# Reflections on Day 1 of the AfIELN Biennial Conference: COVID-19 and International Economic Law: Africa's Experiences and Responses

**By:**

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**I. Introduction**

On Thursday, 23 July 2021, the African International Economic Law Network, in partnership with Afronomicslaw and the Society of International Economic Law, hosted their Fifth Biennial Colloquium under the theme - 'COVID-19 and International Economic Law: Africa's Experiences and responses'. The conference had various speakers and was headlined by a keynote speech from Professor Olufunmilayo Arewa from Beasley School of Law, Temple University based on her upcoming book and various paper presentations.

This blog piece is a reflection on the core arguments from this conference. Notably, Prof. Arewa explored the broader relationship between Africa and international law governance. Within this general theme, Prof. Arewa discussed the link between copy-and-paste laws, the relationship between internal and external legal perspectives, the importance of measurement systems, the lack of understanding of our legal systems, and Africa's place in the COVID-19 vaccine struggle. This piece will evaluate Prof. Arewa and other speakers' thoughts on how COVID-19 brought Africa's broader problems into light, as well as the measures that could be taken to pivot for effective African solutions. This piece will specifically outline the speakers' views on the place and benefits of regional integration and the emerging digital economy's benefits to Africa. Finally, the piece will conclude by drawing the recommendations made as a way forward for Africa.

## II. Internal Perspectives, Historical Realities and Africa's Response to the COVID-19 Pandemic.

Professor Arewa presented three main factors affecting Africa's legal and economic systems that significantly affect African states' policy and legal response to COVID-19. Firstly, she highlighted the impact of colonialism on most African states' legal and policy frameworks. There are demonstrated patterns of borrowing in law and policy. What models are being used for law and borrowing? She asked. Whereas most former colonies follow the laws of their colonial masters, this is done with little thought and care. She noted that Africans didn't understand their legal system. African states' uncritical adoption of external laws has limited Africa's contribution to COVID-19 policy and legal perspectives. There are many external perspectives into approaches taken by Africa that do not fit the continent's challenges. She asserted that the causes of this include elite mentalities. The issue of borrowing is also seen in terms of external borrowing, leading African countries to have a huge sovereign debt.

I agree with Prof. Arewa that the continued borrowing patterns limit the possibility of coming up with African solutions. This was vivid with the response to COVID-19, where most African countries enforced lockdowns without critical thought on their effects on other sectors such as the economy. Sub-Saharan Africa has the highest number of people living in extreme poverty than any other region, with about 40 percent of the population making less than $1.90

per day. Whereas in the global north, lockdowns were feasible since most people can work from home, over 70 percent of Africans work in the informal sector and make their living as traders, farmers, or self-employed artisans hence living hand to mouth subjecting such people to no work means continued poverty. This furthermore led to lockdowns being deadlier to African countries than the disease itself due to the various human rights violations such as killing lockdown breakers, police beating up local men and raping their wives and many more. This shows that the blatant lockdown measures were indeed a copy and paste measure that is not perfectly suited for the African challenges.

Prof. Arewa's second point was on the lack of proper measurement systems as many African governments are not well aware of their legal and economic status. She explained that many African countries lack statistical capability, evidenced by external companies like Google having more information about Africa than African governments. This led us to ponder on the poor decision making taking place in many African governments. Prof. Arewa posited that having a clear understanding of the right measurement systems will facilitate a more straightforward approach to understanding what is fit for Africans.

