



## COVID-19 and After: Agenda for the Legal Profession in Africa

### Conference Report - January 2021

Co-hosted by:  
Institute for African Women in Law (IAWL)  
Law Society of England and Wales (LSEW)  
The Raoul Wallenberg Institute for Human Rights and Humanitarian Law (RWI)

Pan African Lawyers Union  
3 Jandu Road, Corridor Area  
P.O. Box 6065  
**Arusha, Tanzania**  
+255 27 254 3192 (landline)  
+255 68 507 8794 (mobile)  
[secretariat@lawyersofafrica.org](mailto:secretariat@lawyersofafrica.org)

# Table of Contents

Summary	2
General recommendations (specific recommendations per theme are available below)	2
Key Discussions	3
COVID-19: Impacts and responses	3
Recommendations	4
Women & Gender: Inequalities Exacerbated by COVID-19	4
Recommendations	6
Technology: Opportunities and Challenges	6
Recommendations	7
Human rights and the civic space	8
Recommendations	9
Restitution of African Heritage	9
Recommendations	10

## Summary

The Pan African Lawyers Union (PALU) hosted its first virtual conference for the year 2021 a three-day, six-session event from January 27- 29. With COVID-19 as its theme, the conference addressed different aspects of the pandemic's impacts on the legal profession in Africa and how lawyers, legal firms, bar and law associations, courts and regional bodies such as the African Union and regional courts have been responding. The impact on the profession has been more than just financial. Restrictions introduced by governments to curb the spread of the novel coronavirus have constrained civic space and a wide range of fundamental human rights and freedoms, such as freedom of expression and information, and assembly. In turn, such restrictions have affected lawyers' ability to do their work. Lawyers have a key role to play in protecting human rights and the civic space, in particular through strategic litigation, not just during the pandemic, but in general. On the other hand, the adoption of technology by courts, legal practices and the African Union have helped transform the legal profession by allowing remote work and flexible hours. This, however, leaves behind those without access to the internet or those lacking digital literacy skills, hampering their ability to access justice. In addition, while working from home is seen as a positive development, it is likely to disrupt the professional lives of women since by being at home they are spending even more time taking care of children and participating in their education since schools are closed. However, on the positive side, the pandemic has curbed down the stigma of hiring women as it has shown their male counterparts how women are able to cope with family and work, by working remotely. In general, women in the legal profession continue to face barriers and inequalities, including cultural and patriarchy, unequal access to opportunities, gender wage gap and sexual harassment. Speakers and participants further addressed the importance of online tools in enabling lawyers to continue learning and building on their capacities for legal tech and continuing legal education, particularly in light of disruptive technological changes. Finally, the conference had a discussion about restituting African heritage through strategic litigation, and strategies to increase awareness about the significance and importance of such objects.

## General recommendations (specific recommendations per theme are available below)

- Embracing technology and reviewing how to improve technology's use in the legal profession to further enable access to justice.
- Lawyers need to engage in strategic litigation through collaborations to protect human rights and the civic space.
- Lawyers need to engage with others stakeholders, including techies to innovate and to protect data privacy.
- Legal practitioners need to have meaningful engagement with other stakeholders to enhance legal reform.
- Governments need to adopt gender quota rules to ensure equal representation of women.
- African Union should implement reform to the procedure of electing judges so that females are better represented at different regional courts and tribunals.
- Universities need to develop short-term programmes and courses for registered lawyers to continue their education and build on their capacities. Bar schools should teach students about how to effectively use technology.

- African art and heritage restitution can be achieved by encouraging governments to take necessary measures towards their return.

## Key Discussions

### COVID-19: Impacts and responses

With COVID-19 continuing to wreak havoc and upend people's lives across the world, speakers and participants discussed its impacts on the legal profession and human rights in Africa, and ways to respond such as by passing laws to find new ways of living and working to ensure respect of the rule of law as highlighted by Emeka J.P. Obegolu, PALU President and chair of a roundtable held on the first day of the conference and titled "COVID-19 and After" Agenda for the Legal Profession in Africa."

When COVID-19 struck, many lawyers, legal firms, judicial bodies, and African intergovernmental organizations lacked the required measures, policies and tools to effectively respond to the disruption caused by the crisis. This has forced them to innovate and adopt new methods of working to ensure continuity.

