the Marine Environment

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Abstract

There is an urgency to the call to further respect the marine environment. At a most basic level we know that we need to protect coastlines and marine resources in the face of sea-level rise and global economic expansion and innovation, but there is also a growing recognition that the ocean is fundamental to the wellbeing of all life, no matter the distance from the water's edge. Despite this urgency, large numbers of the world's population have only distant and surface-level understanding of the ocean. Further, it is those who feel and find themselves physically and spiritually closest to the oceans that are likely to be disproportionately negatively impacted by a widespread failure to respect the marine environment. How can we better connect humanity to the ocean in light of the environmental urgency of respecting the marine environment? In this paper, we explore the potential of international law, and in particular international human rights law (IHRL), to contribute to engendering positive, transnational narratives around people and the marine environment.

We do this by drawing on our work within the One Ocean Hub project, an international programme of research for development, and from our combined disciplinary perspectives of anthropology and law. The question of how to better connect more of humanity to the ocean can be informed by reflecting on, and reflecting back, different ways in which personhood is associated with ocean space, and we suggest that such reflection is helpful for understanding the capacity of international law narratives to engender respectful relationships between people and the marine environment. We argue that IHRL has done relatively and uniquely well at 'sea-ing' persons, and we begin to explore if, and how, the potential of IHRL might be realised.

Key words: Oceans; marine environment; international law; human rights law

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Title of Presentation: 'The need for environmental and socio-cultural impact assessment for large-scale fisheries'

Abstract: This article seeks to clarify the extent to which the international legal requirements for environmental impact assessments (EIAs) and strategic environmental assessments entail the assessments of potential social and cultural impacts from large-scale fishing activities as well. After clarifying the meaning of impact assessments more generally, and explaining the potential and actual environmental and social impacts caused by large-scale fisheries, the article argues that the international duty to carry out EIAs for large-scale fisheries is grounded on the general requirements provided by article 206 of the 1982 United Nations Convention on the Law of the Sea and article 5(d) of the so-called 1995 United Nations Fish Stocks Agreement. These provisions can be interpreted in combination with other human rights and biodiversity legal instruments, principles and approaches, in support of integrated impact assessments that aim at preventing negative impacts on both the environment and human rights, as well as strategic environmental assessments for large-scale fisheries policies, plans and programmes.

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AFRICA UNION AND THE CHALLENGE OF SUSTAINABLE MARINE TOURISM

Author: Tajudeen Sanni - One Ocean Hub Funded Post-Doctoral Research Fellow, Chair of Law of the Sea and Development in Africa, Nelson Mandela University, Gqberha, South Africa

Abstract

In line with the broader objectives of African Union (AU) Agenda 2063, the African Union Declaration proclaiming 2021 as the year of African Culture highlights the role of culture as an important tool for the realization of African economic and socio-cultural objectives. Agenda 2063 identifies tourism as a priority area aimed at ensuring that the continent meets its aspirations including by way of tapping into the blue economy. With a coastal line of no less than 26,000 nautical miles and enormous marine aesthetics, marine tourism represents a significant part of African tourism potentials. Marine tourism helps boost African countries' foreign exchange income, bolsters employment levels and spurs infrastructural development. However, studies- including by United Nations Environmental Programme- have shown that tourism comes with environmental challenges such as marine litters and has caused erosion of local cultures. Despite its enormous potentials in enhancing economic development, it may also undermine local economy. Indeed, there have been spikes in anti-tourist voices in some places (including by coastal local communities) as concerns are raised about what the communities refer to as the negative impact of tourism. It is against this background that this paper examines how sustainable marine tourism which considers the cultural, environmental and economic contexts can help deal with these concerns. The paper further examines the extent to which relevant African continental instruments such as African Charter for Maritime Safety, and Security and Development 2016 and African Integrated Maritime Strategy 2013 contain provisions that can facilitate realization of sustainable tourism and contribute to the realization of cultural, environmental and economic objectives of Agenda 2063 in AU member countries.

Topic: Human Rights and the Law of the Sea: Prospects in Africa?

Author: Edwin Egede

There is a growing understanding that the sea is not a "human rights-free zone." Human rights should be applied to all people at sea to the same degree and extent that they are on land. For instance, the European Court of Human Rights has made it plain in various cases, including *Women on Waves and Others v. Portugal* (2009) and *Hirsi Jamaa and Others v. Italy* (2012), that human rights at sea must be protected in the European region. In recent years, there has been a growing engagement with the sea in Africa as a result of interest in maritime security and blue(or ocean) economy. This presentation will explore the possibility of human rights violations in the African maritime domain, as defined by the 2050 African Integrated Maritime Strategy, and the prospects for protecting these rights in the various African human rights judicial bodies.

Title: The protection of the land rights of indigenous persons in international investment law: a critical analysis of *Bernhard von Pezold and Others v Zimbabwe and Border Timbers Ltd and Others v Zimbabwe cases*

Author: Dr Rimdolmsom Jonathan Kabre, Postdoctoral Researcher at the Centre for Human Rights (University of Pretoria) rj.kabre@up.ac.za

Abstract

This contribution explores the relationship between the human rights of indigenous people and international investment law by looking, more specifically, at the question of how the land rights of these people have been protected in the settlement of investment disputes.

This will be done through a discussion of *Bernhard von Pezold and Others v Zimbabwe and Border Timbers Ltd and Others v Zimbabwe* cases, where the property over the territories occupied by some indigenous groups was at the very heart of the disputes.

The analysis of the protection of indigenous people in the settlement of investment disputes will consist of three parts: The first part discusses the 'indirect' protection of these peoples through the participation of their home State in the investment arbitration. As the respondent parties, these States generally use two main avenues for the protection of their populations, either public interest defense or counterclaims. The second part deals with the 'direct' participation of these peoples in the arbitral proceedings by filing amicus curiae submission.

The effectiveness of these submissions as well as the various options to enhance this direct participation will be examined. The last part examines the issue of granting locus standi to indigenous people for the violations of their rights, resulting from investment activities. This option, which is currently being discussed in the United Nations Commission on International Trade Law (UNCITRAL) Working Group III, is also mentioned in some recent investment agreements

concluded by African States. This part will also explore the growing interconnexion between proceedings before courts in investors' home state and investment arbitration.

Key words: indigenous people, public interest defense, amicus curiae, public participation

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Property Rights and Market Behavior in the Low-Income Housing Sector: Evidence from Chile

Authors:

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Abstract

Recent decades have seen a strong commitment in development theory and practice towards the idea of promoting homeownership among low-income families, partly due to the influential ideas of Hernando de Soto, a Peruvian economist who has proposed that property formalization constitute an important vehicle for social mobility and economic development. The empirical evidence that has emerged after De Soto's theory is not conclusive. This paper aims to explore these ideas using evidence from Chile, a country that has shown high success in moving low-income families from the informal to the formal housing sector. The data for the analysis comes from a comprehensive survey conducted in 2008 with a representative sample of two groups of low-income households in Santiago: the first group living in an irregular settlement, the second living in subsidized formal housing. Through the use of statistical methods that allow to compare these samples (matching strategies), we find that market behavior among both groups are not considerably different. The analysis shows that there are not statistically significant differences between the two groups with respect to access to credits from the formal financial sector, savings and investments in their homes. The only relevant difference we find is that individuals living in formal housing have more access to loans from commercial stores. The paper discusses some hypotheses that may explain the similarities and differences we find between low-income groups that have substantially different tenure security.

Keywords: Property rights, housing policy, homeownership, informal settlements

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State orientation in registering communal land in Indonesia

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Abstract

Indonesian Agrarian Law aims to achieve two objectives namely to create a national legal unity, and to respect customary rights to land. The second aim is to tolerate the diversity in national

land law. In the implementation of customary land registration, these two objectives do not appear to be equally prioritized. In fact, the first objective is very important, which causes the second goal to receive very little attention. This paper sees that the process of customary land registration shows the tensions in achieving these two objectives. This paper will explain why the Indonesian government has put the first objective at first and priority, and paid less attention to the second objective. This paper further examines the extent to which the legal policy has brought impacts to the communalistic nature of customary land, as well as its effects to the enforceability of customary land.

Key word: Land law, customary land, land registration, and formalization

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Fiscal Activism: Operational Dimensions of the Shift Towards the Islamic Wealth Tax for Financing SDGs

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Abstract

This discussion paper investigates the Islamic wealth tax (zakat) as a source of development finance. To map and trace the operational dimensions of this proposal it is discussed in the context of SDG3 (Good Health and Well-Being). This focus initiates an agenda for future research in financing health using zakat. It also seeks to place the tax within private finance as part of the broader dimensions of international development finance law and policy. The discussion paper takes an interdisciplinary perspective using Kenya as its case study to chart out the operational implications of introducing zakat as part of the discourse on development finance. As such, probing into legal systems approach to taxation provides a new iteration towards changing the current fiscal design on development finance. It places development finance within indigenous and social legal norms governing extraction of resources towards meeting development needs. One such legal system is the Islamic socio-fiscal institution. Unlike the tax state that offers a fiscal model based on the taxation of income and profits, the Islamic socio-fiscal system models taxation based on wealth and conceives the discipline of public finance as a part of social economics. Social economics introduces topics such as social capital, social norms, cooperation, collective action and the analysis of individual utility function to the field of development finance. It can be seen as a reflection and one of the central areas of social and political interactions that provide the state with alternative sources of revenue with which to finance sustainable development. Such socio-fiscal relationship between the state, society and individuals can play a central role in supporting the state meet development needs. This relationship is best described through the tax arrangement between a state and its society or the religiously sourced tax norms that bind a particular society. The latter source has not featured as part of development finance and this discussion paper aims to discuss this gap in the next sections.

Keywords: SDG3, development finance, legal systems, zakat

Impact of Covid-19 Pandemic on Value Added Tax Regime in Nigeria

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Abstract

Corona Virus Disease (Covid-19) outbreak which had its spread across the world has brought with it a new wave of disruption never experienced before. The health system has been over stretched and the pandemic is as well taking its toll on business and revenue generation by governments across the world. Nigeria is not left out of this as the government needs non-oil revenue for sustainability of the economy due to fall in the global crude oil prices. The situation of many Nigerian taxpayers (individuals and companies) who were out-weighed by serious economic crisis and poverty before the outbreak of the pandemic become more aggravated. In 2019 the Finance Act was enacted and Value Added Tax was raised from 5 percent - 7.5 percent. The new rate becomes effective from 1st of February, 2020. The article examines the impact of Covid-19 Pandemic on VAT regime in Nigeria. The study employed doctrinal research method which will involve library-based analysis of the content of both major and minor sources of law and information as well as internet sources. The article found that Covid-19 Pandemic is a slap on VAT regime in Nigeria in view of the already dwindling economic situation and high poverty level of taxpayers. The study concluded that the inability of government to mitigate the hardships which resulted from the pandemic is against the provisions of section 14 (2) (a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 as amended. The study recommended that there is the need for the National Assembly to refine the Bill to make the Finance Act 2019 to be more responsive to the needs and yearnings of businesses and individual taxpayers in Nigeria.

Key words: Impact, Covid-19 Pandemic, Value Added Tax, Regime, Nigeria.

OVERVIEW LEGISLATIVE FLAWS AFFECTING ACCESS TO DEBT RELIEF FOR LOW-INCOME EARNERS IN SOUTH AFRICA

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Abstract

This paper provides an overview analysis of some selected laws dealing with access to consumer debt relief by low-income earners in South Africa. This is owing to the fact that most low-income earners are over-indebted since they rely on credit for survival and to attain most of their basic needs in South Africa. Owing to this, debt relief measures have become increasingly important in the current South African credit-driven society and during the ongoing global COVID-19 pandemic. Accordingly, there are four statutory debt relief measures that are available to over-indebted persons and insolvent debtors in South Africa, namely, the sequestration proceedings

in terms of the Insolvency Act 24 of 1936 as amended, the administration order under the Magistrates Courts Act 32 of 1944 as amended, the debt review that is contained in the National Credit Act 34 of 2005 as amended and the recently introduced debt intervention in terms of the National Credit Amendment Act 7 of 2019, which is yet to be successfully utilised. This paper argues that most of the available debt relief measures are not yet easily accessible to low-income earners in South Africa and calls for streamlining the access requirements to such measures to enable access to them by low-income earners without difficulties.

Key words: debt relief, low-income, over-indebtedness, debt discharge, consumer credit.

Paper title: Order in the Bazaar: The Transformation of Nonstate Law in Afghanistan's Premier Money Exchange Market

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Abstract

Based on 14 months of ethnographic research on the central money exchange bazaar in Kabul, Afghanistan – *Sarai Shahzada* – this presentation examines the microdynamics of legal change within a close-knit community in a fragile setting. For most of its history, the bazaar has been governed by informal legal norms. New state-building measures after 2001 led to increased state regulation of the bazaar, causing money exchangers to initiate internal transformations to protect their autonomy. While scholarship generally argues that state coercion substitutes for private legal norms, this study shows the centrality of the state in consolidating the bazaar legal system. Exchangers have cast their nonstate legal system in the image of the state by formalizing new operating rules that have introduced a management structure and dispute resolution forum. New state licenses have also helped to safeguard the boundaries of the bazaar. This presentation contributes to private governance and legal pluralism scholarship by revealing that a private community, even in a fragile state, may be capable of maintaining an autonomous nonstate legal system not *in spite of* but *by depending on* the state.

In the quest for labor rights: Corporations, the State and the International law

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Abstract

The way the world does business has undergone a sea change in the last few decades. We are living in a world being run on outsourcing and global supply chains. No matter the product we are using, from mobiles to coffee to garments and footwear all of them are being produced in different parts of the world. Most often the corporations owning these products are

headquartered in Global North and their production is being carried out in different countries in Global South through myriad supply chains.

Now often the goods are produced in conditions which would be considered unacceptable in the countries where corporations are registered or countries where products are eventually sold.

This raises not only ethical and political concerns but also legal concerns. What is the scope of the social responsibility of corporations located in Global North which get their products manufactured in poor and developing nations, often at low costs causing multiple labour rights violations and environmental abuse? Are these corporations under an obligation to prevent such activities from taking place not only in their subsidiaries but also at all other local suppliers to ensure no adverse impact on labour rights among others. Further, if such labour violations do occur, under what circumstances can these corporations be held liable?

Conventional approaches to international law are inadequate to address these challenges as public international law fails to regulate the affairs of non-State actors including corporations.

Thus some scholars have argued for national law either through home States or host States, while there are still others who have argued for self-regulation or international regulation.

This article will highlight labour violation committed by corporations and also the reasons why continuous efforts to bring corporations directly liable under international law are failing. As a result, multiple efforts have been made at international level to hold corporations liable ranging from UNGP, OECD Guidelines to proposed Binding Treaty on Business and Human rights. All of these shall be discussed in detail and conclusions will be drawn on what is the best way forward.

Keywords: labour rights, corporations, international law, soft law

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Title of the paper: "Human Rights Due diligence: a bibliographic review"

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This work will be carried out with support from the FGV/SP, through the Mário Henrique Simonsen scholarship for Teaching and Research. Advisor Professor: Mariana Pargendler.