Closely related to the above points, Prof. Arewa's third point was that there is a preference for the external over internal evidence in trade matters since colonies were structured not to be competitive in international trade. African states were meant to be lead suppliers of raw materials to their colonial masters exporting crude raw materials and getting refined goods from them. To achieve this, African states were each allocated a particular cash crop which many still grow to date; for example, Ghana grows cocoa, and Nigeria grows palm oil. Prof. Arewa highlighted the fact that while these are good to grow, they are not what African countries need to develop or fulfil their needs. To this end, I totally agree with Prof. Arewa since agriculture is no longer a lead driver to development and, as she also discussed, other opportunities like a robust digital economy should instead be pursued. She commented that external dominance also plays out in the governments' preference of large firms that are mostly foreign-owned over SMEs, yet African economies are saturated with the latter. Indeed, it is estimated that SMEs make up 70 % of Ghana's GDP and 92 % of its businesses. They also make up 91% of formalised businesses in South Africa and 70 % of the manufacturing sector in Nigeria.

She concluded by arguing that the COVID-19 pandemic has exacerbated the aforementioned challenges. She stated that this is clear in the distribution of the COVID-19 vaccine around the world. Whereas European countries have hoarded the vaccines hence having more vaccines than they need, African countries are behind on the vaccine queue. For example, by August 2020, the USA had entered into seven bilateral deals with six companies for more than 800 million doses enough to vaccinate 140% of its population; the UK had bought into five bilateral deals giving it access to 270 million doses, equivalent to 225% of its population. In my view, this is indeed problematic because the virus is always mutating, and the lack of vaccination of the greater public puts everyone at risk of variants.

### III. Regional Integration and COVID-19

Regional integration is important to make the lives of Africans better in light of the right to development as well as Agenda 2063. Various issues surround the success of African Regional Agreements in driving a successful COVID-19 push-back. In this regard, the speakers presented insightful arguments on the operationalisation of the AfCFTA, reinforcing regional economic communities as building blocs and empowering informal cross border traders.

### A case study of the Economic Community of Central African States (ECCAS)

Prof. Tamfuh Y.N Wilson from the University of Beau, Cameroon, in his paper presentation titled '*COVID-19 and African regional integration: A case study of the Economic Community of Central African States (ECCAS)*', stated that the ECCAS is made up of 11 countries and was severely hit by the pandemic. This is exemplified by a decreased demand for oil goods and minerals by leading countries that buy from this region. This is particularly serious because the mining industry employs over 500,000 people. ECCAS countries such as Angola that heavily rely on tourism were also affected by the pandemic.

He further stated that the pandemic led to donor cuts since leading donor countries also used their money to fight the pandemic. Furthermore, the pandemic has led to countries' budgetorial shift from other ministries or sectors to the health sector. I agree with Prof. Tamfuh on the shift of budgets to prioritising health over any budget; despite these ministries fighting COVID-19,

there has been a laxity in other diseases such as malaria that have continuously killed many other people.

Prof. Tamfuh, however, stated that the upside of the COVID-19 pandemic had been an increase in e-commerce. The digital economy, as discussed in the next section, is a powerful catalyst for growth. Consumers have flocked to the internet, and heads of state and ministers have deliberated on online platforms such as Zoom. He concluded by calling states to embrace the digital economy.

**Operationalising the AfCFTA**

In his paper presentation titled 'Operationalising the AfCFTA at the time of a global pandemic: Landlocked countries and the issue of freedom of transit', Dr Regis Y Simo, a lecturer at the University of the Witwatersrand School of Law submitted that in light of regional integration, trade access to the sea is important for countries. With the COVID-19 insurgence, border closures were the run-to strategy for most countries. He stated that various land-locked countries, however, face a double vulnerability in the form of limited access to the sea as well as being least developed. Africa has 16 land-locked countries, 3 of which have not ratified the Agreement establishing the Free Trade Area.

He affirmed the need to have open trade through operationalising various laws such as the freedom of transit, Protocol on trade of goods and Annex A on the transit of goods in place meant to ensure that landlocked countries benefit from the AfCFTA. Indeed, countries that are open to international trade tend to grow faster, innovate, improve productivity and provide higher income and more opportunities to their people. Operationalisation of the AfCFTA will bolster the trade opportunities of the landlocked countries.