For example, most African Union instruments "do not have provisions for emergencies of this nature. We found most of our instruments are unable to address external and internal issues arising," Stephen Buabeng-Baidoo from the Office of the Legal Counsel (OLC), African Union Commission, explained. The OLC, which serves as a centralized legal service for the AU, moved to enact general guidelines to ensure continuity of work. These included commanding all organs of the AU to allow teleworking, adopting online signatures and requiring staff to communicate utilising official channels, introducing new types of leaves such as rest and recuperation for critical staff members, and introducing a roster system for critical staff, such as the Africa CDC, to ensure maintenance of social distancing.

Across several African countries, courts have started holding hearings virtually to minimize risks. In Kenya, an online filing system to enable litigants to have their cases heard by the judiciary via a virtual platform was introduced. The system, however, presented several challenges including concerns about confidentiality and etiquette, lack of access to ICT equipment, connectivity issues, and digital illiteracy. "It is very important to review the system and to improve on it especially for litigants who have no law firms representing them or can't access online services," Wachia Kilel, a legal specialist with the International Development Law Organization (IDLO), opined.

Other participants throughout the conference highlighted the important role of technology and agreed that more needs to be done to address limitations and challenges (**See Technology: Opportunities and Challenges**).

To overcome the challenge of lack of access, Linda Kassonde, Vice President For Africa at the Commonwealth Lawyers Association (CLA), suggested going the route of encouraging virtual sessions in commercial cases where litigants have the means or when all parties agree to virtual sessions.

The pandemic and the ensuing economic downturn also affected the legal business and practice. For Kassonde, “It is key to use this opportunity from the crisis and follow where the money is”. The pandemic is also an opportunity to improve systems within one’s legal practice and is a good time to hone leadership skills and manage staff through this crisis while recognizing staff welfare during this tough time.

## Recommendations

- Embracing technology and improving these tools.
- Legal firms need to take into account staff’s well-being during this difficult period. They also need to work on improving their systems and leadership skills.
- Encouraging virtual court hearings for litigants with the means.

## Women & Gender: Inequalities Exacerbated by COVID-19

Women in the legal profession face many challenges and inequities. These include gender stereotypes, discrimination ingrained in the culture, gender wage gap, sexual harassment, and lack of participation in specialized areas dominated by men, such as the legal financial sector and mining law.

A male-dominated system, which is not confined to Africa, is one of the challenges identified in a 2019 research by the Law Society, Lizzette Robleto de Howarth, international programmes manager at the Law Society for England and Wales said in a session titled “Women in Leadership in the Legal Profession in Africa”. This system expects women to deliver a bigger role in domestic lives, which is detrimental. Women of child-bearing age are perceived as not committed to the job. Returning to work after maternity leave is one of the biggest issues women face. There is a double burden of unpaid labour in the domestic sphere vs paid work, forcing women to work a great deal harder.

COVID-19 has further exacerbated these inequalities. With women working from home, they also have to take care of their children and participate in their education from home. For Robleto de Howarth, working from home demonstrated that flexible and agile working is possible and boosted productivity. However, it is important to establish boundaries between home and work which have become blurred, she warned. The pandemic has also been dangerous for domestic violence victims trapped by lockdown measures.

Throughout the conference, participants and speakers discussed different strategies to overcome these challenges that stand in women’s way. Pheona Nabasa-Wall, President of the Uganda Law Society, discussed the importance of employment quotas and gender balance in recruitment, explaining that Uganda’s adoption of a gender balance certificate to ensure equal representation of women in recruitment, had a great impact on employment gender balance. South Africa adopted a similar policy through The Black Economic Empowerment Code to require companies to comply with employment equity codes in terms of gender and race.

Adopting sexual harassment policies and zero-tolerance against sexual harassment is also key. For example, Uganda Law Society has a legal aid project that does public awareness campaigns around sexual harassment and is encouraging law firms and other corporate institutions to speak about the issue. While anti-sexual harassment laws exist in certain contexts, ensuring their proper and effective enforcement is a challenge. There is a need to concentrate on mindset and stigma to talk about harassment. Providing training to businesses on sexual harassment is also key. In businesses, no one has the time to sit with an employee to train them on sexual harassment, the dos and don'ts. It can only be done through education, Rehana Khan Parker from Women Lawyers Academy said.

