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Introduction to Issue 2 of the African Journal of International Economic Law (AfJIEL)

Olabisi D. Akinkugbe and James Thuo Gathii
Co-Editors in Chief

Welcome to the Second Issue of the African Journal of International Economic Law (AfJIEL). The on-going COVID-19 global pandemic provides an important background for this volume. It is therefore unsurprising that a central theme that runs through the articles in this issue is the impact of the pandemic on the states and peoples of the Global South. Indeed, the articles by Katrin Kuhlmann, Chris Changwe Nshimbi, and Okanga Okanga & Lyla Latif emerged in part from the Symposium on '*Vulnerabilities in the Trade and Investment Regimes in the Age of COVID-19*' convened by Olabisi Akinkugbe and Clair Gammage on the Afronomicslaw Blog.

The second issue of the AfJIEL furthers our commitment to centering critical analysis of international economic law as they relate to Africa and the Global South. There are five lead articles, a feature analysis of African practice in international economic law, a case note, and two book reviews in this issue. The articles cover a broad range of issues including digital regulation of Africa's female farmers, debt sustainability and the reform of the International Monetary Fund, informality and the future of work in Africa, tax vulnerability in an era of inclusive global governance as well as the comparative lessons that the regulation of trade and development in Africa offers for the global regime. Our African Practice of International Economic Law analyzes developments at the regional, sub-regional and national levels that are worthy of note in the 2020-2021 calendar. The Case Note analyzes the Panel Report of the World Trade Organization in the Morocco – Definitive Anti-Dumping Measures on School Exercise Books from Tunisia. Building on our feature essays in the inaugural issue, this Issue includes two Book Reviews.

The first article by Uchenna Felicia Ugwu titled *Advancing the Use of Digital Technology by Africa's Female Farmers: Shortcomings in Data Protection Regulations* examines the role of digital data and information and communication technologies in advancing agricultural production. Ugwu's article focuses on the role of women farmers as generators and users of data by articulating the issues at intersection of intellectual property rights, digital data regulation and the development of female smallholder farmers in Africa. Ugwu argues that existing studies have not focused enough on female smallholder farmers as active participants in the innovative process. More specifically, she applies an interdisciplinary research method to examine the question: 'How can intellectual property and data protection regulations related to agriculture be adjusted to be more inclusive of the needs

of female smallholder farmers in Africa?’ The article concludes with recommendations that could advance inclusiveness of Africa’s women farmers interests in data protection regulations.

The second article by Karina Patrício Ferreira Lima titled *Reforming the International Monetary Fund’s Debt Sustainability Assessments towards Achieving the UN’s Sustainable Development Goals (SDGs): A Crucial Post-Pandemic Recovery Agenda* was initially written as part of the African Sovereign Debt Justice Network Paper Series. Lima examines the role of the International Monetary Fund’s (IMF) Debt Sustainability Assessments (DSAs) in achieving the United Nation’s Sustainable Development Goals, (SDGs), which is a crucial agenda towards a resilient, sustainable, and inclusive post-pandemic recovery. Lima argues that a ‘debt sustainability framework that is unable to appropriately account for sovereign insolvency problems effectively legitimises unsustainable debt service by draining vital public resources from IMF member countries. Thus, the DSA has crucial distributive, economic, and ecological implications both within debtor states and across the globe.’ As Lima argues, the DSA framework is both legally and macroeconomically biased towards conducting assessments that underestimate sovereign insolvency problems. In her view, the underestimation of insolvency problems is a persistent pattern in the IMF’s debt sustainability analyses that underpins the widespread trend of post-pandemic austerity in the global South. This renders the DSA a core legal infrastructure in the international financial architecture that needs to be reformed in the years ahead. Her article offers some way forward in this regard.

The third article by Katrin Kuhlmann is titled *Mapping Inclusive Law and Regulations: A Comparative Agenda for Trade and Development*. In this article, Kuhlmann builds on her previous Blog contribution on Afronomicslaw and argues that the crises which the global economic order confronts presents an opportunity to craft and implement more diverse legal and regulatory approaches that could improve the vulnerabilities that the marginalized parts of the globalized order confront. Kuhlmann’s article thus engages in a comparative and socio-legal analysis that maps the trade and economic rules by focusing on seven dimensions at the international and national levels that would facilitate an inclusive and sustainable development. In particular, the article focuses on the different dimensions of inclusive law and development that a redesign of trade’s “legal ground rules” will need to take into account in light of systemic and stakeholder-driven vulnerabilities. Her analysis concludes with a discussion of seven possible aspects that could be addressed to address potential shocks that may arise from future vulnerabilities.