Furthermore, Louis Koen, a lecturer at the University of Johannesburg, in his paper presentation titled 'Informal cross border traders and sustainable regional integration post-COVID-19', brought to light the predicament that has befallen informal cross-border Traders (ICBTs) due to measures such as border closures in addressing the pandemic. Amidst the lack of a regulatory framework, Informal Cross Border Trade (ICBT) still comprises approximately 40% of the GDP in African Countries and accounts for the majority of the trade in the EAC.

He stated that ICBTs are usually subject to sexual harassment because most of these traders are female; for example, in major cross-border posts within East Africa, women account for a high percentage of informal traders. With the COVID-19 insurgence, the ICBTs situation was worsened with the closure of borders since they could no longer cross them for purposes of trade. Louis further set forth the fact that whereas bulk buying programs were put in place to subvert any challenges, there is limited research on how the bulk buying programs have been done, their efficiency or how many people have been helped.

**Building blocs for the AfCFTA**

Kimberly Nyajeka, an independent Scholar, presenting her paper titled '*Reinforcing the building blocs of the AfCFTA -COVID 19 and African Regional Integration*', highlighted that under the Abuja Treaty and the Agreement establishing the African Continental Free Trade Area, the Regional Economic Communities(RECs) are the drivers of the FTA.

She stated that challenges subsist in benefiting from the FTA since only 8 of the 14 regional economic communities are recognised by the African Union. There is also a capacity disparity between African countries, which will make many African countries free riders. In light of the COVID-19 pandemic, she asserted that only 5 African countries have the capacity to manufacture the COVID-19 vaccine, which makes Africa dependent on the importation of the vaccine. She added that the problems are catapulted by a lack of proper data collection on COVID-19 due to constraints in countries such as Tanzania, which refused to cooperate in declaring their results or accepting vaccines offered.

In addition to the above arguments, I strongly believe that the lack of supranational accountability in respect to consensus decision making in the as opposed to voting majority or power to impose sanctions and weak and ineffective institutions exemplified by divergence in the RECs still limit their effectiveness which affects the AfCFTA in pushing back on COVID-19.

**IV. The Digital Economy-Solution or Challenge**

The Covid-19 pandemic has increased the use of digital facilities for purposes of food and health supplies. This is evidenced through the mobile phone

penetration and the need for broadband as well as blowing increase in sales for digital platforms such Jumia. In the third quarter of 2020, Jumia's payments volume reached €48 million—a 50% year-over-year increase. It is estimated that the digital economy will contribute 180bn dollars to Africa's GDP in 2025. In light of this, the speakers outlined important opportunities and challenges regarding Africa and the digital economy.

### (a) Opportunities

Nanjira Annabel, an independent scholar and Chidochashe N Ncube, a post graduate student at the University of Western Cape, in their paper presentation titled '*Digital Free Trade Areas: A compass for navigating the new normal in Africa*', postulate that this shift can be harnessed for purposes of regional trade through the adoption of digital free trade Areas and zones in Africa. Firstly, these have been exemplified by the Malaysia DFTZ that saw Malaysia's imports record a new high of RM80.2 billion, increasing by 11.2% year-on-year. This resulted in an 83.7% contraction in trade surplus to RM1.61 billion. Secondly, the Dubai commercial city covers an area covering 2.1 million square feet and an investment of around $1 billion. The free zone is divided into three clusters that is the business, logistics and social cluster, each with its own innovative design. Lastly, the COMESA DFTA initiative aimed to break the current practice, which involves manual applications and physical presentation of documents to tax bodies and other government agencies that cause businesses delays through block chain technology thus helping businesses within the Common Market for Eastern and Southern Africa (Comesa) save up to $450 million spent in clearance documentation. They conclude that digital free trade areas are meant to facilitate imports and seamless trade. While this is a great initiative, as discussed in the next section, many challenges could affect its blossoming.