Abstract

Since the adoption of the United Nations Guiding Principles on Business and Human Rights, there is an increased understanding of human rights due diligence (HRDD) as one of the main tools for business enterprises to meet their responsibilities in relation to human rights. The aim of HRDD is to provide a process so as to identify, prevent, mitigate, and enable accountability of business enterprises, regarding their impact on human rights. The growing global importance of HRDD includes the recent adoption by different States of national policies and legislation on the subject, which demonstrates the advancement of a new regulatory regime that requires

companies to respect human rights, a process known as 'juridification' or 'norm cascade'. The parameters and principles of business HR responsibility have become the object of public regulation through various mechanisms of Law. There is growing attention in academia to the topic, with intensive production on HRDD by leading universities around the world, with the literature focusing on the following issues: (a) the main characteristics of HRDD and how it differs from other forms of due diligence, focusing on its continuous character, the actors involved (stakeholders approach), and the impact that should be assessed; (b) its voluntary character versus the need of advance binding standards; and (c) the role of corporate legal liability to HRDD, and the existing uncertainty. The paper will devote particular attention to the first issue and the definition used in legislation. By means of a qualitative mapping of the evolution of HRDD from its comparative historical perspective, the current models and their main characteristics and functions will be compared, which will potentially enable a systematization of the different existing models of HRDD, thus leading to a further reflection on recommendations for a HRDD model to be implemented in Brazil.

Key words: business and human rights; human rights due diligence; due diligence law; United Nations Guiding Principles on Business and Human Rights.

ARTIFICIAL INTELLIGENCE AND THE LABOR MARKET: REGULATING THE USE OF TECHNOLOGY IN PRODUCTION AND THE IMPACT ON WOMEN'S WORK.

Author: Monica Sapucaia Machado, Ph.D. in Political and Economic Law, Permanent Professor at Brazilian Institute of Education, Development, and Research – IDP/ monica.machado@idp.edu.br

Abstract

Even though most people do not know the concept, disruptive technologies, especially Artificial Intelligence, are part of everyday life.

Academia raised a series of human rights problems related to the large-scale deployment of artificial intelligence as individual rights, state control, privacy, and data storage. (DONEDA *et al*. 2018). In addition, the impacts related to the labor market are also a preoccupation.

Since the first industrial revolution, there has been the advancement of technology in functions previously performed manually. Nevertheless, History demonstrates that it did not end jobs but gave new meaning to the worker-machine relationship.

Industrial revolution 4.0, however, seeks more than the automation of human action; it seeks the capacity of learning as a human. This circumstance makes regulation essential to prevent the new technology from deepening social, environmental, regional, gender and race inequalities. Parallel to the work dilemma, equal opportunities between men and women appear as guiding threads for regulating technological innovation.

During the 20th century, women entered formal jobs. In this process, new legislation guaranteed more equal conditions between the sexes. Law that prevented or hindered the participation of women in the labor market was banned, and formal equality became the rule in most countries.

Despite legal advances, reality shows that women still receive 30% less than men (UNWOMEN) and hold only 25% of management positions (WORLD BANK).

Th COVID-19 pandemic had a regressive effect on gender equality worldwide. In Latin America, the number of women who lost their jobs between 2020 and 2021 was 44% higher than men. (WB,2021). It is urgent that, in the process of economic recovery, the Law observes the effect of the use of artificial intelligence in the labor market and the impact of this use on the access, permanence, and economic gain of women, especially in the countries of the South.

Key words: Artificial intelligence; Labour market; Women workers; Women's rights

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The Rise Of Legal Incentives For The Adoption Of Anti-Corruption Compliance Programs In Latin American: A Comparative Analysis

Author: Dalila Martins Viol, Ph.D. candidate and Researcher at the Center of Law, Economics, and Governance at Fundação Getulio Vargas School of Law in São Paulo

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Abstract

The anti-corruption agenda is currently shared on a global scale, as are the strategies to fight the problem. In this context, according to a recently OECD study, anti-corruption compliance programs were a topic of interest in a limited number of countries ten years ago, but, currently, anti-corruption compliance systems are adopted in companies across the world. This article, which highlights the role of the State in the increase of corporate compliance programs, presents the first comparative study to examine the similarities and differences of new legal incentives for the adoption of corporate compliance programs in 12 Latin American countries. Seven Latin American countries (Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, and Peru) embraced legal incentives for the adoption of corporate compliance programs against corruption in the last decade. All of the adopting jurisdictions are signatories to the OECD Anti-Bribery Convention, even though the Convention does not mandate the adoption of compliance programs. Despite relative convergence in the promotion of compliance programs, there is local variation in the design of the relevant strategies, which range from reduced sanctions for convicted companies that have compliance programs to requirements of the adoption of such programs for purposes of government contracts or other economic activities and their imposition in negotiated settlements with the State. This study aims to contribute to a new field of study on comparative corporate compliance, a central strategy against corruption worldwide that has received little attention in the literature.

Keywords: corruption; compliance programs; comparative law; Latin America.

Title: The Domestic Violence Amendment Bill 20-2020: Impediments to practical implementation during the COVID 19 pandemic.

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Abstract

On 10 September 2021, the National Assembly sent the Domestic Violence Amendment Bill for the President's signature. The amendment bill seeks to, amongst other things, reaffirm the constitutional right to freedom of security by requiring various institutions to work together in amplifying the victims' right to health care and social services. In the bill, the legislature has inserted a section 2A to assist the victims with certain services. Section 2A obliges certain institutions to perform several duties: the medical and related institutions are required to screen, counsel or provide emergency medical treatment as applicable and do a risk assessment before referring the person for further services. They are also required to provide the complainant with a prescribed list containing the names and contact particulars of accessible shelters and public health establishments, amongst other things. However, the enforcement of the Domestic Violence Act poses practical challenges relating to its implementation during the COVID 19 pandemic and under the national lockdown. Many institutions, including health care facilities, are under pressure due to work overload. Many shelters have reached full capacity due to the strain caused by the COVID 19 pandemic on many families. Due to the implementation of the Disaster Management Act, many institutions (private and public) operate on skeleton staff. They may not have the capacity to effectively render the services afforded by the newly inserted section of the Domestic Violence Act. Thus, the legislature has introduced the section without providing the necessary resources and working environment to realise the victims' constitutional rights fully. For the efficient implementation of the Domestic Violence Amendment Act during a national lockdown, the SA Government must create an environment that ensures the efficient operation of the institutions mentioned in section 2A of the said legislation.

Key words: Violence, rights, lockdown, institutions.

Title: Beyond the Corona Virus (Covid 19) Containment Measures: A critical Analysis of Governance issues during pandemics.

Author: Roy Mashoko Matika

Abstract

The Corona Virus (Covid 19) pandemic which broke out in the Wuhan Town of China in December 2019 has created a myriad of health, social, economic and human rights challenges across the world. It has changed the everyday realities of people everywhere on the globe, directly or indirectly. The outbreak of the Corona Virus pandemic caught the world by surprise and exposed the inadequacies of national and world health, governance and political systems. The pandemic brought to the fore, structural inequalities inherent in terms of access to health and other fundamental rights and freedoms. As part of a buffet of measures to curb the spread of the virus, governments variably reacted with measures that inadvertently mirrored their governance and democratic values. This paper will argue that the pandemic was securitized in

some countries of the world almost on the same fashion as the 9/11 attacks in the United States of America. Democracies, hitherto perceived as liberal, were pushed into de facto state of emergencies because of social and economic restrictions imposed on people; collectively referred to as lockdown measures. Covid 19 has sharply pitted lives against livelihoods in a manner never witnessed in recent times. The processes through which governments made decisions in reaction to the pandemic has triggered intense debate on issues of human rights, rule of law and public accountability. The paper will refer to examples from different parts of the world to evaluate the effectiveness measures adopted by governments to react to the corona virus and the resultant implications of governance issues such as transparency and accountability in handling of offenders, information and the intricacies of decision making processes in the context of a deadly global pandemic.

THE RIGHT TO DIGNITY AND THE ENFORCEMENT OF COVID-19 MEASURES: A COMPARATIVE STUDY WITH EXAMPLES FROM THE CARIBBEAN AND AFRICA

Authors

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Abstract

Upon the onset of the global outbreak of the corona virus disease (COVID-19) in 2020, governments worldwide introduced measures to counter the spread of the disease. It is trite knowledge that public health management measures affect individual human rights and are reflective of countries' approaches to governance and human rights.

Governments of countries in Africa and the Caribbean deployed measures which involved lockdown, curfew, mandatory PCR tests and temperature checks as well as imposition of travel restrictions. These measures impact on the right to dignity- valued and respected without humiliation, objectification and degradation. Enforcement of public health regulations requires maintaining a critical balance between the State's obligation to promote public health and the right of individuals to enjoy a dignified existence.

This paper explores how COVID-19 measures were enforced in select countries in Africa and the Caribbean regions, taking into account the use of force during enforcement, imposition of internal and external travel restrictions and the cost of multiple PCR tests required in certain contexts and mandatory requirements for vaccine uptake for some persons.

It addresses the policy formulation process(whether participatory and consultative); the fitness for purpose of the measures; regulatory impact assessment as well as the ramifications of the measures in light of the unintended consequences on the dignity of persons in the regions under study, including its undue impact on the marginalised and vulnerable.

Key words: Enforcement, COVID-19, dignity, public health regulation.

Illiberal Regimes and Human Rights During the Covid-19 Pandemic: Latin America and Southeast Asia in Comparison

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Abstract

How do illiberal populist regimes respond to the COVID-19 pandemic and to what extent those responses further undermine human rights deterioration in societies facing democratic regression during the pre-pandemic period? We tackle this puzzle by comparing the responses to the pandemic by two illiberal regimes from Latin America and Southeast Asia. COVID-19 responses include policy coordination —or the lack thereof— at the domestic, regional, and international levels. In those two world regions, we draw the attention on two specific country cases: the Philippines and Nicaragua. In both countries, democratic regimes have recently collapsed under the respective presidential administrations of Rodrigo Duterte (Philippines) and Daniel Ortega (Nicaragua). Based on this comparison, the article explores and builds a theoretical argument on the interplay between democratic breakdown, public health management, and human rights deterioration. The article bridges the gap between public health governance scholarship, studies on illiberal regimes, and human rights crises in the Global South

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TITLE OF PAPER: Evaluation of Nigeria`s Implementation of its Nationally Determined Contribution (NDC) in transition to a low carbon Economy

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Abstract

Nigeria`s Nationally Determined Contributions (NDC) which it submitted as a requirement to the 2015 Paris Agreement shows its global commitment towards embracing sustainable development measures that limit the rate of global warming and negative impact of climate change. It shows the country`s climate targets and measures adopted in actualising them. The aim of this work is to assess the implementability of Nigeria`s Nationally Determined Contribution and its effects on the transition to a low carbon economy. It also examines the

complexities surrounding Nigeria's dilemma of insisting on environmental protection while simultaneously maintaining a steady growth targeted at elevating the Country to a developed economy. This can be attributed to lack of awareness, adequate financing, top-down policy approach, lack of an independent enforcing agency, governance deficit and so on. To achieve this, the work raised these questions, what are the effects of the Nigeria`s NDC on the transition to low carbon economy? What are the factors militating against effective implementation of the Nigeria`s NDC in the post-Paris era? The methodology used is a doctrinal approach. The work found that in Nigeria, there is lack of sufficient political will by the government towards the implementation of the country's NDC, Nigeria`s NDC implementation is left to be funded by foreign intervention and has not been made part of the national budget and tailored to national needs. Things like successive updates and submission of NDCs are binding but the ambition and concrete implementation or financial commitments are not and that weakens it a bit. It therefore recommends that NDC implementation which is left to be funded by foreign intervention has to change; it has to be part of the national budget and tailored to national needs.

Key words: Climate Change, Development, Implementation, Paris Agreement,

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Title: **Incorporation of Indigenous Knowledge Systems (IKS) on Streambank Cultivation Into Zimbabwe's Environmental laws for Sustainable Development.**

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Abstract

In post-colonial Africa, including Zimbabwe, the tendency to apply received law without adaptation to local needs has been prevalent but with adverse effects that range from political, social, ecological to economical ones. This has been particularly evident in environmental laws that are not locally appropriate due to their failure to incorporate local indigenous knowledge. Without doubt, indigenous knowledge represents a way of life that has evolved with the local environment; hence, it is specifically adapted to local needs and conditions. In Zimbabwe, streambank cultivation or alternatively riparian agriculture has endured the test of time among local communities without any environmental degradation due to the use of indigenous natural conservation methods. The methods include planting sugar cane; banana plants and bamboo trees at the edge of the stream bank to prevent topsoil from being washed away and at the same time guarantee sustainable livelihoods and food security for local households. The 2013 Constitution of Zimbabwe in *section 73* and the Environmental Management Act in *section 4* both speak to the promotion of environmental rights. Nevertheless, Zimbabwean legislation criminalizes the conducting of agricultural activities within 30 metres of any bank of any wetland and water body, be it a dam, lake, river,

stream or weir. This article has been written based on data collected during a doctoral study of Mazowe Catchment between 2013 and 2016. Using grounded research methodologies and data collection methods such as in-depth individual interviews and focus group discussions with women and men, groundbreaking findings were made which clearly reflected the need for environmental legislation that is in harmony with indigenous knowledge systems.

Key words: Streambank cultivation environment IKS

Forests and Forestry Reserves as Security threat in Federal Capital Territory, Abuja Nigeria.

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Abstract

Forests are important plant communities that consist of trees and other woody vegetation's that perform life supporting functions on earth. For example the tree species can serve as diversity conservation and protection of fragile ecosystem; development of parks and event centers for relaxation and social engagements; provision of vegetable and fruits/seeds for foods and medicines; and purification of air, wind break. This paper attempts to examine forests and forest reserves as security threats in the Federal Capital Territory, Abuja, Nigeria. The study is both empirical and theoretical in nature as both primary and secondary sources of data were collected, edited and analyzed for the research. In additions different daily Nigeria's newspapers desk were reviewed. Pictures were taken to support finding. The results identified the reasons, why forests and forest reserves can be security threats. The security threats they posed were examined which include basic, hideouts, drinking and smoking, camping sites for insurgents, homeless in highway armed robbers, thieves and other criminals. The study proposed the way out of the present insecure situation, through launching attack to dislodge the insurgent, protection of forests and forest reserves, reforestation of degraded sections among others. These forests and forest reserves need to be properly harnessed guided, implementation of policy and developed into Recreational parks and tourist centers, that will yield the much needed revenue.

Key words: Forest, Forest Reserve, Security Threat

TITLE OF PAPER: GULF OF GUINEA MARITIME SECURITY: An Examination of Emerging Legal Issues and Developments

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Abstract

The maritime space, otherwise considered as global commons, remains vital to global trade, communication, development, tourism, recreation and even cultural interaction. Crucial in this regard, is the maintenance of safety and security of sea lines of communication and maritime routes across the world. As Somalia became a major threat to the safety and security of international shipping and trade, the global community, lead institutions such as the UN Security Council (UNSC) and States had to respond to the invidious threat of the Somali piracy enterprise. While physical presence, policing and escorts were necessary in deterring piracy, complimentary developments within the law had to take place to permit States to be able to effectively interdict, arrest and prosecute pirates, including UNSC resolutions that marked an evolution of international law. Over the last decade, Gulf of Guinea (GoG) piracy has presented similar threats to the global community and legal developments are taking place within the GoG space, thereby pushing the confines of international law and paving way for national, regional and global action. Also important are recent developments where, for example, the European Union has announced an independent coordinated maritime patrol in GoG waters, while Denmark has indicated its resolve to deploy vessels to the GoG by the close of 2021 to counter piracy. These developments are new additions to the plethora of legal issues raised by the presence of navies of France, Unites States, Italy and China. Thus, from national, regional, global and external country-specific points of view, the evolving legal regime in GoG maritime space and the corresponding legal complexity need close examination.