Robleto de Howarth emphasized the need for political will and a holistic approach. Law firms and societies can also support women returning to work by creating spaces that cater to their needs (for example, childcare facilities).

Jarpa Dawuni, Executive Director at the Institute for African Women in Law (IAWL), highlighted the importance of looking at traditional systems that allowed women to have leadership roles vis a vis man in Africa, including spiritual roles and taking part in wars, and realize that this is something that is indigenous to Africa and is not imported. "As women, we need to re-engineer our thinking about leadership and take our leadership positions."

The challenges women face in regional courts and tribunals in Africa were also discussed in a session held on the second day of the conference.

Judge Monica Kalyrgira Mugenyi of the Court of Appeal of Uganda; and Former Principal Judge of the East African Court of Justice (EACJ), discussed inequalities at the EACJ, which when it was first constituted, had only 2 female judges out of 11. In terms of staff, there are 11 females and 13 males, so it is more balanced at the lower levels. When it comes to professional staff, the four top positions are occupied by men.

In addition to unequal representation of women, male ego also often impeded collegiality and progress, Kalyrgira Mugenyi said. There is also a tendency from male judges not to take seriously points raised by female advocates and consider them as simplistic. Finally, trying to balance life and work often impedes the performance of women and leaves them with little opportunities for career development.

Women judges are better represented at the African Court on Human And Peoples Rights (AFCHPR). They hold 6 of the 11 seats. Inequalities, however, still exist at the level of employed staff, Robert Wundeh Eno, Registrar at the AFCHPR said. For example, out of 58 professional staff, only 8 are females. At the unit level, only two out of 16 units are headed by women. To address this inequality, Eno emphasized the importance of passing legislation supporting and establishing gender parity. For example, he cited new rules of the court adopted on September 26, 2020, which established that in the composition of bureau gender parity shall as far as possible be observed.

Beyond this unequal representation at the AFCHPR, there are also other challenges affecting witnesses, staff, and victims such as sexual harassment, lack of means to access the court, women applicants lacking access and knowledge of procedures. Some of the measures taken by the court were reducing short term

positions as much as possible (a commission of inquiry with the AU found that sexual harassment targeted mainly short term staff because their conditions are more vulnerable), implementing a legal aid program to facilitate access to the court, and providing female complainants with the ability to see female staff members in cases where they prefer to talk to a woman.

For Renifa Madenga, the challenges and inequalities women face in regional courts and frameworks are not just about the legal frameworks but also other embedded imbalances like patriarchy. People think women are relegated to domestic roles and reproduction, and women judges are constructed like they are rebelling against norms in society, she explained. She also emphasized the importance of gender balance to help ensure women victims are heard.

## Recommendations

- Law firms, law associations need to adopt zero-tolerance policies toward sexual harassment.
- Law firms need to create spaces for women returning to work after maternity leaves (such as child care facilities) and promote flexible hours.
- Law associations need to conduct more research projects to gather quantitative and qualitative data on topics that remain hidden, such as the impact of mental health issues and menopause on women in the legal profession.
- Women need to work together and support each other and also work with male champions and feminist men.
- The African Union should adopt uniformity in terms of criteria used to ensure gender equality and representation across the board.
- Need for an AU decision and political will to implement reform to the procedure of electing judges so that females are better represented at different courts.
- The AU tribunals and courts need to provide for gender considerations in recruitment. It can, for example, encourage those who recruit to be more sensitive to gender and recruit more women or facilitate employment for spouses of those who get employed in these tribunals. Demographic considerations must also be factored in and addressed (for example, the relocation of a wife or a mother to another state is a lot more difficult than that of her male counterpart).
- The AU should publicise judgements and decisions of courts, especially those affecting gender.
- Considering virtual court hearings, to ensure continuous judicial hearings.
- There must be a deliberate and intentional move to review the appointment of judges and staff so that gender balance is ensured.
- Lawyers need to be at the forefront of law reform in support of gender equality.
- Governments need to adopt and implement gender quota rules.

