

Ada Ordor\* and Faizel Ismail

# Mapping Law and Development from African Perspectives: An Overview

<https://doi.org/10.1515/ldr-2018-0021>

**Abstract:** This piece provides an insight into various contributions made by participants at the Law and Development Conference 2017. Participants converged in Cape Town, South Africa in September 2017 from institutions in different parts of Africa, as well as from other continents to deliberate on the theme of law and development from African perspectives. Over six panels of presentations, contributors wove a collective tapestry of reflections, critiques, debates and ideas showing the intersectionality of different fields of law in constructing, shaping and re-defining multiple development pathways for various constituencies. These discourses present a matrix of needful conditions, content and uses of law for its optimal application to development processes in and for the continent of Africa.

**Keywords:** law, development, Africa

## 1 Introduction

The Law and Development Conference annually organised by the Law and Development Institute since 2010 came to Africa for the first time in 2017.<sup>1</sup> On 7 and 8 September 2017, the Centre for Comparative Law in Africa at the University of Cape Town partnered with the Law and Development Institute to co-host the 2017 Law and Development Conference on the theme *Law and Development from African Perspectives*. Over the two conference days, more than 40 papers were presented around various streams as follows: Legal Pluralism and Effective Governance, Law and Industrial Promotion, Intellectual Property Rights for Development, Poverty and Sustainable

---

<sup>1</sup> The conference was hosted with the generous support of the TY Danjuma Fund for Law and Policy Development at the University of Cape Town and Walter de Gruyter GmbH, both of which are gratefully acknowledged.

---

**\*Corresponding author: Ada Ordor**, Centre for Comparative Law in Africa, University of Cape Town, Rondebosch 7701, Cape Town, South Africa, E-mail: [ada.ordor@uct.ac.za](mailto:ada.ordor@uct.ac.za)  
**Faizel Ismail**, Faculty of Law, University of Cape Town, Rondebosch, South Africa  
<http://orcid.org/0000-0002-4281-8447>

Development, Law and Natural Resources as well as Human Rights and Conservation.

The enthusiasm, responsiveness and vibrancy that defined participants' engagement with the many pertinent issues as conference sessions unfolded signalled clearly that the Law and Development Conference had come home! Many valuable papers were presented on a wide variety of topics, and in this special issue, we present some of these insightful perspectives on how law engages with its environment in various parts of Africa.

## 2 Legal Pluralism and Effective Governance

Writing on “African Union Agenda 2063 and the Imperative of Democratic Governance”, Osy Nwebo presents an important overview of Africa's developmental path which identifies the democracy paradigm as the appropriate governance framework for Africa's forward-thinking Agenda 2063 plan to yield the intended outcome of sustainable development. The usefulness of determining a suitable foundation is all the more critical, given the depth of legal pluralism that is characteristic of the African continent as Elizabeth Bakibinga-Gaswaga discusses in her paper titled “Unpacking Legal Pluralism in Commonwealth Africa: Towards Strengthening Methods for Rule of Law Programming for Development”. Noting how pluralism underpins much of African legal frameworks, Bakibinga-Gaswaga emphasises the importance of localising programmes and interventions to strengthen the rule of law in Africa by recognising and incorporating African normative values and systems into such efforts.

On a related note, David Finnegan problematises a key assumption on which law and development efforts have proceeded, namely the supply of legal institutions by the state. In his paper, “Demand for Law in the African Private Sector”, he emphasises the importance of understanding the factors that inform the social demand for law while also recognising that this demand occurs at various levels, particularly in societies characterised by deep legal pluralism. Using empirical research results from business firms in Tanzania, Finnegan discusses a range of issues that shape private sector response to law reform in developing and transition countries.

Jonathan Bashi discusses Organisation for the Harmonisation of Business Law in Africa (OHADA) and the making of transnational commercial law in Africa in a similarly titled paper. This topical discourse goes beyond simply describing the make-up and work of the OHADA<sup>2</sup> to analyse its character as

---

<sup>2</sup> In French, Organisation pour l'Harmonisation en Afrique du Droit des Affaires.

transnational law, its connectedness to global governance systems and its prospects as a law and development vehicle in Africa.