### (b) Challenges

According to Prof. Arewa, there is a blatant law and policy mismatch in the laws regulating the use of emerging technologies that countries are coming up with. She also added that rampant digital authoritarianism in most countries is a looming problem to the digital economy. Africa's larger problems like youth unemployment and police brutality usually lead to agitation for accountability by youths. This is characterised by Nigeria's End SARS movement and the

economic apartheid in South Africa, where more than 200 malls were targeted, over 800 stores were looted, and 100 were completely burnt. Ironically, the online agitation is negated by high handed measures such as the Ban of Twitter in Nigeria and the non-acceptance of cryptocurrencies by most African countries. As of 2018, out of the 39 governments in sub-Saharan Africa, only two of those countries are South Africa and Swaziland. Whereas the South African Reserve Bank (SARB) is considering introducing a state-backed, or native, cryptocurrency, otherwise known as a "central bank digital currency," the Central Bank of the Kingdom of Swaziland announced that it is researching cryptocurrencies with the view of 'supporting innovation'. As Prof. Arewa predicated before, the younger generation is the biggest percentage of Africans, whereas they are more receptive to technology; they are ruled by old people that are out of touch.

Furthermore, Dr Susan Isiko Strba, from the International Lawyers and Economists for Development, in her paper presentation titled '*Covid 19 and Electronic commerce in Africa: Experiences and responses*', reiterated that there is limited or lack of internet connectivity due to the high cost of broadband and data bundles. The average cost of 1GB of data on the continent is 7.12 per cent of average income, with some countries having rates as high as 20 per cent. There are also limited payment systems and a lack of trust in goods' successful delivery and payment.

She further stated that there is a lack of financial information on where to get good financial credit. Adding to this, she noted that few people own bank accounts. Indeed, in 2017, 35 per cent of the African population had access to banking services and this figure was projected to increase to 48 per cent in 2022, yet digital payment systems are linked to these accounts. More so, she observed that most of the digital platforms are not African; for example, Jumia, which is present in 14 African countries, is headquartered in Germany. She reiterated that goods might be ordered online, but they are brought through the African infrastructure characterised by slow and expensive cross-border logistics. I agree with Dr Strba since people want logistical mechanisms as fast as their internet. This can be done by improving the online companies efficiency through overnight shipping, customer package tracking support systems through apps such as GoogleMaps and reduced or eliminated shipping costs.

In my view, there have been some successes such as legislation on digital systems (for example, the Uganda Data Protection and Privacy Law), creation of local e-commerce places(for example, Safe Boda Uganda developed in 2014), online payment systems (for example, Cassava Fintech and Flutterwave. Overall, the later we adopt technology, the wider the gap in technology advancement between the global north and global south becomes. Thus, the need to adopt the digital economy as early as possible. But where do we start from? The next section highlights the speakers' attempts to answer this question.

## V. Way Forward

### (a) African Diversity

While concluding her keynote, Prof Arewa reiterated that Africa is a diverse society with the biggest youth population around the world, ironically being led by old rulers who are seemingly out of touch. The diversity of the African continent is a crucial tool in Africa's development tool kit. She affirmed that although this diversity was blurred by the colonial masters arbitrarily imposing border divisions at the Berlin Conference, this diversity still remains and can be harnessed to produce a development model t that other countries can learn from.

Furthermore, three avenues for development were provided by Prof Arewa for exploitation: air transport, electricity and the digital economy. In the case of air transport, she affirmed that it was previously easier to travel to the Global North than to travel around Africa. Although it is easy to travel within regional blocs such as the East African Community, the Economic Community of West African States, the Southern African Development Community, the Maghreb, and the Central African Economic and Monetary Community, it is rarely possible to travel from one region to another without restrictions. This has limited intra-African trade, which currently stands at around 18% compared to that of other areas such as Asia and America. There is, however, some progress because airlines like Ethiopian Airways are doing a good job of connecting Africa. She asserts that a single African air transport system is needed and that Agenda 2063 should play a role in this. In my view, there is a need to streamline air transportation with a single air transportation code so as to unite air transport

with the objectives of the AfCFTA and a 'one Africa.'