## Technology: Opportunities and Challenges

Technology's adoption increased during the pandemic, presenting both opportunities and challenges. International Development Law Organization (IDLO) coped with the pandemic by embracing technology and supporting partners to use technology to ensure they meet their obligations and mandates. Courts in

Kenya and Nigeria started offering virtual hearings. The Africa Union instituted teleworking and digital signatures and came up with a platform to host the election of senior AU leadership virtually.

Technology also provides Africans in the legal profession with the opportunity to continue their legal education and build on their capacities. Speaking at a session titled “Legal Tech and Continuing Legal Education in Africa,” Stephen R. Karangizi, director of the African Legal Support Facility (ALSF), which develops and proposes courses for capacity building, the cost of live education is higher, and materials available online do not relate to Africa. “If we don’t move online, we don’t have a paradigm shift,” he said.

Another platform introduced at the conference was Lawtrella which enables continuous legal development for lawyers in Africa. A consensus was reached that Continuous Legal Education should be available, accessible and affordable to any lawyer in Africa regardless of where they are. Technology can help achieve this.

According to Linda Bonyo, Executive-Director at the Lawyers Hub/Africa Tech Law Association, COVID-19 acted as an accelerator of innovation and of technology’s role in the legal profession, which always comes last in adopting technologies.

However, technology adoption is leaving behind those who lack access to the internet and digital literacy, further hampering their access to justice. “The primary problem is access to technology, so many lawyers and younger ones, in particular, can’t afford data, even some people don’t have access to email,” Wachia Kilel said at the opening roundtable.

Restrictions imposed by governments, such as network shutdowns, also hamper such access. While COVID-19 has forced us to rely on more virtual platforms and there has been positive usage of technology during the pandemic, governments also moved to impose restrictions on freedom of expression and information online. “While it is a force for good, the government sees technology as a threat that requires regulation,” Irene Petras of the International Centre for Non-For-Profit Law (ICNL) spoke in a session titled “The Role of Lawyers in Protecting Constitutionalism and the Civic Space in Africa.”

In addition, there are threats to the privacy and data of lawyers’ clients and victims, defendants and witnesses appearing in virtual hearings. There are also questions on how data is retained and managed in contact tracing, and how immunity passports at the vaccine stage are going to be used and what kind of data we will have to give up.

## Recommendations

- The legal profession should embrace technology, remote working and flexible working hours.
- Lawyers and bar associations need to enhance capacities in terms of technology.
- Lawyers and those working in the legal profession need to engage with other sectors including techies who can help lawyers protect their systems and client data.
- Bar schools need to teach student lawyers how to use these tools.



- Need to conduct more research and allow nonlawyers to break the rules and see how innovation can go within a controlled setting to improve access to justice.
- Lawyers must continue to educate themselves and bar associations need to enable continuous learning, including through online platforms.
- Governments should adopt enabling laws relating to data security, privacy and e-commerce, and lawyers need to push for such laws. Lawyers should work with governments to pass legislation to enable the creation of a better enabling environment for legal technology.

## Human rights and the civic space

During the conference, participants discussed concerns related to human rights and the lack of respect for the rule of law, which affects everyone including lawyers. The role of lawyers in protecting the civic space was repeatedly emphasized. Speakers and participants also noted the deteriorating civic space across Africa during the COVID-19 pandemic.

Irene Petras, a legal adviser at the International Centre for Non-For-Profit Law (ICNL) noted that since 2012, out of 100 legal initiatives enacted in Africa only 28% enabled civic space. With the pandemic, laws that restrict freedom of expression have overtaken, and as societies have become more digitized, governments have moved to restrict the digital space. There were 149 measures by 46 governments. At least 41 countries partially or fully prohibited gatherings, and at least 32 countries imposed lockdowns. These restrictions added to the legal constraints on the civic space and lawyers' ability to do their work. For Petras, "COVID-19 is a new threat for the civic space."

Participants emphasized the importance of lawyers' role in strategic litigation to advance human rights and democracy. In Tanzania, lawyers have been supporting human rights defenders on a pro bono basis especially when they are arbitrarily arrested. Speaker Linda Kaaonsde also encouraged lawyers to offer pro bono services to those subjected to human rights violations as this is an area that does not offer a lot of revenue but is crucial to democracy. She mentioned network shutdowns in Uganda as an example of restrictions that affect everyone including lawyers (and their bottom line). Petras shared a similar opinion, "with the modernization of the profession with digital technology, these restrictions that governments are imposing are affecting everybody, when there's a shutdown, people can't work."