Key words: Gulf of Guinea, Maritime Security, Piracy, Legal Developments

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Title: Imprisonment as a sanction for illegal fishing: A Namibian perspective

Author: Hashali Hamukuaya, Nelson Mandela University and One Ocean Hub

Abstract

Illegal fishing is a major international problem of which Namibia is not exempt. The Law of the Sea Convention (LOSC) grants coastal State jurisdiction concerning "the protection and preservation of the marine environment […]". Namibia has promulgated the Marine Resource Act, 2000 (MRA) to give effect in protecting and preserving its marine environment. This article will examine the extent to which LOSC grants Namibia jurisdiction in prescribing imprisonment as a sanction for contravening the MRA. The article will evaluate the following scenarios:

1. When a Namibian fishing vessel is involved in illegal fishing activities in the territorial sea and exclusive economic zone, including the implications of the crews nationality when prescribing imprisonment as a sanction.
2. When a foreign vessel is involved in illegal fishing activities in the territorial sea and exclusive economic zone, including the implications of the crews nationality when prescribing imprisonment as a sanction.

This paper examines the extent to which Namibia is permitted in terms of LOSC to use its coastal jurisdiction, flag State jurisdiction, and personal jurisdiction in exercising its prescriptive jurisdiction to prescribe imprisonment as a sanction for illegal fishing.

Key words: Illegal fishing, imprisonment, jurisdiction, and Marine Resource Act of 2000.

Title: The Work in Fishing Convention as an instrument to combat coercive recruitment practices resulting in forced labour: A South African perspective.

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Abstract

This paper aims to conduct a comparative analysis of the provisions of the Work in Fishing Convention (WFC) and the Merchant Shipping Act 57 of 1951 (MSA) that regulate the legal aspects of common coercive recruitment practices that result in forced labour on fishing vessels. The decline in fish stocks has pushed long-haul fishing vessel operators to use coercive recruitment practices to reduce the cost of labour.

This paper focuses on coercive practices such as the use of illegitimate or unscrupulous recruitment and placement agencies, deceitful work agreements and the use of fraudulent medical certificates. The aim of this analysis is to determine whether South Africa complies with its duties in terms of the WFC. In the process of this analysis, this paper identifies gaps in the WFC and the MSA that allow for this appalling practice to continue and provides recommendations for amendments to the proposed Merchant Shipping Bill (MSB) based on the identified discrepancies in the MSA.

This paper concludes that, provided the provisions of the proposed MSB do not change, South Africa currently complies with its duties in accordance with the WFC and goes beyond what is required in some respects. However, South Africa does not comply with its obligation to regulate the recruitment and placement agencies for fishers. This leaves fishers in South Africa vulnerable to coercion by recruitment agencies. It is suggested that the provisions of the WFC relating to the recruitment and placement of fishers can be given effect in South Africa by either amending the current Seafarer Recruitment and Placement Regulations to apply to fishers or by drafting new Merchant Shipping (Fisher Recruitment and Placement) Regulations, which give effect to the WFC in line with the existing Seafarer Recruitment and Placement Regulations and promulgating them in terms of the MSA or its successor.

Key words: recruitment, forced labour, involuntariness, threat of punishment

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Climate Change in a North South Perspective: Navigation Rights in the Antarctic and the Arctic

Author: Prof. Erik Franckx (Vrije Universiteit Brussel and Nelson Mandela University)

Abstract

Polar regions are often considered in terms of similarity: Cold temperatures and remoteness evidently spring to mind. The basic premise on which the present contribution is based, however, is that the starting point to address both polar areas should rather be their distinctness as far as geography, geology, climate and strategic values are concerned, resulting in a different legal regime as well. The latter submission fully applies to the navigational rights and freedoms applicable in both polar areas. Indeed, whereas creeping coastal State jurisdiction has been the made driver in the North, internationalization has rather played a crucial role in the South.

Climate change has had a demonstrable impact on these navigational rights in the Arctic so far. Starting from the fact that the effects of climate change in the Arctic has been more pronounced than elsewhere on the globe, the melting of the ice cover, having an average thickness of 2 meters on average, has substantially extended the shipping season in the region while at the same time easing navigation during summertime. In the Antarctic, where climate change has only more recently started to have a marked impact, the waxing and waning of the massive continental ice shelf has been less susceptible to climate change in overall, even though larger pieces of ice shelf tend to brake off in recent times.

Starting from these differences, the navigational rights in both polar areas are analysed in some detail. When doing so, one ends up with quite different navigational systems being applicable around the North and the South Pole. This seems to be contradicted by the recent initiative undertaken within the framework of the International Maritime Organization to introduce the so-called Polar Code, *i.e.* a set of mandatory navigational rules applicable since January 1, 2018 simultaneously to both the Antarctic and the Arctic. However, closer scrutiny reveals that first, it has been a tortuous road to arrive a single document applicable to both Polar areas, and second, that is does not necessarily mean that the same navigational rules apply at present at both Poles.

A critical reflection on the impact of human mobility on governance and development in Africa

Authors

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Annah Kahari *Doctoral Researcher, University of the Free State*

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Abstract

This article focuses on the impact of human mobility on domestic governance and socio-economic development. Human mobility is a complex concept that contributes to change in the economic, social, and cultural conditions of migrants whilst having a developmental impact on both the receiving and sending countries. From this viewpoint, migrants act as agents of change since their actions determine a set of change in the socio-economic status of the migrants, their families and the external structures having a direct and indirect developmental impact on the area of origin and countries of destinations.

Using a broader socio-economic and developmental perspective, a comparison examines how South Africa, Uganda and Canada have responded to critical issues that affect migrants and refugees pre-and during the COVID-19 pandemic. These critical issues include social protection, healthcare, socio-economic rights and education. Firstly, this article will interrogate the importance of drawing a distinction between the Global South and North, and the international duty on countries to offer social protection during a crisis.

The Global North sees a large number of voluntary migration, with Canada ranking eighth for the most immigrants in the world. The Global South sees the most refugees, with around 84% of all refugees hosted in developing countries. Uganda specifically hosts the largest refugee population in Africa, while South Africa has the most migrants in Africa. Secondly, the article will compare the countries' duty to offer social protection to migrants and refugees during a crisis. This paper will also consider how international migration affects the achievement of Sustainable Development Goals, as well as the socio-economic impact of hosting refugees. We will argue that the responsibility of addressing mobility issues hinder the efforts to realize sustainable development.

Key words: human mobility, migrants, development, Africa

COVID-19 and Asylum seekers' Access to Social Protection In South Africa

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Abstract

Asylum seekers are adversely affected by COVID-19 and intermittent lockdowns in South Africa. Legislative framework such as the 1948 Universal Declaration of Human Rights (UN 1948) and stipulates migrants' rights and equality of treatment in Social Protection [SP] during emergency regardless of their nationality. In light of this, the paper analyses asylum seekers' access to social protection mechanisms in South Africa, notably welfare packages and palliative measures' during COVID-19. The paper gauge whether South Africa's SP mechanism widens or

narrows the protection gap in situations of vulnerability. The paper is underpinned by Lipsky (1980), Brodkin and Marston (2013) Street theory of bureaucracy. Data is generated from triangulated sources such as interviews, observations, policy documents and media mapping exercises.

Findings suggests that barriers exist for asylum seekers to access social protection exemplified by their exclusion from Unemployment Insurance Fund, palliative measures, and hindrance by bureaucratic identification system during the COVID-19 pandemic. The paper argues that COVID-19 pandemic exposed gaps in the social protection of vulnerable migrants with asylum seeker status evident in their exclusion in South Africa's pandemic preparedness plans, including Social Protection policies [SP] such as palliative measures and Unemployment Insurance Fund [UIF]. The paper argues that the provision of SP for asylum seekers is a human right. Yet, it is not always guaranteed for non-nationals in South Africa, where international migration is a polarised debate. South Africa is far from the actualization of constitutional law obligations on equal access to social protection for asylum seekers.

Key words: Asylum seekers, Palliative, COVID-19, legislation

Social protection for climate change-induced displaced persons: in search of an alternative paradigm

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Professor Avinash Govindjee, Executive Dean, Faculty of Law, Nelson Mandela University, South Africa

Abstract

The paper engages with the inadequately explored area of appropriate social protection responses in relation to persons forcibly displaced as a result of climate change, with a focus on Africa – whether internally displaced persons (IDPs) or cross-border displaced migrants. Multitude shortcomings are currently evident in responding to the social protection vulnerability of climate change-induced displaced persons – including inadequate conceptual and policy approaches in relation to both displacement and social protection responses; deficient governmental and protective interventions; and a weak normative framework. With an emphasis mostly on humanitarian assistance, durable solutions for IDPs and refugees respectively often focus on repatriation/resettlement and repatriation respectively. However, often-protracted stay in displacement camps or (urbanised) locations requires a dynamic approach recognising change in livelihood patterns – implying an evolution in the durable solution debate from a predominantly humanitarian assistance-oriented approach to an increasingly developmental one, integrating displacement solutions in the context of "spatial planning" and "human settlement". In support of the above, a displaced persons/societies-centred and whole-of-government approach is needed. Diverse dimensions need to be factored in when designing appropriate policy and other responses – including but not limited to the (social protection)

vulnerabilities experienced by affected persons and communities and the impact of displacement on host communities.

There may be a need for a new social risk-based conceptual approach, which would acknowledge *exposure to climate/environmental change as a particular social (security/protection) risk*, and to develop, on that basis, an integrated social protection response framework. Also, a human rights-centred responses to climate-induced migration should strengthen social protection responses. There is a need in particular to consider solutions to challenges experienced by cross-border climate migrants who rarely enjoy protection under national and international law frameworks. In fact, as was recently indicated, UN members are not ready to give "specific legal international protection to climate-induced migrants."

https://www.devex.com/news/global-compact-for-migration-not-the-answer-for-climate-refugees-un-representative-92373

Key words: Climate change; Migrants; Internally displaced persons; humanitarian assistance and development

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The climate emergency and the (in)ability of African's states to stop investors' routine gas flaring

Authors

Louis Koen, *University of Johannesburg*

Jenny Hall, *University of Johannesburg*

Abstract

The principle of common but differentiated responsibility (CBDR), which is reflected in the Paris Agreement, requires both that African states adopt progressively more ambitious commitments to mitigate climate change and that developed states support these efforts by securing financial flows.

One way in which several African states can respond is by stopping routine gas flaring practices in the oil industry, including by foreign investors. In the case of Angola and Cameroon, stopping gas flaring would allow them to meet approximately 20 per cent of their nationally determined contribution targets. Both countries have indicated an intention to do so by joining the World Bank's 'Zero Routine Flaring by 2030' initiative.

However, should either country pass legislation which prohibits routine gas flaring, they may well bump up against the tensions that exist between the urgent need for climate change responses and the international investment law regime's focus on securing stable conditions for investors. Both Angola and Cameroon are party to Bilateral Investment Treaties which would provide a basis for declaring an international investment dispute in this instance. Declarations of these disputes is risky for the governments because more than 60 per cent of decisions by the International Centre for the Settlement of Investment Disputes which are decided on the merits go in favour of the investor and the resultant awards often run into billions of dollars.

An aspect of international investment law which has not received much attention in the literature is the effect of stabilisation clauses. This presentation will discuss the potential implications that disputes based on the stabilisation clauses, which are included in Angola and Cameroon's treaties, have for the prohibition of gas flaring. It will explain how these clauses can undermine CBDR because the finances that developed states must contribute to the climate effort may in effect be recycled into funding their own national's profit motivations without any requirement that this ultimately be expended on the climate agenda.

Key words: common but differentiated responsibilities – international investment law – effect on African climate responses – routine gas flaring

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Title of paper: Drafting Trade and Investment Agreements for Sustainable Development

Author: Dr. Andréia Costa Vieira (PhD, International Legal Consultant), Member of the Brazilian Bar Association; acv@acvintlaw.com.br and andreiacostavieira@hotmail.com

Abstract

Trade and investment agreements have to be carefully drafted in order to comply with the real challenge of achieving the Agenda 2030's 17 SDGs. This drafting has to take into account the asymmetries and domestic needs of the countries involved. The framework of global governance has added an international relational interaction in the drafting of these agreements, which is not only pure diplomatic work as it was in the past. Real exchange of information and decision-making procedures have taken place between regulatory agencies and subnational authorities of the countries involved and have become, *per si*, effective international cooperation, sometimes even before the agreement is signed or ratified. The challenge for such interaction and drafting of trade and investment agreements is to identify the sustainable development needs of the partner countries and to previously harmonize possible future impacts or conflicts. In 2021, sustainable development features, such as pandemic recovery, biodiversity protection, climate change, food security, water and sanitation inclusion, reduction of inequalities, inclusion of marginalized communities and access to finance, have to be inserted in the language, principles and purpose of the agreements, thus promoting real international cooperation that will meet developing and developed countries' needs.

Key words: trade and investment agreements; sustainable development; sustainable development in trade agreements; sustainable development in investment agreements.

Human rights clauses in investment treaties and investor decision to go to arbitration in Latin America

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Abstract

This paper explores the effects of human rights clauses included in 272 investment treaties (BITs and FTA investment chapters) signed by Colombia, Chile, Uruguay, Perú, Argentina, Bolivia, Ecuador and Venezuela, on the investors' decision to initiate arbitration. This analysis is based on a new classification (Olarte-Bácares, July 2015) of all clauses included in these 272 investment treaties that relate to human rights obligations. These clauses, which we call '*human rights integrative clauses,*' enable an integrative, harmonizing interpretation of potentially conflicting investment treaty obligations, and human rights obligations of the State. The paper also considers other potential determinants of investors' decision, including the country´s level of enforcement of government regulations.

Key words: Human rights; BITs; investor-state arbitration; Latin America

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PANEL PROPOSAL – Track 1

Debating the globality of Law and Development: a North-South divide?

Convenor: **Deval Desai**, Lecturer of International Economic Law: ddesai@ed.ac.uk and;

Morag Goodwin (Chair in Global Law and Development, Tilburg Law School; m.e.a.goodwin@tilburguniversity.edu

The aim of this panel is to create a roundtable that brings together younger voices within the Law and Development community to discuss a series of questions about the structure of Law and Development as a field or as a movement, and thereby to discuss the future of the field. To this end, doctoral and post-doctoral researchers would be invited to participate – not to present but to discuss and reflect. The convenor would act as moderator. The hope is to facilitate an open and dynamic space of engagement with the field.

The focus would be on the mooted existence of a North-South divide in perspective. How do different participants experience the field? Is there a divide and, if so, what does it consist in? Where or how does it manifest itself? Does this divide serve a purpose or is it something to be overcome?

The format would be as follows: four invited participants will be invited to give 5 minute statements based on the questions above, to which the other participants and audience will be asked to respond.

The participants would be drawn from both the North and South.

Nigeria's Equality and Non-Discrimination Obligations in International Law

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Abstract

Equality and non-discrimination are deeply engrained concepts in the history and literature of United Nations human rights treaties. The United Nations framework for the protection of minorities is constructed around equality and non-discrimination. International human rights instruments such as the Convention on the Elimination of all forms of Discrimination against Women, the Convention for the Elimination of all forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities are specifically designed to eliminate discrimination. Nigeria is signatory to several international and regional treaties promoting equality and non-discrimination.

The Nigerian Constitution also mandates the State to ensure equality and non-discrimination within the polity. The international human rights community has however come to the stark realization that a legal commitment to formal equality is insufficient to guarantee the fair treatment of minority groups. Minorities everywhere experience direct and indirect, de jure and de facto discrimination in their daily lives. Dealing efficiently with two hundred and fifty ethnic groups which live in one country and assuring to each individual, fundamental political, social, economic and cultural rights, is a task that frequently pushes the Nigerian State to the limits of its international obligations.