The fourth article by Chris Changwe Nshimbi is titled *Reforming the International Monetary Fund’s Debt Sustainability Assessments towards Achieving the UN’s Sustainable Development Goals (SDGs): A Crucial Post-Pandemic Recovery Agenda*. The article is situated within the narratives or debates on post-Fordism, a form of economic governance which entrenches neoliberal globalization. Nshimbi argues that post-Fordism intensified the casualization of labor in Africa and, therefore, contributes to informality on the

continent. In contrast, he argues that the fourth industrial revolution (4IR) – and the disruption caused by the Covid-19 pandemic – provide opportunities to catapult Africa's development. Importantly, his article engages with an expansive literature including that on Fordism, post-Fordism, neoliberal restructuring as well as globalization and its impacts on developing countries. The article examines these literatures and how they conceptualize and understand the informal economy in Africa. The article concludes by reflecting on the future of informal workers in Africa in an era of 4IR.

The fifth article co-authored by Okanga Okanga & Lyla Latif is titled *Effective Taxation in Africa: Confronting Systemic Vulnerability through Inclusive Global Tax Governance*. They situate the vulnerability theme in the tax context noting that the rules governing international taxation have largely been developed by a handful of Western countries resonating their own economic purposes. This fraught historical emergence Okanga and Latif argue, has resulted in a regressive relationship that overlooks African perspectives in the creation of tax norms. The COVID-19 pandemic has spelled further trouble for African countries as it aggravates their revenue constraints and widens the chasm of inequality that already exists between African countries and their developed counterparts as well as cause a dramatic fall in foreign direct investment. Okanga and Latif therefore call for developing countries in Africa to participate effectively in the development of an international tax regime. In their view, African countries will derive more from a global tax system that centers inclusivity and development. African states should be part of the process from the center and not the margins.

The sixth article co-authored by Tsotang Tsietsei and Akinyi J. Eurallayah is titled *African Practice in International Economic Law 2020-2021*. This second instalment of the section discusses some of most significant developments in international economic law on the African continent. From regional trade matters, such as the launching of trade under the African Continental Free Trade Agreement, to investment dispute resolution involving African governments, as well as urgent imperatives surrounding intellectual property rights law. The section updates readers on some of the issues that were captured in the Inaugural Issue, and which are ongoing. It also provides an overview of significant milestones in international economic law in Africa over the past twelve months.

The seventh item in this issue, is a case note, co-authored by Oluyori Ehimony and Maryanne Kamau focuses on the *WTO Panel Report in Morocco – Definitive Anti-Dumping Measures on School Exercise Books from Tunisia*. This is the first intra-African trade dispute to be adjudicated by a World Trade Organization Panel after nearly 25 years. Ehimony and Kamau's analysis offer a bird's eye view of the Panel's findings on the (in)consistency of Morocco's measure with its WTO obligations and the legal issues in contention in that case. The article also discusses the likely implications of the case and the signals it sends concerning the participation of African countries in the WTO'd dispute settlement system.

The eight item in this issue is a book review by Talkmore Chidede of *Law and Investment in Africa: The Governance of Foreign Direct Investment in Zimbabwe. Edited by Timashe Kondo. University of Western Cape Press, 2021. Pp. 296.*" In Chidede's review, 'the book critically evaluates Zimbabwe's investment obligations under bilateral investment treaties (BITs). The analysis reveals that investment protection provided under BITs, (concluded by Zimbabwe), is characterised by many shortcomings including, *inter alia*, limiting the right to regulate and biased towards investors. Kondo proposes the modification of certain provisions to allow investment liberalisation, adoption of more concise definitions of investors and investments, alignment of investor-state dispute settlement (ISDS) provisions with recent trends.'

The ninth and final item is a second book review by Nkechi Azinge of "Combating Money Laundering in Africa: Dealing with the Problem of PEPs. By John Hatchard. Edward Elgar, 2020. Pp. 277". Azinge's review, notes that 'Hatchard's scholarship deserves a wide readership and consideration by academics and stakeholders in the AML space. The book heralds the dominance of an existing voice, intertwining AML strategies and constitutional law, complex areas of law which the author simplifies. As this review has shown, the book's arguments are compelling.'

We hope that our readers enjoy the articles in our second volume. We thank all our authors (including those whose articles did not make it into this issue) and peer reviewers for their support in finalizing the second issue during a pandemic year. We hope to count on our reader's support as we march towards Volume Three of the AfJIEL.