The success or failure of law in development processes is particularly tested in the public procurement space and Thato Thoeba takes on this dimension in her article on “Neoliberalism and Anti-Corruption Strategies: The Case of Public Procurement in Lesotho”. This work highlights the unsuitability of anti-corruption programmes designed and packaged by international donor agencies when directed towards installing a particular brand of democracy. Thoeba draws attention to the necessity of considering the socio-political, cultural and economic contexts of recipient states in designing development programmes, if they are to be effectively deployed.

### 3 Law and Industrial Promotion

Yong-Shik Lee’s article titled “Law and Development: Lessons from South Korea” draws out the central elements, particularly legal and institutional factors, which account for the remarkably rapid economic growth achieved in that country in the space of three decades. Lee identifies these elements to include government-led economic measures implemented through law, within a flexible and adaptable framework, supported by customised institutions, all of which point to strong and purposeful leadership capable of motivating and directing a supportive citizenry.

“Has it Reinvented Iron Law? South Africa’s Social Industrialisation, Not Iron Industrialisation” is the question posed by TK Pooe’s article in which he persuasively critiques a law and development paradigm that failed to prioritise industrialisation, as much as it did social justice, in post-apartheid South Africa. It may be observed in relation to the *law and industrial promotion* track that levels of industrialisation notwithstanding, stock markets have been in place as a thriving feature of the organised private sector in Africa for decades, with significant internal success but varying degrees of connectedness to the global economy. This then prompts the question: what accounts for the differing degrees of development found in African stock markets? Flora Huang and Horace Yeung explore this dynamic in their paper “Law-Finance-Growth Nexus in the Context of Africa” and conclude that factors other than law and finance, such as politics, trade, education, technology, culture and colonial ties play influential roles for development.

Colette van der Ven, writing on inclusive industrialisation, foreign direct investment (FDI) and small and medium enterprises (SMEs) in sub-Saharan Africa, skilfully examines the intersection and interplay between FDI and policies promoting SMEs in sub-Saharan Africa. Van der Ven comes to the

conclusion that the FDI–SME intersection provides something of a crucible where inclusive and sustainable industrialisation on the continent, as envisaged by Goal 9 of the sustainable development goals, can be forged.

## 4 Intellectual Property Rights for Development

If the prioritisation of industrialisation is key to development as the track on law and industrial promotion demonstrates, intellectual property governance, in turn, significantly impacts on the pace of industrialisation. This track points to the importance of tailoring intellectual property regimes to balance the protection of intellectual property rights with the accessibility of creative inventions and innovations for development.

Caroline Ncube’s paper on “The Creative Industry and South African Copyright Law” shows how strong copyright regimes which are potentially beneficial in a developmental context need to be complemented by a range of other measures in order for creativity to be incentivised and accessed. These measures include entrepreneurial capacity building, the use of statutory and contractual exceptions and limitations as well as statutory mechanisms such as the reversionary interest. This discussion is done within the South African intellectual property regulatory landscape.

In his paper “Digital Rights Management System and Administration: A Wake-Up Call for Nigeria”, Ridwan Lanre Ajetunmobi discusses ways of protecting creative works that are expressed in digital form, given the increasing ease of copying and distributing such works via the Internet. He examines the subject from the standpoint of Nigeria’s copyright regime which is in the process of amendment, specifically to make provision for digital rights management and protection. The intellectual property for development segment concludes with Nkem Itanyi’s discussion of a range of compelling issues to be considered in making intellectual property rights more realisable in environments that present severe challenges to enforcement, in the article titled “Enforcing Intellectual Property Rights in Nigerian Courts”.

## 5 Poverty and Sustainable Development

This track features conference keynote speaker, Wouter Vandenhoe, writing on “Rethinking Human Rights Law and Poverty Alleviation”; Martin Skladany on “Macro-Aid: Applying Microcredit’s Group Liability Principle to Foreign Aid”;

and Jane Ezirigwe on “Food Security in Nigeria: Law as a Tool for Ensuring Contributions of Small Scale Women Farmers”.