This paper examines the equality and non-discrimination obligations imposed by the Nigerian Constitution and the International and regional human rights treaties that Nigeria is signatory to. It specifically analyzes the periodic reports submitted by Nigeria to the International and regional Treaty bodies examining and monitoring compliance with the prevention of discrimination. The paper concludes that the constitutional, regional and international obligations on equality and non-discrimination are attainable but the prerequisites are informed citizens and deliberate and intentional leadership committed to the rule of law.

Key words: Equality, Non-Discrimination, Nigeria, International Law

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The suppression of freedom of expression in Africa: A case study of Tanzania

Author:

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Abstract

This paper will give an overview of the right to freedom of expression and the trends in practices used to limit this right in Tanzania.

Regionally, the right to freedom of expression is guaranteed in Article 9 of the African Charter on Human and Peoples' Rights (Banjul Charter) which is an instrument of the African Union and Article 18 of the Constitution of the Republic of Tanzania, 1977. Freedom of expression, which has been said to run in tandem with press freedom and freedom of information, guarantees all persons the right to freely receive and disseminate information.

Whilst the right to freedom of expression is not an absolute right, the scope of this right and its limitations must always be carefully balanced against other human rights to ensure that it is effectively promoted and protected in a democratic state. Furthermore, any limitation of the right to freedom of expression should undoubtedly satisfy the requirements of legality, necessity (i.e., have a legitimate aim), and proportionality.

Despite being guaranteed, there has been an increase in the application of repressive tactics used to silence those who choose to exercise this fundamental human right. These techniques have included the use of vague and ambiguous terms in national laws, non-bailable offences such as money laundering to prolong cases, social media shutdowns, non-enforcement of regional and sub-regional court decisions, and the issue of impunity. Besides immediately punishing those who have chosen to exercise their rights, these techniques have also forced the wider community to practice self-censorship to avoid facing any repercussions.

This paper will highlight these trends in greater detail as well as various proposed solutions meant to ensure greater protection of the right to freedom of expression for Tanzanians.

Key words: Freedom of expression, Tanzania, Limitation of rights, Banjul Charter

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EXAMINATION OF COVID-19 REGULATIONS AND THE RIGHTS TO PRIVACY, ASSEMBLE AND FRREEDOM OF MOVEMENT IN NIGERIA

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Abstract

The promotion and protection of the primacy of constitutionalism and particularly, human rights is most important in times of national emergency. It is at such times that the principles of rule of law must be strictly adhered to ensure that constitutional rights are not unlawfully breached. The COVID 19 pandemic period is one of such times of national emergency. Nigeria like most countries of the world experienced the COVID 19 pandemic which necessitated the derogation of many fundamental rights guaranteed under the constitution. Some of such rights which suffered derogation during the COVID 19 pandemic were the right to privacy, right to associate and assemble, and right to freedom of movement. These rights are guaranteed in the Nigerian Constitution under section 37, 40 and 41 respectively. These rights are fundamental and must only be derogated under strict conditions and following strict rules. The rights however, suffered some derogation through statutes and regulations because government concluded it was the only means of protecting society from the public health crisis that is COVID 19. Regulations were issued by the Federal and State Governments to restrict, movements of persons, physical goods and services. Public gatherings were also barred, religious and social gatherings inclusive. These actions of the government raised serious constitutional questions on the legality of the content and form of the regulations. The paper examines the legality and constitutionality of these regulations by examining the extent to which the regulations comply with the constitutional requirement for the derogation of fundamental rights, the procedures for such derogation and substantive limits for effective and efficient derogation. The paper adopted the doctrinal method and structured to cover the examination of the extent and options for protecting fundamental rights vis a vis the COVID regulations purporting to derogate these rights. The paper concluded with a set of recommendation on approaches for maintaining and promoting constitutionalism and safeguarding fundamental rights in Nigeria.

THE POSITION OF TENANTS WHO ARE UNABLE TO PAY RENT OR UTILITY BILLS DURING THE COVID-19 PANDEMIC

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Abstract

This paper analyses the position of residential tenants who are unable to pay rent or utility bills during the Covid-19 pandemic. The paper questions whether tenants are entitled to a payment holiday, a remission of rent, or a suspension of rent, for the duration of the lockdown period as

a result of the Covid-19 pandemic. The paper concludes that tenants were not automatically entitled to a remission or suspension of rent or a payment holiday of rent in terms of the common law. Tenants were, however, entitled to an appropriate remedy after careful consideration of the terms of the lease agreement, the merits of their case, and depending on how the common-law rules relating to *vis major* or *casus fortuitus* will be interpreted and applied in the context of Covid-19. Whether or not tenants are entitled to remission, suspension or a payment holiday for utility bills is less clear in terms of the common law, the Rental Housing Act 50 of 1999 and the Covid-19 regulations. I argue that tenants should continue to make payments for utilities consumed during the Covid-19 pandemic.

Key words: Residential tenants – Inability to pay rent or utility bills – Remedies

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The COVID-19 Pandemic and the War on Terror: Global Crises of Dehumanization and Human Rights

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Abstract

What do the post-9/11 war on terror and the COVID-19 pandemic have in common? How and under which conditions do global crises exacerbate the politics of dehumanization and undermine human dignity? While also considering the unique features of a pandemic and a military security crisis, I examine the commonly shared features of the post-9/11 crisis and the COVID-19 pandemic as *global crises* that bolstered the politics of dehumanization. Global disasters such as the 9/11 terror attacks in the US and the COVID-19 pandemic are — in many ways — sudden, disruptive, and, unexpected series of events that were deemed enabling background conditions for the discursive construction of a global crisis. Taking a broad perspective of the global order in the 21st century, this article demonstrates that both crises have exacerbated dehumanization of individuals from minoritized socio-economic groups. Dehumanization emerges from four mutually reinforcing macro-social mechanisms of repression: 1) threat construction through securitization; 2) intensified coercion; 3) intensified necrostratification; and 4) entrenchment of a global necropolitical culture. The article discusses the theoretical premises that underpin each mechanism, while also providing demonstrative empirical examples from the human rights crises emerging from the global war on terror and the coronavirus pandemic.

Key words: COVID-19; human rights; crisis war on terror

Critical Assessment of the Whistle-blower Protection in the AU Convention on Preventing and Combating Corruption: South Africa in Context

Author: Gaopalelwe Mathiba
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Abstract

The African Union (AU) Convention on Preventing and Combating Corruption is a renowned regional instrument aimed at, among others, promoting and strengthening development in Africa by prescribing mechanisms necessary to prevent, detect, punish and possibly eradicate corruption and related offences in both public and private sectors. The Convention touches upon the aspect of whistle-blower protection in Article 5.6, calling upon State parties, including South Africa, to "adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals". This provision is important given a serious nature of the risk posed to one's life, wellbeing and career when exposing, reporting and adducing evidence of corruption at various public and private institutions. While the Convention is commendable, to an extent that it acknowledges the importance of whistler-blower protection, its implementation aspect leaves much to be desired across the member States. The victimisation of *bona fide* whistle-blowers and reporting persons remain unabated and this presents a serious hurdle to the fight against corruption in that it discourages the reporting of fraud and corruption. In South Africa, for instance, a senior civil servant whistle-blower, Babita Deokaran, has in recent times been allegedly assassinated for adducing evidence to the Special Investigating Unit in connection with the grand COVID-19 related-corruption in the Gauteng Health Department. This goes a long way in exposing the lackadaisical nature of whistle-blower protection framework in South Africa, and perhaps in Africa. Against this background, this contribution seeks to assess the efficiency of the whistle-blower protection provisions as contained in the Convention generally and in South African legal framework in particularly. The contribution argues that South Africa and Africa needs a strong whistle-blower protection mechanism, coupled with adequate implementation, in order encourage reporting of corruption and related offences, thus decreasing corruption risks and creating a more accountable and transparent system.

Safeguarding human rights and discouraging corruption through Public Procurement in Kenya

Author: Francis Khayundi (Lecturer, School of Humanities and Social Sciences, United States International University – Africa. fkhayundi@gmail.com)

Abstract

Public procurement is a major way the state acquires goods and services to execute its mandate. However, it also provides opportunities for corruption. The majority of the government's budget is spent through the public procurement process. Thus, the provision of goods and services to the

greater population is greatly influenced by the public procurement processes that affect several aspects of life including the enjoyment of human rights.

The Kenyan Constitution accords primacy to national values in the conduct of state functions. Particularly article 10 (2) of the Constitution lists the values that state organs should embody as they carry out their functions and they include rule of law, equality, human rights, sustainable development, integrity, transparency and accountability among others. The primacy of human rights is revealed in article 19 (1) of the Constitution that states, "the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies." What this means is that human rights must be considered in all formulation of laws and policies.

In Public Procurement, the provisions of article 227 embody the primacy of human rights as provided in articles 10 and 19 (1) of the Constitution. Article 227 has been operationalised by the Public Procurement and Asset Disposal Act (PPDA). To this end, there was a deliberate process to amend the public procurement legislative framework to comply with the Constitution. Section 3 of the PPDA lists several guiding principles that are likely to avail opportunities to promote and protect human rights.

This paper will be a human rights compliance audit of the PPDA and ways in which state organs have used it to procure essential goods and services. This analysis is informed by the widely accepted belief that the realisation of human rights is better driven by efforts taken in the domestic sphere.

Key words: Human Rights, public procurement, Kenya

Which way forward: The Challenges of Internally Displaced Persons in Nigeria

Author: Ifeoma Eke

Abstract

The challenge that is currently confronting the Nigerian state is on how to assuage the predicaments faced by internally displaced persons (IDPs) in the northeast. There have been various conflicts occasioned by violent activities of Boko Haram insurgents. Since Boko Haram insurgents started their acts against the Nigerian state in the North-east in 2009, many people have lost their lives and properties destroyed, thereby compelling people to live their homes for safety.

Displacement is a life-changing event, while the often traumatic experience of displacement cannot be undone, displaced person need to be able to resume a normal life by achieving a durable solution. As articulated in most statutory provisions on Internal Displacement, IDPs have a right to a long-lasting solution and often need assistance in their efforts. This paper is a conceptual legal analysis and relies on primary sources like international instrument and Nigeria domestic legislation, and secondary sources like text book, journal articles and other sources for its data. This paper aims at exploring the challenges faced by IDPs e.g. starvation,

accommodation, unemployment, school dropouts, sexual harassment, child labour, early marriage, poor health and sanitation due to the unending surge in internal crises in Nigeria with the view of bringing to light obstinate influence on the protection needs of IDPs. This paper also looks at the effort made by the Nigeria government in a bid to improve these challenges either by way of statutory intervention or policies. The study recommends among others; that government should make more concerted efforts to provide the needs of the displaced persons while it expedites actions to end up the insurgency. The study equally recommended for the review of the laws and policies as a way of bridging the gaps in protection to enhance the plight of the IDPs.

Proposal Title: THE FREE MOVEMENT OF PEOPLE IN AFRICA POST COVID-19

Author: Victor Amadi, Postdoctoral Research Fellow Centre for Comparative Law in Africa, University of Cape Town.

Abstract

In pursuit of a stable and economically robust continent, people can be the drivers and carriers of growth and development and the future of Africa lies with its people considering the youthful demographic of the continent. However, people can only contribute effectively to this future if they can move easily and explore the vast opportunities that the continent holds. Africa's future prosperity increasingly relies on closer regional integration, underpinned by more intra-African circulation of productive factors such as goods, labour, services, capital and people as a central factor. Therefore, interruptions to cross-border movement of people presents a risk in holding back the continent's progress towards the integration aspirations identified in the Abuja Treaty and the Agenda 2063: The Africa We Want. The subsequent adoption of the Protocol relating to the Movement of People, Right of Residence and Establishment (FMP Protocol) by AU member in 2018 heralds a new era of harnessing migration for development across the continent making its implementation very necessary now. In considering the beneficial role people can play towards economic growth and development, this paper aims to give an assessment of the effect the COVID-19 pandemic and the related responses has had on the movement of people in the continent and makes recommendations on a way forward post COVID. The paper highlights that though some regions and countries have made considerable progress in bringing barriers down through visa-free travel, visas on arrival and other simplifications for other African countries, the level of enthusiasm for the continental FMP Protocol as such remains low, with 32 signatories and 4 ratifications to date. Missing among the signatories to the Protocol are most North African countries; most Southern African countries, including South Africa, Namibia, Botswana, and Zambia; Nigeria in West Africa; Cameroon in Central Africa and Ethiopia in the horn of Africa.

This paper is developed through the reliance on desktop analysis of primary references sources of the AU, RECs and Member States. It also reviews updates and information from the UN specially the IOM, UNECA, and UNCTAD as well as updates and information from think tanks such as TRALAC.

Key words: COVID-19, Africa, Regional Integration, Movement of People, Economic Growth, Development.

Supporting the social protection of internally displaced children in Africa: A legal perspective

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Abstract

Internal displacement creates risks to the rights and needs of children. From the perspective of law and development, internal displacement creates challenges for the social protection of displaced children. Specifically, internal displacement contributes to the invisibility and vulnerability of children, which makes it challenging for States to provide them with various forms of social protection. This contribution will examine to what extent African human rights law responds to the challenges of providing social protection to internally displaced children. The rationale for this focus is due to the dire situation of internal displacement in Africa and the regional treaties that can be applied to address the provision of social protection to internally displaced children, namely, the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. In theory, these instruments provide a legal framework to respond to the challenges of providing social protection to internally displaced children on the continent. Overall, this contribution aims to determine how African human rights law supports the social protection of internally displaced children. In terms of methodology, a critical analysis of the above-noted instruments will be conducted using the principle of non-discrimination as a theoretical lens. This principle was selected as internally displaced persons, including children, often experience discrimination based on their status as displaced persons, and it is a fundamental principle in human rights law, children's rights law and internal displacement. Therefore, the analysis will examine how the principle of non-discrimination can be mobilised through these instruments to support the social protection of internally displaced children by identifying the provisions that can be applied to provide social protection, highlighting any gaps in the law and addressing issues of implementation by examining relevant decisions on communications regarding these instruments.

Keywords: internally displaced children; social protection; African human rights law; non-discrimination.

THE REGRESSION OF REFUGEE LAW IN SOUTH AFRICA

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Abstract

The Refugees Act in South Africa has undergone several amendments since its promulgation in 1998. Over the last decade only, the South African government implemented a steady curtailment of refugee rights and freedoms. The limitations were codified through the Refugees Amendment Act of 2017, which came into effect on 1 January 2020 and introduced sections and regulations that have been viewed as *prima facie* unconstitutional and conflict with international refugee laws.

The Amendment Act introduced strict rules of refugee protection such as; entering the country illegally and fraudulently obtaining identity documents (IDs), which conflicts with international refugee law prohibiting the penalization of refugees for irregular entry into the refugee-hosting state. Also, persons who do not apply for asylum within five days of entering South Africa are excluded from refugee protection. Ultimately, these changes conflict with the fundamental principle of *non-refoulment*. The refugee determination processes have proven to be time-consuming. Also, they have significant financial implications that make the lawful processing of the documentation of refugees and asylum-seekers practically impossible. Hence, refugees and asylum-seekers constantly fear expulsion from the Republic, which goes against the principle of *non-refoulement* and the Constitution.

This paper underscores the practical challenges resulting from the 2017 Amendments and concludes that refugees and asylum seekers face difficulties in obtaining legal documentation and the consequences thereof. It recommends measures that may be put in place to improve the refugee and asylum-seeker determination processes in line with international refugee laws.