On electricity, she asserted that the resource is crucial in the building of economies; this is based on the fact the digital economy is hinged around electricity as a potential infrastructure tool. However, Africa has not tapped into the electricity opportunities that lie within it. Despite being home to 17% of the world's population, Africa currently accounts for just 4% of the global power supply investment. The AfCFTA will need a good infrastructure such as electricity to thrive. This point was further buttressed by Prof. Tamfuh, who argued that African countries need to stop borrowing from IMF and World Bank and look at their resources such as airports, ports, forestry and minerals. Whereas the above views are cogent, there is a need for proper accountability systems such properly working legislative systems such as the leadership code of conducts that seeks a declaration of wealth by public officials and proper follow up of donor funds by both the donor and the receiving country, institution or body to curb the high levels of corruption in African governments that leads to loss of $148b annually and hence deepen the sovereign debt gap. This will allow Africa to possibly benefit from this resource without the need for a lot of borrowing.

### (b) Digital Economy

Since data is relevant in the digital economy, Prof. Arewa affirms the need to harmonise Africa's digital laws. Dr Franziska Sucker from the University of Witwatersarand reinforced this in her paper presentation titled '*The AfCFTA's role in digital trade facilitation within Africa*' wherein she affirmed that a faster digital market and a transition into the Fourth Industrial Revolution need to be created through the Afcfta E-Commerce Protocol. She further asserted that this Protocol is a great platform to consolidate a Pan African negotiation system with uniform rules and principles of negotiation that can address the fragmentation issue.

Nanjira Annabel and Chidochashe buttress the fact that the digital trade needs data. There is untapped digital trade in LDCs. This calls for enablers to aid the smooth implementation of this such as through CT goods and services, incubators and hubs, and regulation for technological tools and trade. The enablers include e-logistics and e-commerce, e-letters of origin, e-payment

systems, and e and-platforms to trade goods and services. Prof Tamfuh further asserted that government heads of state should call business magnates to champion the copy-and-paste system of digital platforms for Africa. This was reinforced by Dr Sucker, who asserted that there is a need to understand that the African problem is unique from Asia or America to avoid digital colonialism. Understanding the meagre differences, such as the limited phone penetration as discussed above, is crucial since it will allow Africa to plan to address its myriad of issues properly.

Dr Sucker advanced the point that Africa needs a development-focused approach in the digital economy. Since SMEs in Africa operate in fear of big tech companies from the Global North, sensible African competition law with proper rules is needed to discipline the bigger players. This will give the SMEs space to operate in. In my view, whereas the law on paper is important, quickly setting various institutions devoid of corruption or conflict of interest to ensure this law is properly implemented is even more crucial for the practicability of the law.

### (c) Agreement Negotiation

As discussed by the various speakers above, a coherent, robust legal and policy framework is needed to address the various challenges in COVID-19. This calls for various states to develop capacity in negotiating international agreements that meet Africa's needs and the participation and consultation of people affected by the trade laws. Whereas this is important, I strongly think African bodies or non-governmental groups should usually develop African-centered law prototypes encompassing various stakeholder views that they submit before the international bodies rather than starting the negotiations from a blank slate.

Ms Nyajeka also suggested that trade law systems are very complex hence a need to simplify trade laws so that those affected by them can understand them. I believe that this can be done by coming up with information sessions on the various laws and translating key provisions into local dialects of those affected by the same. Through an Afrocentric approach to law-making on global standards, the continued legal marginalisation by the global north shall be adequately pushed back.

## VI. Conclusion

Prof. Arewa, in her keynote address, reflected on the question of how best to build a new Africa. The other speakers buttressed the same to the effect that there is a need to have a bottom-up, research-driven and informed approach to solving African problems. In light of the COVID-19 pandemic, this is very critical.

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