Vandenhoe reflects on the multi-dimensional facets of sustainable development, as a precursor to an exploration of the adjusted roles this might create for human rights in development contexts. This article discusses that human rights paradigms would have to recalibrate when development is no longer premised on classical notions of economic growth, but on a necessary balance of economic, social and ecological sustainability. Skladany makes a carefully reasoned proposal for a macro aid framework for qualifying developing countries. In this framework, a system of collective accountability, such as that used in micro-credit schemes, is applied to the allocation and management of aid funds. Ultimately, the aim is to advance developmental outcomes by improving the stewardship of development assistance by receiving countries. Concluding this segment, Ezirigwe insightfully discusses nuanced challenges faced by women in subsistence farming and other forms of small-scale agriculture in Nigeria and proposes law and policy interventions to address their particular needs.

## 6 Law and Natural Resources

The final track on *law and natural resources*, not surprisingly, received vigorous attention from various dimensions. This segment commences with Johan van der Vyver’s piece on “Land Reallocation and the Protection of a People’s Right to Mineral Resources in Africa: International and Municipal Perspectives” in which he explores the delicate subject of land reallocation for development and government control of mineral resources, with a special focus on Zimbabwe and South Africa.

Writing on “Justifying the Right to Water in Nigeria: Fiction or Achievable Panacea”, Irekpiton Okukpon and Ijeoma Anozie systematically examine the framework of obligations created by international instruments in relation to the provision of potable water. Using South Africa as a reference point for the protection of the right of access to water, they discuss the prospects and imperative of securing a legal pronouncement on the right to water in Nigeria.

“Three Mining Charters and a Draft: How the Politics and Rhetoric of Development in the South African Mining Sector Are Keeping Communities in Poverty” by Anri Heyns presents an account of the progression of South Africa’s mineral regulatory framework, in the post-apartheid era. Heyns draws attention to the frequency of regulatory change in South Africa’s mining sector as an indication of the highly contested terrain that it is. She further insightfully shows

how a sweeping rhetoric of poverty alleviation may end up in the enrichment of a few elite rather than in the advancement of equitable development.

The imperative of securing corporate compliance with business and human rights principles in Africa's extractive industries is the focus of the paper by Oyeniyi Abe and Ada Ordor. Within this framework, they examine the value of an African regional criminal court proposed by the Malabo Protocol in determining corporate liability for human rights violations.

In their exploration into "Wildlife Poaching and Rule of Law in Africa", Paul Zwier and Sergio Glajar highlight the complexities which justice system practitioners have to deal with in efforts to uphold the rule of law in key development contexts in Africa. This is exemplified in the interplay of cultural value systems and identities with common law rule-making ethos and jurisprudence, a dynamic engagement which is particularly pronounced in efforts to define, enforce and redefine the law in relation to wildlife management in Kenya and broader developmental issues on the continent.

The rich discourse in this special issue is capped off by Sara Ghebremusse's reflection on "Good Governance and Development in Botswana – The Democracy Conundrum". In this piece, Ghebremusse incisively analyses the combination of factors accounting for Botswana's record economic growth as a resource-rich developmental state. In particular, the article reflects on the departures presented by this success story from widely held notions of the indispensability of conventional forms of democracy to development.

## 7 Conclusion and Acknowledgements

It remains to be reiterated that the authors have done an excellent job of articulating various compelling facets of development confronting diverse African countries and contexts. Similarly, the sterling input of anonymous peer reviewers who carefully signposted ways of improving the packaging of contributions is gratefully acknowledged. The enthusiastic response to the call for papers at the onset provided the first hint of how successful the conference would be, and for this, we thank all the scholars, researchers and practitioners who responded to the call for papers as well as all conference participants who made the considerable effort to attend. The conference service team made up of CCLA staff, UCT Law@Work and UCT Law postgraduate students ensured a seamless integration of all dimensions of the conference and are gratefully acknowledged. Director of the Law and Development Institute, Professor Y.S. Lee is hereby specially acknowledged for bringing this important conference to Africa. The depth and breadth of engagement captured in this volume leave no

doubt that many more dedicated law and development conferences will follow in the years to come. We leave you with a special issue of the *Law and Development Review* which presents a variety of subjects, altogether clearly indicating that from an African perspective, every field of endeavour has a law and development context.

Reproduced with permission of copyright owner.  
Further reproduction prohibited without permission.