Author: Philip Dann

Abstract

'Comparative Constitutional Law scholarship is only slowly turning to address the particular questions that arise in and from the Global South. My presentation will present a framework to question and theorize the notion of the 'Global South' and sketch some larger ideas on how a Southern turn in comparative constitutional law scholarship would push the field and law-and-development scholarship more generally.'

Title: The Crisis in Law and Development: TNCs, Capitalist States and Legal Relations

Author: Radha D'Souza, Professor of Law, Development and Conflict Studies, Westminster Law School, University of Westminster

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Abstract

This abstract is submitted for the first track. Taking a critical Southern perspective, the paper interrogates the theoretical assumptions and underpinnings of the field of Law & Development. Notably absent in a field that studies the relationship of law, institutions and development in Third World governance are Transnational Corporations (TNCs). The epistemologies and methodologies that inform Law & Development studies invisibilise the relationship between transnational corporations and states. The field takes states as formal juridical entities and de-historicised international organisations as its point of departure for its studies. Consequently, the field of Law & Development lurches from cycles of crisis and revival. Without history and context, particularly colonial history and context, it becomes impossible to incorporate the co-constitution and co-evolution of TNCs and capitalist states in the course of colonisation, and their co-production of knowledge of colonial governance. That knowledge, anchored to colonial histories and context, could be a rich genealogical source for concepts and orientations towards Third World governance today, a task that is so central to the field of Law & Development.

Key words: TNCs; Capitalist states; neo/postcolonial states; Third World governance.

Title: Varieties of Constitutionalism in North-South perspective

Author: Michael Riegner, Humboldt University Berlin / University of Erfurt, Germany, riegner@rewi.hu-berlin.de

Abstract

Are there specifically Northern and Southern perspectives on comparative constitutional law? Building on earlier work on constitutionalism of the Global South, this paper develops a typological theory of comparative constitutionalism that seeks to account for the specificity of Southern constitutional experiences while also capturing the multidirectional entanglements, transplantations and migrations of constitutional ideas across the North-South divide. Methodologically, it argues that comparatists should develop a manageable number of ideal-types to capture the patterned diversity of constitutionalism across North and South. In substance, the paper illustrates this framework with a case study on how constitutions treat political economy, and especially questions of property, markets and transnational corporations, across liberal, social-democratic, postcolonial-transformative and authoritarian varieties of constitutionalism.

Key words: comparative constitutional law; comparative methods; political economy; Southern constitutionalism

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A law for the masses: Judicial activism and innovative public law remedies in the Global South

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Abstract

In this paper I discuss the activist role played by some (High Court) judges on the right to housing in Kenya. Judges have pushed the boundaries of judicial review through activist public law remedies that require much more accountability mechanisms than is traditionally envisaged in Anglo-American common law jurisdictions. These activist public law remedies are very much inspired by activist judging techniques from other Global South jurisdictions, particularly South Africa (structural interdicts and suspension of invalidity orders), India (social action litigation and continuous mandamus), and Colombia (dialogic activism). The influence of activist judging from these other jurisdictions are also discussed to place Kenya alongside wider studies on Global South constitutionalism to challenge the *hegemony* of Anglo-American ideas of constitutionalism and rule of law masquerading as global constitutionalism. I make the submission that Global South constitutionalism is increasingly asserting itself as a perspective that has much more radical potential for securing the livelihoods of the poor of the poorest in the Global South – in this paper landless people living in informal settlements (slums) in urban areas. This body of law is increasingly exposing the hegemony of global/Global North ideals of constitutionalism rooted in principles such as separation of powers and judicial restraint, and the use of constitutions to sanction private property interests, some owned by global multinational corporations, over those of the landless masses whose land has been taken away from them through historically violent and coercive processes of colonialism, neo-colonialism and the globalising logic of neoliberal capitalism. Although the paper focuses on public law remedies, the fact that these remedies impact on a 'constitutional interest to land' not otherwise privately owned, reveals the artificiality of the public/private distinction of law, as public institutions of law are very much implicated in the struggles of the poorest of the poor.

Key words: Global South, constitutionalism, constitutional hegemony, judicial activism

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Right to Development Governance; Responsiveness to COVID-19 and the Impact of Policy Deficiencies on Sustainable Livelihood in Africa

Author: Carol Chi Ngang, National University of Lesotho & Free State Centre for Human Rights, University of the Free State

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Abstract

The outbreak and unprecedented impact of the COVID-19 pandemic has not only been devastating, it has also seriously overwhelmed the coping capacity of almost every country around the world. While in the last two decades the world has been engaged in a global commitment to eradicate poverty, a 2021 World Bank analysis of the effects of COVID-19 reveals that the pandemic will in the long term, push an estimated 119 to 124 million people

into poverty brackets, most of them in Africa. Although the rate of infections and death toll has not been for Africa as much as in some developed countries, Oxfam International estimates the long term ripple effects to be quite catastrophic in developing countries with extreme levels of poverty, the severity of which tends to obliterate development efforts. While poverty eradication endeavours remain elusive in Africa, the spirited response to the pandemic necessitates an enquiry into why comparable commitments are not directed to combating endemic poverty on the continent.

The legal framework on human rights and development in Africa imposes an obligation to prioritise the right to development, which is conceived as a radical transformative alternative in governance with the potential to provide systemic balance in facilitating the attainment of sustainable livelihood. This has been marred by policy deficiencies, portray in the often reactionary rather than proactive visionary responsiveness to perennial challenges, resulting in a persistent re-cycling of setbacks that have continued to rupture the domestic capacity and resilience of state governments in meeting aspirations for sustainable development. As a point of departure for the discussions in this paper, it is assumed that a right to development governance model sutured with a policy framework that incorporates genuine commitments both to poverty eradication and to emergency preparedness is inevitable in ensuring that adversities impact minimally on development gains.

Key words: Right to development governance, COVID-19 pandemic, poverty eradication, sustainable livelihood

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Law And Development: From Theory To Practice

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Abstract

The nexus between law and development involves a foggy academic discourse. Its application is even more complex. Thus, 'law and development – from theory to practice' is an attempt to, first unearth the major debates around law and development, and second to analyze its application taking the case of Ethiopia. This paper has four aims; a) introduce the historical development of 'law and development', b) discuss the academic debate on the nexus between law and development, c) elaborate the relevance of the state in law and development discourse, and d) analyze its application taking the case of Ethiopia – from the 1950s to present. The

paper argues that the relationship between law and development is not diametrically opposed; rather they are inextricably linked notions – both in theory as well as in practice.

Key words: Democracy, Ethiopia, Law and Development, Rule of Law.

Provisional Title: A Fragmented Kaleidoscope of Meanings: Exploring the "Work" that the Rule of Law Does in International Development

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Abstract

Since the mid-1990s, the 'Rule of Law' as been recognized as being a dominant conceptual frame for legal and governance reform work in international development. As a concept and a norm, its meaning has long been ambiguous and 'essentially contested' in legal and political philosophy, but through its promotion in international development project work it has become even more so. The 'work' that the concept does to legitimate and organize legal reform work in development is variable and multi-faceted, and inconsistent, so much so that it becomes difficult to describe and explain the Rule of Law in international development in terms of direct linkages between concept and practice. The Rule of Law is a paradoxical, strange, and frustrating concept whose reality often makes little sense, even, if not especially, to those who are tasked with promoting it in international development. It is ubiquitous and important while also meaningless and empty; information about it abounds, but little is helpful for those whose job it is to actually promote it anywhere; it is a universal and transcendent value and concept, yet it is elusive and difficult to 'apply' anywhere in practice. This paper will provide an alternative, relational description of what the 'Rule of Law' is and means in international development and what work the concept does in practice. Using qualitative empirical data from 40 semi-structured interviews with Rule of Law development professionals, I explore the concept's relational social reality in international development to demonstrate how the institutional structures and procedures of international development policymaking and project work modify and fragment its meaning and meaningfulness within and among organizations and actors at multiple levels in ways that make any comprehensive understanding of it virtually impossible for those who work with it. By establishing this fragmenting relationship between concept and practice, the paper challenges fundamental presumptions and assumptions about how concepts like the Rule of Law 'work' in international development generally.

Key words: Rule of Law; development; relational sociology; practice

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STRENGTHENING THE RULE OF LAW AND GOOD GOVERNANCE AMID COVID-19 PANDEMIC IN THE GLOBAL SOUTH

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Abstract

Disproportionate curtailment measures against COVID-19 pandemic involving compulsory testing, contact tracing, social distancing, restriction of movement, wearing of facemasks, maintenance of public and private hygiene, quarantine policies, compulsory vaccination in the midst of rumors and conspiracy theories which has contributed to vaccination hesitancy, data and surveillance monitoring without due regard to civil and political rights such as consolidation of power by autocrats undermine the observance of rule of law and good governance with sweeping implications on public disorder and insecurity, disruption of electoral process and the right to dignity through unlawful use of force and torture. Socio-economic rights violations, relaxation of public procurement mechanism, lack of capacity to deliver essential services, disinformation, corruption, perversion of justice, and sexual and gender-based violence have also overwhelmed the entire global health care system. The aim of this paper is to assess curtailment measures against COVID-19 pandemic and its impact on rule of law and good governance in the Global South towards a better COVID-19 stimulus and recovery packages. It finds that the discriminatory, inequitable curtailment measures and insufficient governmental social protections and economic supports, constitute "multiplier threat" that produces structural violence against vulnerable, marginalized communities and foreign nationals. The pandemic has created scientific uncertainty that necessitate global solidarity and scientific precautionary measures through digital and telemedicine leading to important health management. The paper calls for international democracy support for electoral reforms and United Nations oversight mechanisms for rule of law and good governance to promote transparency and accountability in the management of COVID-19 pandemic that will strengthen COVID-19 respond architecture. It concludes that necessary, lawful, and proportionate curtailment measures in exceptional circumstances on "fact-specific" basis should have regard to due process and procedural justice.

Key words: COVID-19; Curtailment Measures; Good Governance; Rule of Law

Ethical Director Appointments – Comparison with Australia

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Abstract

The King Code is South Africa's corporate governance code which describes the principles of good corporate governance relevant to business decisions, for example the principles that explain when company behaviour or decisions are ethical. The King Code is relevant to both listed and unlisted companies and compliance with the Code is voluntary in South Africa. In Australia, corporate governance principles and recommendations are regulated by the Australian Securities and Investments Commission (ASIC) for listed companies and by the Prudential Regulatory Authority (APRA) for unlisted companies such as friendly societies (a form of insurer). In this presentation we discuss director appointments with reference to the King Code and the ASIC to understand unethical director appointments. In South Africa and Australia, additional company rules or codes maybe drafted by individual companies to explain good corporate governance behaviour. The focus of this presentation is not on the regulatory provisions of exchanges relevant to director appointments but simply on directors who have not been appointed properly and whether such appointments are part of ethical company behaviour e.g. appointments due to the constraints of Covid-19. This presentation will also focus on the OECD (Organisation of Economic Co-Operative Development) and its interpretation of ethics and or ethical appointments.

Key words: Ethics, King IV, ASIC, director, director appointments, OECD

Law and morality: the dilemma of separating Siamese twins within the business and human rights discourse

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Abstract
The attendant controversy that surrounds the separation of law from morality vis-à-vis treaty or normative underpinnings in the business and human rights field are primarily hinged on 'what is moral' or a 'higher morality', or what is ethical or moral for companies to do? The morality of law becomes debatable when companies determine not to do much more than the law allows. In the African context, what is important is that a designed set of rules do not result into an instrument of insecurity, stagnation, and inequality. Understanding human rights responsibilities,

impacts and socially responsible behaviour for companies is therefore an essential component of corporate risk management today. Within this space, business enterprises and transnational corporate actors operate in a complex global environment. The release of the UNGPs have further underscored the emergence of a rapidly developing set of international law norms on human rights responsibilities of businesses and multinational corporations. Understanding and demonstrating corporate respect for human rights is vital to building a culture of trust and integrity amongst local communities, investors and shareholders. This article investigates the following questions: what are the most effective means of achieving respect for and compliance with international human rights standards by African states? How have African states and non-state actors been able to synergize in designing and implementing policies within a determined focal and informal structures shaped by power? How should stakeholders approach the political and evolving discourses about implementation of social norms ingrained in business and human rights principles, ethics and ideals? Kenya, Nigeria and South Africa will be focal case studies. While investigating how the UNGPs as normative instruments can order corporate behaviour, the article argues that those who seek to separate morality from law, therefore, are in pursuit both of the impossible and the destructive.

AI for Good and the UN Sustainable Development Goals: An Anticolonial Mapping

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Abstract

Our paper seeks to use an anticolonial positioning to interrogate the aspiration of using AI for meeting the SDGs in the discourse of law and development in general and 'AI for Good' in particular. The last decade has seen the framework of law and development being brought together with heterogeneous contexts of AI deployment in the Global South. In particular, the framing of the Sustainable Development Goals and the 2030 Agenda has led to widespread proliferation of international initiatives to build projects under the rubric of 'AI for Good'. However, given that the epistemological frameworks of both 'AI' and 'development' remain contested by citizens and refugees, activists and scholars, the discourse of 'AI for Good' needs to be urgently problematised. We propose to undertake such problematisation by mapping the discourse on 'AI for Good' in its historical context of colonialism. Such a mapping seeks to illustrate how the AI for Good discourse enables continuing coloniality of relations between the Global North and South, albeit in new formats. To this end, we contextualise the 'AI for Good' discourse against the history of privatisation of development funding on the one hand, and the

datafication of Global South experiences on the other. Through such a mapping we find that even as AI is deployed increasingly in Global South contexts—be it through market mechanisms, for research purposes or masquerading as projects of emancipation—the 'AI for Good' discourse centres Global North interests while failing to adequately account for experiences of exploitation and marginalisation in the Global South. In this regard, the proposed paper highlights how an unmoderated focus on the deployment and use of AI while neglecting the exploitative processes through which data and AI is created and traded enables the prevalence of neocolonial narrative of 'AI for Good.'

Keywords: AI for good, development programs, colonialism, epistemology

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CORPORATE COMPLIANCE AS A STRATEGY AGAINST CORRUPTION: THE BRAZILIAN EXPERIENCE WITH LENIENCY AGREEMENTS

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Abstract

Countries have been reforming their legal framework to increase incentives for the adoption of corporate compliance programs, including as part of negotiated settlements. This paper is the first effort to analyzes the inclusion of requirements that prosecuted companies implement or enhance their compliance programs in Brazil as a part of leniency agreements, a negotiated method of resolving corruption cases for legal persons instituted by Law 12.846/13. I systematically examine the publicly available versions of these Brazilian agreements signed between defendants and the Federal Prosecution Service (MPF) or the Federal Comptroller General (CGU) from 2013 to 2020, in an attempt to answer the following questions: Do the agreements require the creation or improvement of compliance programs? If so, do they require an external evaluation of the program? How does the authority intend to monitor the program? I conclude that requirements to adopt or improve compliance programs are virtually universal, being present in 33 of the 34 agreements that are publicly available. The terms of the compliance mandate vary from one authority to another. The MPF is more likely to delegate the monitoring of the program to third parties, which increases the costs of the program for the firm, whereas the CGU imposes stricter reporting obligations for it to monitor the program itself, which requires more resources from the agency. The accessory obligations for compliance programs differ within the same authority, with no apparent criteria about the choices made. The Brazilian dynamic regarding compliance programs seems to pose challenges to the effectiveness and legitimacy of this strategy. This paper contributes to the study of comparative corporate compliance, a novel research field, offering an approach that, with proper caveats, can serve as a basis for analysis of other countries.

Keywords: corruption; leniency agreements; corporate compliance; Brazil.