Donald Deya, PALU CEO, said that there's a need for more people to work together to push for human rights. "Part of the challenge is that we're outsourcing our obligations to fight for our freedoms to a small group of people and organizations. We have too few actors standing up for the citizens and too few citizens standing up for themselves." PALU for example has been encouraging members of bar associations to establish human rights committees, gender committees, strategic litigation committees and to take strategic litigation more seriously.

The role of the African Commission on Human and Peoples' Rights in pushing back against these restrictions were addressed, particularly since many of these constraints have no end date and there's a risk that they will continue to be enforced after the pandemic. Since February 2020, the Commission has

adopted a set of resolutions on the impact of COVID-19 on human rights. They continue to call on governments that directly and indirectly take measures that affect rights such as expression, issuing statements by the different commissioners. At the 67th Ordinary Session of the African Commission on Human and Peoples' Rights, there was a panel discussion about such restrictions.

## Recommendations

- Lawyers and civil society organizations need to engage the African Commission on Human and Peoples' Rights to act in response to violations/restrictors via its tools.
- Lawyers need to engage more in strategic litigation to protect the civic space, including offering pro bono services to those affected by human rights abuses.
- Bar associations, law societies and lawyers need to engage Parliamentarians to pass enabling legislation and push for increased public participation in the law-making processes.
- Build expertise through new courses, engagement with universities, academic/research institutions.
- Point out where legal frameworks are restricting civic space.
- Provide input into norm-setting and other multilateral processes, including new norms being set at global levels in the regulation of digital rights and response to COVID-19.

## Restitution of African Heritage

The Conference also addressed the need to take action to retribute and repatriate Africa's heritage. This heritage is of cultural, spiritual and historical value illustrating that Africa has a rich history and is not passive, Donald Deya of PALU said.

For Monica Hanna, founding Dean of College of Archaeology of Cultural Heritage, Arab Academy of Science, restitution and repatriation is also about the restitution of knowledge. She highlighted the need for Africans to work together on this: "Colonialist collections are deeply interrelated and connected and we hope at the Arab Academy to collaborate with different countries in Africa working on restitution to share experiences and work together in forming a strong African voice in restitution."

Litigation can be deployed as a tactic to repatriate and repatriate objects. Currently, there are a lot of disparities between African countries, and some countries have no litigation efforts at all in this regard.

For Waikwa Wanyoike, from Open Society Justice Initiative, there are three broad litigation categories:

- Litigation challenging how cultural artefacts are acquired: These can be based on international conventions that ban pillages in international law such as the 1899 Hague Convention and 1907 Hague Convention. Such instruments can be used to take action to return objects that were forcefully acquired during the first half of the 20th century, where a majority of objects were purchased and collected with little to no consent. However, the statute of limitation and proving lack of consent pose a challenge. Other legal instruments include the 1970 UNESCO

Convention, 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and national criminal/penal laws can be used to reconstitute objects acquired illegal post-independence, for example under conditions of illicit trade, and those stolen during periods of upheaval.

- Litigation targeting host states to facilitate restitution: Laws of host states make it hard to return objects. A focus could be on challenging those laws in host countries. It is also possible to use access information requests to get as much information as one can about African cultural heritage held in public and private collections.
- Litigating African states to pursue recovery of objects through, for example, domestic litigation to require governments to pursue restitution efforts by negotiating with foreign states and regional courts.

Public awareness is also key. “There must be a very strong public opinion that supports restitution in both Africa and colonialist countries,” Monica Hanna said. PALU has also started a discussion for the return of this heritage and its return with no conditions.

### Recommendations

- Litigation using different international, regional and national legal instruments and at host states and in African states.
- Public awareness campaigns highlighting the significance of Africa’s heritage and the need for restituting it.
- Working with others and partnering with other players, such as museums and anthropological professionals, political scientists, IT etc.
- Engaging the African Union and regional economic committees in Africa.
- Bilateral agreements between African states and host states to reconstitute and return heritage.
- Using access to information requests to gather information about Africa’s heritage held in both public and private collections.
- African governments need to strengthen laws, including based on a Model Law on Protection of Cultural Property and Heritage, which the African Union is currently working on.