WHO SHOULD BE LIABLE? CORPORATE ACCOUNTABILITY FOR CORRUPTION IN BRAZIL

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Abstract
The UN Sustainable Development Goals consider reducing corruption a key aspect of promoting inclusive societies and promoting development. To this end, holding perpetrators to account for their corrupt acts is an increasingly shared consensus among scholars and practitioners. Around the world, there is no shortage of reforms aiming to boost legal accountability, with a more recent focus on corporations and their executives. However, there is comparatively little reflection on the apportionment of liability among corporations, executives, and especially the controlling shareholders that dominate most large corporations outside of the Anglo-Saxon world. In this paper, we conduct a study of the sanctions imposed on the operating company, executives and shareholders in connection with the corruption scandal involving meat-industry giant J&F (2015-2021), which led to a large series of settlements and had significant economic and political implications of the country. While centered on one particular Brazilian case, the paper highlights the critical tradeoffs and policy dilemmas relating to the punishment of national champions with controlling shareholders.

Keywords: corruption, corporate liability, controlling shareholders, Brazil

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Title: Implications of Paris Agreement on Developing nations

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Abstract

Economic development has direct relationship with the environment and is bound up with capitalism which in turn emphasizes a maximum utilization of resources to create wealth. Capitalism creates the tendency to dominate and cause monopoly and selfishness or rather the desire to succeed even at the expenses of others. The world, since the Earth summit at Rio de Janiero in Brazil, is aware that development has upset the ecosystem and caused harm to the environment. In the bid to reset the dangerous movement of the hand of the clock in climate change UNFCC was held with its several Conferences of Parties which followed the Kyoto protocol. The COP21 which culminated in the Paris Agreement is the main focus of this easy. The

paper set out to discuss the agreement in relation to other protocols, especially the Kyoto protocol, and it faithfulness to the United Nations Framework Convention on Climate Change. It observed that it was degeneration from the lofty height attained by the Kyoto Protocol in addition to its several implications to the developing nations. Not only is it true that the goal of UNDP (sustainable development) may not be achieved by 2030 as envisaged but also that agenda 21 of UNCED will suffer great set back. This is subsequent to the fact that Paris Agreement did not set up mechanisms to monitor the commitment of member parties so as to achieve the said goals of cushioning the harsh effect of climate change. The paper also finds out that economy is a set of processes which is influenced and determined in relation to factors like values, education, technology, history and political structures. It equally showed that human development index of most developing nations are very low and cannot support the required change to clean energy. Sequel to these findings and observations, the paper is of the view that the emerging economies and developing nations should divert their development plans through technology transfer aided by the developed nations. The developed nations should make inventions of new technologies and industries as a result of their high human development index.

Key words: United Nation Framework convention on Climate Change, Human development index, Economy, Technology transfer, National determined contribution, Capitalism

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The problem with sustainable development: In search of alternatives for environmental law and governance

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Abstract

In this paper we argue that sustainable development, a foundational principle of the global law and governance order, is not a socio-ecologically friendly principle. We describe how this principle, which is deeply embedded in environmental law, policymaking and governance, drives environmentally destructive neoliberal economic growth that exploits and degrades the vulnerable living order. Despite well-meaning intentions behind the emergence of sustainable development, it almost invariably facilitates economic growth that exacerbates systemic inequalities and social injustices without noticeably preventing the socio-ecological destruction that threatens all life forms in the Anthropocene. We conclude the paper by examining three attempts to construct alternatives to the sustainable development paradigm that are already present to some extent in some laws and policies in the form of epistemologies of humility and care, namely *buen vivir*, *Ubuntu*, and degrowth.

Key words: Anthropocene, *buen vivir*, developmentalism, sustainable development, sustainable development goals, *Ubuntu*

Falling through the cracks: The response of the African human rights system to the conduct of non-State actors that causes environmental harm

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Abstract

Investors are significant players in the economy of a host State. These non-State actors bear increased responsibility for providing goods and services related to economic, social and cultural rights. Also, their conduct may impact the environment and the well-being of the communities they operate in. For example, Konkola Copper Mines plc (KCM), whose parent company Vedanta Resources plc, a multinational group listed on the London Stock Exchange, is Zambia's largest private employer. Its subsidiary, Nchanga Copper Mine, allegedly repeatedly discharged toxic matter into watercourses that serve as the only water source for four poor rural farming communities in Chingola, Zambia. Thus, the activities of the Nchanga Copper Mine damaged their health and farming activities. This paper will examine the response of select bodies within the African human rights system, namely the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, the ECOWAS Court of Justice, to the conduct of non-State actors that has caused environmental harm which has resulted in human rights violations. It will draw conclusions as to whether the response of these bodies has been appropriate to the challenge raised by the conduct of these actors.

Key words: non-State actors, human rights, environment, sustainable development

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Defending the Defenders: Environmental Human Rights Protection and the Escazú Agreement

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Abstract:

"Only hearing the cosmovision and ideology of indigenous peoples we can save ourselves. There is no other way. The recovery should be transformative, based on a new social contract that recognizes the centrality of their collective rights"

Alicia Bárcena, Executive Secretary, UN Economic Commission for Latin America and the Caribbean (ECLAC)

The environmental human rights of communities in Latin America are under threat leading to violence, assassinations and forced displacement. The COVID-19 pandemic has worsened the situation. According to Global Witness, in 2020, three quarters of all attacks to environmental defenders took place in Latin America, 165 persons where assassinated in the region defending their territory.

The "Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean" was adopted at Escazú, Costa Rica, on 4 March 2018, and has as its objective to guarantee the full and effective implementation of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters. The Agreement entered into force on 22 April 2021. Of the 33 countries of the region, only 12 have ratified the agreement to date. This leads to a situation in which countries are not adopting enough measures to ensure access to environmental human rights and to protect the defenders. The questions are which possibilities are being opened by the ratification of the Agreement? And which parallel measures are being taken despite nonratification?

The process of Escazú has changed national frameworks in such a way that legislation to access the rights and protections guaranteed by the agreement have become the preferred outcome for legislators. A consensus is emerging. This can have important consequences in the light of the processes of constitutional reform taking place in the continent at the same time.

The paper shall map out the legislation emerging from the process of Escazú. It shall also present a preliminary evaluation of what needs to be done and how communities on the ground could contribute to the process. The paper will be based on desk research.

Key words: environment, human rights, defenders, Escazú Agreement

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TRADE AND UN SDGs 2030: THE INTERPLAY BETWEEN PUBLIC INTERNATIONAL LAW AND CONTRACT LAW

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Abstract

The 2030 Agenda for Sustainable Development recognises international *trade* as a vector for delivering the *Sustainable Development Goals* (*SDGs*). To pursue the achievement of these goals in trade regulation and trade transactions, each separate legal regime engages different subjects and uses different sources. The proposed paper seeks to bring to light the intermingling and interaction between domestic and international law, and between public and private law, when it comes to achieving sustainability through international trade in the South and the North.

Socio-environmental interests can be incorporated in the regulation of trade through international treaties. In addition, international soft law including principles, guidelines and codes of conduct – mainly developed by international organisations – attempts to direct the behaviour of both States and traders, encouraging voluntary compliance or inspiring business

conduct. In implementing their international obligations, States may adopt internal regulations to shape the business environment; some unilateral regulations are able to reach activities that are outside a State's territorial jurisdiction. Traders, whose transnational activities specifically affect the achievement of non-economic interests, while not being legal subjects of international trade law, are the principal subjects of domestic legal orders under which they may be held liable. Traders' interactions are governed by contract law. MNEs have increasingly incorporated sustainability into their supply contracts; sustainability has thus reached the stage of a binding, private-to-private legal source – the contract – although this contractualisation of sustainability presents enforcement issues.

Conceptualising the dynamics involving subjects and sources across different legal regimes may assist in understanding how to improve the delivery of SDGs in global trade involving the South and the North. Public international law and comparative private law, as different fields of scholarship, offer separate analyses. Arguably, the legal solutions they envisage within their respective regimes can be considered complementary to each other or may suggest that innovative repackaging of public and private law is needed to accommodate environmental and trade interests within the perspective of sustainability. Thus, we attempt to address the interplay between public international law and private law on trade and sustainability. Section II and III analyse how public international law and private law currently accommodate sustainable development goals. Section IV discusses the extent to which contractual, domestic and international legal sources interact and shape each other in this respect.

Key words: SDGs, global trade, MNEs, development

Transparency at the International Seabed Authority – matter of international human rights obligations, not just good practice?

Authors:

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Hannah Lily, Independent Consultant (UK)

Abstract

This presentation will assess the content and extent of binding international obligations for State Members of the International Seabed Authority (ISA) to ensure transparency in its regulatory, management and monitoring functions. Following an assessment of current practices in relation to transparency and stakeholder engagement at the ISA, this contribution will explore the relevance of a mutually supportive interpretation of international human rights law and international environmental law (based on, among others, the 2018 UN Framework Principles on Human Rights and the Environment) to clarify existing obligations for Member States to ensure access to information and public participation in the conduct of the ISA's mandate. Through this investigation, the presentation aims to shed light on the transparency and participation dimension of the existing obligations under the international law of the sea on the protection of the marine environment in the context of the Area. The findings will be then related to 1) the precautionary principle, taking into account current gaps in the scientific understanding of deep-

sea ecosystem services and the importance of these ecosystem services for the protection of human rights; and 2) the common heritage of humankind.

The Implications of Deep Seabed Mining for the Human Right to Health

Author: Graham Hamley, PhD Candidate, University of Strathclyde

Abstract

The world finds itself at a tipping point for the future of deep seabed mining (DSM) in areas beyond national jurisdiction (ABNJ). In June of this year, the Republic of Nauru invoked Section 1(15) of the Annex to the 1994 Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea. In doing so, Nauru triggered the 'two-year rule' which mandates the International Seabed Authority (ISA) to either finalise the Mining Code within two years or, otherwise, consider applications to begin exploitation of seabed resources under whatever regulations are in place at the time. Simultaneously however, there is growing momentum for a global moratorium on DSM, with support from global corporations like BMW, Volvo, Google and Samsung. Many objections to DSM to-date are founded in its potentially catastrophic environmental impacts. However, consideration of its implications for human health have been largely neglected — a concerning gap noted by several commentators.

In my ongoing PhD research, I am investigating the ways in which DSM's anticipated effects on marine biodiversity could have knock-on implications for human health and, by extension, the human right to health under international law. This serves as a case study for applying my prior doctoral research into the linkages between marine biodiversity and the right to health, and the state obligations this gives rise to concerning the management of marine biodiversity. The potential knock-on effects of DSM on human health and the right to health is significant for two reasons. First, it plants DSM firmly at the centre of a topic that is of universal concern — public health — thus engaging a wider audience in the ongoing DSM dialogue. Second, it cements DSM as not only an environmental issue, but also a human rights issue, unlocking a package of state obligations toward management of marine biodiversity that are embedded in the right to health.

In my proposed presentation, I would begin with an overview of my research into the ways in which marine biodiversity impacts the right to health, and the state obligations this gives rise to concerning ocean governance. I would then proceed to summarise how DSM in ABNJ threatens to harm human health, and the state obligations this gives rise to under the right to health. Finally, I would conclude with my observations on whether the ISA's draft exploitation regulations for DSM contain appropriate mechanisms to satisfy states' obligations under the right to health, or whether there are any notable omissions or weaknesses.

Reimagining the common heritage of humankind – Reflections on environmental and economic governance intersections in deep seabed mining

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Abstract

This presentation builds on the authors' earlier research about the intersections between environmental and economic governance in deep-seabed resource extraction. That research reflected, for example, on the foundational role of the continental shelf doctrine in sustaining the fossil fuel economy, the potential impacts of deep-seabed mining on ecosystem services and their relevance for a variety of human rights-holders, and the ways in which international investment treaties can affect environmental decisions in areas within national jurisdiction.

This presentation will further develop this thinking as regards the legal regime for the exploitation of deep-seabed minerals in areas beyond national jurisdiction. This legal regime places at centre-stage the principle of common heritage of humankind, overseen by a multilateral institution – the International Seabed Authority.

There has been considerable debate about how the Authority might reconcile economic and environmental considerations in the exercise of its institutional mandate, partly in connection with the ongoing development of the Authority's exploitation regulations. Suggestions that international investment law principles may have a bearing on deep-seabed mining beyond national jurisdiction, for example by informing the interpretation of relevant provisions of the United Nations Convention on the Law of the Sea, have also raised questions about the interplay of economic and environmental interests in deep seabed governance.

The presentation will explore how these evolutions could (or should) affect the legal contours of the principle of common heritage of humankind, linking the reflection to wider, longer-term debates about shifting balances of economic and environmental considerations in the "law and development" literature.

Title: Ocean decade, One health and the SDGs

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Pierre MAZZEGA, CNRS, LISST (Interdisciplinary Solidarity, Societies, Territories Laboratory) Toulouse, Affiliate researcher at SCELG, Glasgow

Abstract

The United Nations Decade of Ocean Science for Sustainable Development aims to the development of good science to ensure the conservation and sustainability of the ocean and to preserve its health. Nevertheless, there is no common understanding of what the health of the ocean could encompass and definitions differ depending on the scientific disciplines concerned. The One Health approach which recognises intrinsic connection between human health, animal health and the health of the environment is advocated at the international level by the Secretariat of the convention on Biodiversity as a means to a safeguard the environment and achieve the Sustainable Development Goals. Furthermore, the role of UNEP has been affirmed, alongside FAO, OIE and WHO in their collaborative support to One Health, highlighting the importance of a biodiversity-inclusive and holistic approach.

The Unesco Intergovernmental Oceanographic Commission document « The science we need for the ocean we want » sees the Ocean decade as an « opportunity to engage the ocean science community in achieving the Sustainable Development Goals ». However, the study of nearly 5,000 scientific publications dedicated to One Health (Web of Science) on the one hand and of the IOC document on the other hand shows the gaps existing between the ongoing One Health scientific research and the goals of the Ocean decade. Through an analysis of the interlinkages between ocean-related concepts and governance related concepts, we show how the implementation of the One Health approach of ocean health may contribute to the improvement the dialogue between science and policy/law.

Keywords: One Health; SDGs; Ocean; Law and policy.

SO NEAR YET SO FAR: A REVIEW OF THE OF THE SADC MODEL LAW ON ERADICATING GENDER BASED VIOLENCE IN SOUTHERN AFRICA

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Abstract
This article critically examines the Southern African Development Community Parliamentary Forum Model Law on Eradication of Gender based Violence in the region, highlighting the positive and forward-looking provisions of the law to determine how best member states in the region can utilise it to combat the scourge. The article also highlights the shortcomings of the Model Law, specifically the fact that the Model Law is a non-binding instrument that has no legal obligation on member states; the challenge with its non-enactment by member states and inadequate awareness and publicity on its content and scope in the region. This has been the case with many other instruments that have been enacted at the domestic regional level. The

article **c**ontend**s** that gender based violence remains a huge challenge in Southern Africa, despite the variety of international and regional human rights instruments that prohibit the vice. The Covid 19 pandemic has further exacerbated the problem as many women and children have been either brutalised, killed or physically abused by men. Through jurisprudential and literature review, this article will argue that consistent effort needs to be made to address the persistent challenge of gender-based violence in the region through the variety of legal and non-legal measures proffered in the Model Law.

Keywords: gender based violence, women, children, Sothern Africa, Model law

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Conceptualising the Localisation of the Women, Peace and Security Agenda in Cameroon

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Abstract

The COVID-19 Pandemic in Cameroon met with an ongoing violent conflict that has not only disrupted the political and socio-economic life of Cameroonians but has worsened gender-based inequalities and intensified the need for civil society integration in the conceptualisation, implementation, and oversight of the women, peace and security agenda in Cameroon. Women participation and leadership in multiple-level conflict prevention mechanisms and management processes remain critical aspects of localisation across all 360 districts in Cameroon. The protection of women and girls rights (especially against gender-based violence) requires legal and policy reforms that utilise regulations, socio-legal services and budgetary allocations for disarmament programming. Emergency management programming requires adequate gender-responsiveness as well as socio-economic incertion of internally displaced persons. The prevention of violence against women through the promotion of women's rights, accountability, and law enforcement requires institutional mechanism with robust oversight processes that can build critical consciousness towards gender issues.

This research examines Cameroon's legal infrastructure and governance arrangement as well as multiple case studies of civil society organisations to develop broad-based and narrow-based approaches to localization of the WPS agenda. It examines the complexities and perculiarities of gender concerns in global, regional, sub-regional and national regulatory frameworks. It contexualises the challenges and opportunities of Cameroonian women using broad-based and narrow-based people-centered (assets-based) approaches to localisation. Hence, blending the theories of self reliance with gender and power, transformative learning, self-directed learning and experiential learning to foster the women, peace and security constituency in Cameroon.

Key words: Governance, rule of law, women's economic and political rights, peace

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Tackling the Challenges Confronting Women in the Elmina Fishing Community of Ghana: A Human Rights Framework

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Abstract

Although there are numerous studies on the role of women in coastal small-scale fisheries worldwide, little information pertaining to challenges facing women, especially in the small-scale fisheries sector of Ghana exist, and as a result received strikingly little attention in debates over policy, legal and institutional reforms within the sector. This paper unearths the challenges facing women in the small-scale fisheries sector in their daily interactions with their environment. Interviews were conducted in Elmina, a small-scale coastal fishing community in the Central Region of Ghana, to assess the situation. The paper shows that, most of the challenges confronting the women in the study area can be linked to their marginalization in decision-making processes on the issues affecting the fisheries sector. It discusses how an international human rights framework can be effective as a possible tool to respond to the challenges identified and to enhance integration and inclusion of women in small-fisheries resource management in Ghana.

Key words: Coastal fishing communities, Gender and small-scale fisheries, *Human* rights-based approach, Marginalisation, Women in fisheries.

Land as intersection for the enforceability of women's rights. An analyze of development of international law from a gender perspective and the meaning of the right of land to bolivian peasant woman

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Abstract

The evolution of the human rights law, related specially with the recognition of rights of women, shows escenarios of commun injustices and incoherences, determined by discriminatory structures that intersect them (region, cultural identity, class, economic activity). The advocacy of Bolivian peasant women presents similarities of discriminatory structure with other groups of women worldwide that must be overcome, but also the fact that some values are shared when it comes to defending life and land.

The advances of collective rights has reaffirmed the necessity of a special protection of vulnerable groups affected by unequal forces in a global world that puts in first place the

economic development base in values such as competitiveness, productivity, cost/benefit and accumulation. Women in history and present have been connected with collective claims, but also commitment with advocacy in favor of justice, dignity and life, from a differentiated way, regarding what is considered as "general" and "universal". This analize, emphasizes the possibility to transform human rights law from a collective and female point of view, regarding particular realities connected with a global perspective.

Key words: Human rights of women, gender, land, peasant and indigenus, collective rights.

Second Track: Land – the protection of land rights; access to land; land reform; land conflicts; and the land rights of indigenous persons in both domestic and international law

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Global Child Labour: Targeting Target 8.7

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Abstract

In this paper we present findings from our socio-legal study into the child labour agenda of Target 8.7 of the Sustainable Development Goals (SDGs), which stipulates that child labour in all its forms is to be eradicated by 2025.

When adopted in 2015, this target was already highly unrealistic. To complicate matters, it is estimated that the last five years have seen a steady increase in the number of children working worldwide – a development that is often related to the increasing negative impacts of the climate crisis on financially vulnerable families. Furthermore, the latest ILO figures suggest that millions of additional children will participate in child labour as a result of the Covid-19 pandemic. Despite these clear indicators, the ILO and its partner organisations are adamant in pursuing a global advocacy campaign aimed at eradicating all forms of child labour during the following four years – which is currently unfolding within the framework of the UN 2021 International Year for the Elimination of Child Labour.

The central question that drives our research is: What are the rationales behind, the importance of, and the potentially unintended consequences of pursuing a simplistic and unrealistic global time-bound goal in relation to the complex phenomenon of child labour? To provide answers to this question, we have conducted in-depth interviews with experts, practitioners, professionals and academics working in or with international organisations that make up the field of 'global child labour'. Insights drawn from these interviews, which will be presented in this paper, suggest that a small group of influential actors dictate both the current practice and discourse on the eradication of child labour without any evidence or best-practice guidance in support of their

global campaign. This has significant implications for those on the receiving end of such a strategy.

Key words: Sustainable Development Goals; Child Labour; International Labour Organisation; Global Governance.

Rethinking the gender-culture-law nexus through the lens of child marriage and bridewealth payment

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Abstract

In what ways do child marriage and bridewealth payment affect the welfare of women and girls? This question is significant for access to justice and development programming in the global South, especially in the context of the goal of peaceful and inclusive societies set out in the United Nation's 2030 Agenda for Sustainable Development. Furthermore, the 2019 Global Gender Summit held in Rwanda highlighted child marriage as a constraint to realistic gender equality. As prevalent practices in most parts of sub-Saharan Africa, the twin issues of child marriage and bridewealth payment play a huge role in the ability of women and girls to exercise their agency. Indeed, these issues stand at the intersection of an intense cultural struggle between the custodians of culture and change agents such as judges, legislators, religious authorities, and civil society organisations. Using empirical data collected in ten countries in western and southern Africa, this paper argues that culture and law are enablers and contributors to development. Furthermore, the exercise of agency by women and girls is not a self-enforcing activity but is shaped by factors ranging from deficient and poorly implemented legal structures to lack of resources, entrenched customary norms, and social pressure for normative conformity. The paper uses a needs-based theoretical approach to situate the interaction of these factors within a nuanced socio-economic matrix.

Keywords: Agency, bridewealth, child marriage, development, access to justice

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GENDER INEQUALITY AND THE RULE OF LAW

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Abstract

This study explores the association of the rule of law and gender inequality at the country level. We examine the hypothesis that adherence the rule of law is a cross-cutting determinant of gender inequality. Data comes from previously published sources to calculate the correlation between gender inequality and the rule of law, using a cross-sectional and ecological design. Control variables include economic inequality, population, GDP per capita, health expenditure per capita, education, ethnolinguistic fractionalization, and political rights and civil liberties. We find an association between Gender Inequality Index and the WJP Rule of Law Index. While the study design does not permit causality to be inferred, we propose three plausible causal mechanisms, borne out in other studies, which suggest it: (1) Weak enforcement of rights; (2) Legal frameworks that tolerate violence against women; and (3) Corruption. The first mechanism posits that when core health, education and voice (empowerment), and labor market services or entitlements are enforced by government action of through the court system, equality on outcomes for women is more likely to be achieved. The second mechanism posits that legal frameworks that tolerate or facilitate unequal standing among segments of the population with respect to violence, are likely to achieve unequal development outcomes. The third mechanism posits that weak laws and law enforcement facilitate a high prevalence of corruption, which hinders the satisfaction of the three dimensions of gender inequality measured by the GII, because diversion of resources for personal gain directly subtracts from the delivery of services to women

Key words: Gender inequality; rule of law; human rights; violence against women

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CONTRACT LAW AND INEQUALITY

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Abstract

Does contract law have any role to play in tackling economic inequality, one of the most pressing problems of our time? The orthodox answer to this question is no: contract law should promote autonomy, efficiency and/or justice in exchange, while distributive objectives should be dealt with exclusively through the fiscal system. Critics of this orthodoxy struggle with the prevailing understanding that contract law around the world has converged on doctrines that are insensitive to distributive considerations. This Article contributes to this debate by showing how courts in South Africa, Brazil and Colombia—prominent developing countries from different legal traditions—have recently diverged from orthodoxy to embrace the task of using contract law to address inequality. The emergence of contract law heterodoxy in developing countries draws attention to the existing, if more limited, instances of heterodoxy in the contract laws of the United States and Europe and to the stakes of contract law more generally. This analysis highlights how mounting inequality may increase the appeal of contract law heterodoxy and suggests that the present reign of contract law orthodoxy is neither universal nor inevitable.

Keywords: contract law; inequality; legal heterodoxy; Global South

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Blue Bonds: Legal Aspects of Financialized Ocean Protection

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Abstract

In the context of increasing demand for sustainable investments, a number of sustainability bonds have emerged. Over the last two years, blue bonds have been promoted by the United Nations and international financial institutions as financial instruments to achieve the objectives of the Sustainable Development Goals (SDG), in particular, SDG 13 on Climate Action and SDG 14 on Life Below Water. They are also increasingly presented as a tool to fulfill states' obligations under Article 2(1) of the Paris Agreement to make financial flows consistent with climate targets. Blue bonds have been fundamentally issued with the aim provide funding for sustainable marine-related activities. Nonetheless, despite the hype with which they are presented, there is no agreed definition nor a set of consolidated standards for blue bonds. Furthermore, there is no strong evidence to date to confirm that green and blue bonds are beneficial for the reduction in carbon emissions (Ehlers et al., 2020). The lack of a common understanding of blue bonds, let alone a common regulatory framework, raises concerns regarding their suitability in achieving sustainable development. Indeed, drawing on the historical and contemporary experiences of economic activities funded by green and blue bonds, this paper argues that the lack of common understanding and a regulatory framework within the blue bonds sector results in environmentally harmful activities, in contrast to its allegedly key role in supporting the Paris Agreement and the SDGs 13 and 14.

Key words: blue bonds, blue finance, SDGs, climate finance

Climate Change, COVID-19 & Coastal Communities in the Caribbean: A Renewed Role for International Environmental & Human Rights Law?

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Abstract

The CARICOM & OECS Caribbean (C&OC) are highly biodiverse, ocean-rich, small island development states (SIDS), located in the region of the West Indies. Their development is inextricably linked to a vast marine environment, which provides for tourism and fisheries as the main uses of the coast and EEZ. Despite boasting several large ocean-states whose EEZs vastly out-measure their landmasses, the region faces several unique development challenges, and is globally the most dependent on a now volatile tourism industry. In addition, climate change has emerged as the single greatest threat to the enjoyment of human rights of the region's populace, and its nexus to zoonotics, the loss of biodiversity and fisheries threaten the livelihood of the most vulnerable – coastal, rural, traditional, communities – and disproportionately affects the indigenous, women and children.

The Paper, currently in progress, examines the recent struggles by communities in the C&OC to defend their marine environmental rights in the face of environmental governance threats. This has largely been achieved by establishing the nexus between their human and environment rights through Constitutional, environmental, administrative, and public law mechanisms. Further, it explores how the impacts of the COVID-19 pandemic, have led to increasing regional recognition of the right to health as an essential element for livelihood and food security of marine and coastal communities. Despite this, like many states in the Global South, there is a chasm between the securing human and environmental rights, and acceptably addressing contemporary environmental threats in the C&OC. In this regard, the Paper will posit that recent developments at human rights-based approaches for climate action at international and regional law, constitute opportunities through which states vulnerable to climate change, can individually, and collectively pursue vital action through international co-operation. These approaches include the recent recognition that the right to a safe, clean, healthy, and sustainable environment is essential for the fulfillment of other human rights, the implications for the Global

South of the newly-minted decision to create a Special Rapporteur on human rights and climate change, and the entry into force in the LAC region of the Escazú Agreement. This analysis will allow a conclusion of the renewed role of international law in climate action, which is now especially vital for vulnerable, under-represented states.

Key words: SIDS; CARICOM & OECS Caribbean (C&OC); marine environment; human rights; climate change

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Ocean Capture? Ocean Management and Transformation in South Africa

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Globally oceans are viewed as the treasure trove for growing the blue economy. South Africa has joined this view and 'operationalised' the blue growth agenda through the development of Operation Phakisa. South Africa as an emerging economy with a legacy colonial and apartheid rule, seeks to redress inequalities and develop the economy using the National Development Plan as a roadmap. Intransigent inequality, corruption and rogue capitalism has, since 1994, made the task of restitution and economic restoration difficult. This article analyses national government's blue economy strategy and policy, which government believes is key to unlocking future growth and development in the country. It also considers government's ratification of key international climate agreements and how both signal commitment to an inclusive and transformed ocean governance. National government's continued investment in natural resource extraction, which diverges from the stated sustainability strategies. The article documents and analyses this divergence, questioning whether South Africa's oceans are at risk of being 'captured' in the same manner that other critical assets have been, eradicating opportunity for meaningful development and growth.

Keywords: Sustainability, Ocean Capture, Blue Growth, Ocean Resources

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Conserving biodiversity through Geographical Indications: An effective legal approach?

Authors:

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Abstract

Geographical Indications (also including collective trademarks) are a form of intellectual property that allow certain producers of origin-linked products to use a particular name such as Comté or Rooibos because the product's characteristics and quality depends on the physical environment and human skill and knowledge of the region. GIs are being hailed as a useful tool for sustainable development. This is because GIs can help preserve the environment and the biodiversity in a region, provide the economic rationale for producer groups to support their historical investments, culture and traditions; and preserve indigenous people's rights over their land and production practices. In this article, we will argue that while GIs can potentially have these positive externalities, they cannot be guaranteed in the legal protection envisaged under GI protection laws which tend to be rather flexible on environmental commitments. GI protection also carries risks that can further degrade the ecological environment, the quality of the product and as a result also harm the economic interests of communities it sets out to protect. We will further argue that GI laws need to be strengthened and that something more than intellectual property protection is needed if one of the objectives of GI protection for a product or a region is biodiversity conservation. GI law can borrow from other fields of the law, specifically local environmental laws, to strengthen its potential. Governments and policy makers need to look beyond the minimum standards envisaged under the TRIPS Agreement if GIs are to fulfil their multidimensional and multifunctional role (here, conservation of biodiversity). Finally, we also differentiate GIs from third-party certification standards. The identified gaps can be filled through the implementation of standards; through international environmental law principles; and through activating producer's rights over the process of production.

Keywords: Biodiversity conservation; Geographical Indications; Terroir; GI Governance; Strong Sustainability

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The role of international and regional (quasi-)judicial human rights mechanisms in ensuring reparation for arbitrary displacement: case studies from Suriname, Kenya & Spain

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Abstract

Taking a law in context approach, this paper will present three desk-based case studies on the implementation of prominent decisions of international or regional (quasi-)judicial human rights mechanisms which required states to make reparation for arbitrary displacement. The decisions examined are *Moiwana v. Suriname* (Inter-American Court on Human Rights, 2005); *MRG / CEMIRIDE (Endorois) v. Kenya* (African Commission on Human and Peoples' Rights, 2010); and *I.D.G. v. Spain* (Committee on Economic, Social and Cultural Rights, 2015).

The case studies explore the compliance and extra-compliance effects of these decisions (as documented in academic and 'grey' literature, official sources, and by stakeholders themselves); as well as the contextual factors (legal, political, social and economic) which may have contributed to these effects. The case studies are undertaken as a 'reality check' on an earlier doctrinal component of the research project, as they examine the 'law in action' following relatively comprehensive displacement reparation decisions. They aim to contribute to the growing literature on the international human rights system and on international (quasi-)judicial mechanisms which moves beyond a state compliance perspective. They also aim to shed further light on the particularities of displacement situations, which have been the subject of significant case law in international and regional human rights mechanisms, but have not yet appeared as a prominent thematic focus in the study of these mechanisms, and draw out some common reflections on opportunities and challenges for displacement reparations via international and regional bodies.

The case studies were chosen for the varied and relatively comprehensive reparative measures recommended or ordered; the range of causes of displacement that they covered (conflict-induced displacement, development-induced displacement, and forced evictions); as well as to span three different human rights systems and continents - including countries in both the global North and South, as well as both judicial and quasi-judicial mechanisms. While having been chosen because of their variation, the common thread binding these three case studies is that they represent particularly ambitious and innovative attempts by international and regional (quasi-)judicial mechanisms to respond directly to the reparation claims of rights-holders arising from acts of displacement.

Key words: displacement; reparation; international / regional human rights bodies; implementation

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Title: Land expropriation: the hidden danger of climate change response in Mozambique

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Abstract:

This paper sets out why land expropriation is a hidden danger of the response to climate change; a danger that is not adequately captured in legislation and which risks disproportionately affecting the poor. Measures to mitigate the risks and impacts of climate change are often dependent on states' access to land. The legal mechanism through which states can obtain rights over land is expropriation, but a fair expropriation process depends on a number of structural conditions that are (partly or completely) lacking in many countries: effective recognition of people's land rights; a legally detailed expropriation process and adequate administrative capacity to implement it; and respect for the rule of law and access to justice for the affected populations. Climate change exacerbates the problems that many states have with their expropriation processes: it brings new and more complex questions about the

limits of expropriation; provokes more urgent expropriations; and disproportionately impacts the poorest people. Based on legal analysis and empirical research, this paper looks into the case of Mozambique in the aftermath of Cyclone Idai to show how issues related with expropriation are a hidden danger for many Mozambicans, but also for citizens of other countries in similar situations.

Key words: Expropriation; climate change; land rights; Mozambique

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Title: Repossession and Disposition of Farmland Post Land Reform Programme in Zimbabwe a critical Analysis.

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Abstract

The north-south connection that has existed since independence between the former imperial power and the sovereign state in Africa throughout both the colonial and postcolonial eras is inextricably linked to inequitable land distribution in Zimbabwe. The study looks at the land repossession and dispossession post fast track land reform in Zimbabwe. It is the view of the study that the lines are blurred between the ruling party Zanu Pf and the government of Zimbabwe. The study also uncovered that Policy making in terms of land is approved by the ruling party ZANU PF and not the government of Zimbabwe. Although important, the focus on the radical repossession of mostly white-owned commercial farms for reallocation to millions of black families since 2000 has obfuscated attention to contradictory but silent processes of state-led dispossession of black communities living on customary land and a new wave of farmland repossession from black owners. This raises new questions about the post-colonial Zimbabwean state's evolving nature, interconnected party practices, and the intertwined land issues of dispossession and elite concentration after the November coup in 2017.The study recommendations for institutional reforms in all arms of the government, respect for the rule of law and property rights in line with the new constitution of Zimbabwe adopted in 2013.

Key words: Repossession, Dispossession, land reform, Rule of Law

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Social Policy and Developmental Politics of Indigenous Peoples in Botswana

Authors

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Abstract

The San in Botswana share similar experiences with other Indigenous Peoples around the world. Experiences characterised by resistance and advocacy against dominant patterns of development. In such a dispensation, the elites dominate the policy discourse, chart developmental trajectories to the exclusion of Indigenous Peoples. The contentions on the development of Indigenous Peoples have a historical underpinning of disclination to accept colonialism and its toxic inherent nature of changing peoples' lives under the guise of development. This article discusses the developmental contestations and politics that informs the social policies aimed at Indigenous Peoples in Botswana. The paper argues that the decolonisation endveour has not transformed the social policy as colonialism ethos still drive policy preference of the Government of Botswana (GOB). Consequent to that, the San are a people under siege, confronted with a paternalistic Social Policy that prioritises erasure of the different under the pretext of development. The article argues that social policies adopted by the GOB with respect to the San exemplifies the shortcomings of the dominant development patterns which result in the dispossession of Indigenous Peoples of their ancestral lands. This is despite the existence of international law that obligate states with protection of Indigenous Peoples. This paper concludes that the international framework aimed at redressing the developmental path and the Indigenous Peoples rights and issues is ineffective and is dependent of the benevolence of state parties.

Key words: Botswana, Development, Indigenous Peoples, Land

STATE CAPITALISM LANGUAGE IN THE ASSESSMENT OF FOREIGN DIRECT INVESTMENT FROM DEVELOPING COUNTRIES

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Abstract

This paper assesses state capitalism language in the literature on outward foreign direct investment (FDI) from the Global South. We performed a literature review of international business (IB) studies, which address corporate governance issues related to firm

internationalization, and collected evidence on Chinese and Brazilian multinational firms' corporate governance in action throughout the 2000s. The growth of FDI from emerging markets in the 2000s was unprecedented.

IB empirical studies on this subject are influential sources of knowledge and have suggested that state capitalism is determinant in emerging-market corporations' successful performance overseas. State capitalism emerges from corporate governance and takes the form of equity, debt, or directors and executives with government connections. However, the consensus over state capitalism power in emerging-market multinationals' corporate governance is a generalization from China as a typical case of FDI growth, suggested without caveats by the literature to explain FDI growth from other developing countries. Based on our comparative analysis of Chinese and Brazilian multinationals' corporate governance, we claim that generalizations regarding state capitalism in the IB literature are problematic. We confirmed previous assessments of the Chinese experience but found no similarity in government influence over corporate governance in Brazil and China.

Brazilian multinationals which performed large outward investments in the 2000s mobilized generous government financing but resisted government control and diverged from Brazilian economic diplomacy priorities. From our research results, we conclude that emphasizing the Chinese experience as something typical overestimates state capitalism power in the Global South and misleads the difference between corporate finance and corporate governance in other developing countries. Our criticism over state capitalism language is relevant, since the IB literature is an influential source of knowledge in international organizations, like UNCTAD and OECD, which makes it key in policy discourses on state capitalism and development.

Key words: Foreign Direct Investment; Corporate Governance; State Capitalism; Government Influence.

Developing countries and International Monetary system under the Bretton Woods institutions: Why the quest for reform may be a mirage and what Africa should do!

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Abstract

This paper discusses the history of the development of International Monetary regime from the gold standards legal frameworks to the Bretton Woods institutions and its contribution to the wide gap between the Global North and the Global South. It examines the incidents and problems of International Monetary system (IMS) from its inception and why it has been difficult to reform it. The paper notes that the difficulty in reforming the IMS lies at the art of the intersection between free trade, protectionism and multilateralism right from the inception of the IMS.

The paper specifically addresses the challenges and the plight of Developing countries under the Bretton Woods institutions and notes that previous experiences do not justify the intervention of the IMS in national economies. In spite of that admission, a nation in financial crisis could not but seek recourse from IMS. In such a situation of inevitability the paper turns to Africa and advises it on what it should do.

Key words: the Global North, the Global South, Bretton Woods institutions and International Monetary Fund.

Institutional Deficits and Vulnerability to Oil Shocks in the Central African Economic and Monetary Community

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Abstract

In spite of its abundant natural resources and commodity exports, the Central African Economic and Monetary Community (CEMAC) faces serious institutional challenges compromising its development. For decades, Central Africa's policy makers have been mapping out development strategies, developing reconstruction projects, building models and prescribing policies based on theories that have ignored an essential part of economic activity and performance: institutions, or the rules of the game in a society. The sub-region's worsening underdevelopment is the result of institutional deficits, systemic corruption, public spending poorly targeted and used unproductively. In development economics, institutional efficiency provides a valid testing ground for assessing the wealth and poverty of states. In any given context, institutions can either bring about growth, good governance, war and conflict, higher efficiency or economic decay.

To achieve sub-regional development objectives, strategies prescribed by international financial agencies coalesce around substantial structural reforms, namely a sizable fiscal adjustment to help avert the depletion of and start rebuild reserve assets in the short term; strengthening public financial management; enhancing the business environment; and fostering country-specific steps needed to restore sustainable growth. These objectives will be supported by regional actions to tighten monetary policy and liquidity management consistent with external stability and strengthen the financial sector.

Referring to recent oil shocks in Central Africa, this essay explains how institutions are at the core of growth and socio-economic development and sets out the conceptual framework from which such assumptions are drawn and developed. It argues that Central Africa's weaker institutions have produced transversal stagnation, economic decay and underdevelopment. The analysis underscores that it is important for policymakers and regulators to consider tradeoffs and synergies between institutions, social change, good governance, project management, public spending, and economic growth. Referring to policy strategy and the way forward, I note that adjustment programmes should be investment-oriented, results-based, and growth-friendly. However, having regard to institutional deficits, unproductive public spending and poor project planning, I conclude that Central African countries would be unable to fully offset the loss in oil revenues with structural adjustment measures; and that regional and national institutions face severe capacity constraints and should be trained to optimise development reforms.

Key words: Central Africa, Institutions, Oil Shock, Public Sector Economics

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Nexus between teleworking and economic development of the country: the case of Uzbekistan

Panelists:

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Abstract

New flexible working arrangements started to emerge in the 1970s and became a widely discussed topic. Since then, studies have been devoted to exploring the various aspects of teleworking, however, despite the numerous positive effects of a new model, this working pattern was not as widely introduced and implemented as scholars had predicted. The crisis of the Covid-19 pandemic has changed the everyday life of the people globally, which in turn made the teleworking a subject of discussion.

This research thoroughly reviews extant literature and presents the phenomenon of teleworking from different angles. The paper also presents the results of the online survey carried out for the first time in Uzbekistan with 133 employers that experienced the remote working of their employees during the pandemic. It helps to examine the perceptions and attitudes of employers towards this model of work and thereby identifies the features and problems causing its slow adoption in the country. Hence, this paper aims to explore the patterns of development of teleworking in Uzbekistan and provide policy recommendations on its further development to assist the private sector based on the conducted quantitative analysis and the literature review. Our initial working hypothesis is that Uzbek organizational culture is the main issue hindering wider use of teleworking. We base our findings on the analysis of the descriptive statistics of the obtained dataset.

Noteworthy that more than 80 percent of respondents of the online survey represent the private sector, which we believe is the main actor in labour market. The private sector is assumed to be more flexible towards designing and implementing a teleworking program. Therefore, our initial findings propose to study this novel field further and encourage the Government and other organizations to prioritise the introduction of teleworking by developing a sound legal basis and designing effective programs.

Key words: Teleworking, Uzbekistan, economic development, survey

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Social Resilience during pandemic times: civil society and community mobilization in authoritarian regimes. *Case of adaptive capacity in Uzbekistan in the era of COVID-19*.

Panelist: Tolibjon Mustafoev, Sociology of Law Department, Lund University
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Abstract

The purpose of this paper is to further contribute to the national and a broader understanding of the nature of the civil society engagement formulas and practices into state crisis management agenda in authoritarian regimes. This project contends interdisciplinary research of social adaptive capacity in a frame of sustainable development by concentrating on a broader conceptualization rather than just area studies. More precisely, it examines the understanding of civil society concepts in an authoritarian context and the current drivers of community resilience aligned with the agenda 2030 of the Sustainable Development Goals. Forms of representation of civil society in a public policy are interlinked with the socio-political motives of the states and the political will in many authoritarian states, thereby studying the community behavior is an emerging area to better understand the social resilience phenomena. Notably, the covid-19 pandemic challenged many societies in terms of social engagement in building the state agenda on dealing with the nationwide crisis, however, most of the nations, including the ones living under the heavy-handed bureaucratic governments, had certain responsive and active manner to deal with new socio-economic problems. Consequently, a covid-19 response by people themselves challenges the existing academic theories on the absence or weak presence of civil society in authoritarian countries, like in Uzbekistan. Many previous socio-legal and socio-political researchers analyzed the case of civil society in Uzbekistan and concluded that people are not active in terms of representation of themselves in national agenda building processes because of certain political and social aspects. However, community mobilization cases in Uzbekistan during the Covid-19 pandemic show that civil society in this country has a responsive and appearing practice when it comes to dealing with the crisis. Thus, this paper is grounded with the social resilience theory and the social sustainability concept to analyze the adaptive capacity and the community mobilization practice in Uzbekistan in the era of Covid-19.

Key words: social resilience, Covid-19, Uzbekistan, authoritarian regimes

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Can Liberalization be Measured in Terms of Worldwide Governance Indicators? Insights from Central Asian Countries

Panelist : Berdymyrat Ovezmyradov, Sociology of Law Department, Lund University, +46762889514, berdyovezmuradov@gmail.com

Abstract

There is no single accepted measure of a country's liberalization level. The Worldwide Governance Indicators by World Bank can be suitable measures of at least certain aspects of liberalization. The aggregate indicators based on surveys and expert assessments worldwide present easy to interpret ranges: from approximately -2.5 (weak) to 2.5 (strong) governance. The regulatory quality indicator is related to economic liberalization since it can reflect the ability of the government to implement sound regulations promoting private sector development. The voice and accountability indicator is related to socio-political liberalization since it can reflect the freedom of expression, freedom of association, free media, and the extent of participation in selecting a government. The government effectiveness indicator is related to political liberalization since it can reflect independence from political pressures and policy formulation and implementation. Finally, the rule of law is a relevant indicator because liberalization policies cannot succeed without the quality of contract enforcement, property rights, the police, and the courts (which the indicator can reflect). Though a set of selected quantified indicators cannot capture every aspect of liberalization, the Worldwide Governance Indicators can be highly valuable in the country-level comparisons within regions such as Central Asia in the absence of other quantified measures. Though indicators are imperfect and often criticized, the governance estimates allow judging the relative progress made by Central Asian countries in essential aspects of liberalization.

Key words: Central Asia, liberalization, governance, rule of law.

Law and Development: Southern Voices for the South

Panelist: Abdul Paliwala

Abstract

This paper is in part based on my contributions to Adelman and Paliwala eds, The Limits of Law and Development: Neoliberalism, Governance and Global Justice. Routledge, 2021 and Adelman and Paliwala eds. Beyond Law and Development: Beyond Law and Development: Resistance, Empowerment and Social Injustice. Routledge in Press.

I propose that a key task is that of decolonisation of meaning. This involves first a deconstruction of the terminology of law and development, so as to rip it of colonial and postcolonial meanings and hegemony. The idea of development was in fact originated in the global South by Sun Yat Sen and Haile Selassie, but then taken over and converted into

something different by the postcolonial Development and Law and Development industry. This process of decolonisation of meaning is serendipitous with an understanding of the real needs, wishes and desires of the peoples of the global South. I suggest that in this respect all that goes under the terms development and law and development has been mere sticking plasters in the real struggles of global South peoples against global social economic environmental cultural and legal injustices. Thus the voices of the global South, especially the relational epistemologies of Ubuntu, Buen Vivir, Sumak Kawshay and Maori Tē Atānoho become key to a Southern based reconstruction of the global social, economic, cultural and environmental and legal justice.

Law and Development in Africa: Theory and Practice

Panelist: Mashood A, Baderin, LLB (Hons.), BL, LLM, PhD, FHEA, *Professor of Laws,* School of Law, SOAS, University of London, Thornhaugh Street, Russell Square, LONDON, WC1H 0XG.

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Abstract

This Very Short Introduction provides an authoritative perspective on the evolution and nature of Islamic law, analysing its theory, covering the history and nature of Islamic jurisprudence; its scope, covering Family Law, Inheritance Law, Financial Law, Penal Law, and International Law; and, finally, its practice, covering the administration of justice, and the future of Islamic law. It takes into account both classical and modern scholarly perspectives in examining the various facets of Islamic law, to provide an overview of this key legal system.

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