

2017 Annual Global Rule of Law Exchange Conference

SMEs and the Rule of Law in Africa: legal developments, regulatory challenges and prospective solutions

Thursday 12 October 2017 | Washington D.C.

Delegate Pack



**British Institute of
International and
Comparative Law**

Acknowledgments

We are grateful to Jones Day and the Jones Day Foundation for their financial support of the Global Rule of Law Exchange and of this conference.

Thanks also to conference speakers and participants for their active involvement in this event.

We are also grateful for the support and collaboration of the following organisations (in addition to those already included in the conference programme):

- The American Bar Association Rule of Law Initiative (ROLI)
- Center for International Private Enterprise (CIPE)
- Aspen Network of Development Entrepreneurs (ANDE)
- The Partnership for Transparency Fund
- The Good Law Foundation (South Africa)
- The SME Finance Forum
- Poverty Action

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CONFERENCE OVERVIEW

It is well known that the Rule of Law is the foundation of a society, and a key factor for sustainable development and for stable, broad-based economic growth. The Rule of Law assists the operations of free-markets and the stability of commercial arrangements, through clear, non-discriminatory, non-retroactive legislation, which benefits everyone, including small business owners. The Rule of Law is also important to safeguard corporate legal personality, property rights (including for intellectual property), neutral courts and a clear and fair process for the determination of rights and obligations. The Rule of Law is therefore important for the Small and Medium Enterprise (SME) sector.

Although SMEs can vary in size from country to country, they are typically recognised as being the backbone of any economy, and Africa is no exception. SMEs are an important engine of growth and employment. Nevertheless, SME development is often constrained by a number of obstacles: financial (access to finance and limited access to markets), administrative (laws & regulations) and technical or internal (e.g. lack of access to appropriate technology, poor management skills, etc).

While accessing capital and financing is among the most important obstacle to SME growth, some of the pressing legal and regulatory issues include among others: corruption; obtaining business permits (which in some cases can take long); lack of dispute settlement mechanisms and inefficient court systems. The cost of compliance - for example for tax and labour laws, and health and safety regulations - is also said to be great for SMEs and comparatively higher than bigger companies. Moreover, there are also sector-specific legal and regulatory issues that affect the SME sector (e.g. in agriculture, energy or 'financial-technology').

What concrete examples help illustrate legal and regulatory issues affecting SMEs in Africa? What does an enabling legal and regulatory environment for SMEs look like? What is the effect of an unfavourable regulatory and legal environment on investors and SME growth? Are local SMEs at a competitive disadvantage compared to international SMEs and investors, or are rules and regulations the same and equally enforced for everyone? What is the cost of compliance to African SMEs? What solutions are in place to address the abovementioned legal and regulatory issues, and how can other countries learn from these? What is the role of Governments and the private sector in developing a better SME sector in Africa? What are the incentives or disincentives for progress? And how is the Rule of Law - through principles such as legal certainty and access to justice - important for the SME sector?

Drawing on the experience of government representatives and international organisations, entrepreneurs, international investors, the legal profession and representatives of the judiciaries, the conference will address some of these questions and discuss the vital role of the Rule of Law in the development of Africa's Small and Medium Enterprises (SMEs) sector. Specifically, the conference will seek to identify the legal and regulatory obstacles that constrain African SMEs, and highlight practical solutions to addressing these.

AGENDA

8:00-8:30 | Registration and Welcome Coffee

8:30-9:00 | Welcome and Opening Comments

- **Javade Chaudhri**, Partner-in-Charge Middle East/Africa Region and Partner-in-Charge Saudi Arabia Offices, Jones Day
 - **Mat Tromme**, Project Lead Global Rule of Law Exchange, and Senior Research Fellow, Bingham Centre for the Rule of Law
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9:00-9:45 | Keynote Address

Dr Donald Kaberuka, former President and Chairman of the Board of Directors, African Development Bank (2005-2015)

Lessons Learned on Regulations and Business Development in Africa

Chair: **Sheila Khamala**, Practice Manager, Energy and Extractive Industries Global Practice, World Bank

9:45-10:15 | Coffee Break

10:15-11:15 | Morning Panel – Challenges of Regulation in Africa

Good, clear and accessible laws and regulations are necessary for SMEs to thrive. The session will discuss what hampers the development of good laws and regulations, the impact this can have on SMEs and development in Africa and how the problems can be addressed.

- **Timothy Kakuru**, mSME Garage (Uganda)
 - **Affiong Williams**, Founder/CEO, Reelfruit (Nigeria)
 - **Brian Milder**, Executive Vice President for Strategy & Innovation, Root Capital
 - **Oulimata Fall Sarr**, Advisor, Office of the Executive Director, International Trade Centre, and Mo Ibrahim Leadership Fellow
 - **Chair:** **Katrin Kulhmann**, President and Founder, New Markets Lab
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11:15-12:15 | Lunchtime Panel – Legal and Regulatory Challenges in FinTech

The Bingham Centre for the Rule of Law - in collaboration with the Good Law Foundation (South Africa) - has conducted research on the legal and regulatory challenges for SMEs operating in the 'FinTech' sector in Kenya and South Africa. This session will present and discuss the research findings.

Note: Financial Technology ('FinTech') is a new sort of technology-enabled financial solution that covers a range of financial services (mobile money, online peer-to-peer lending, blockchain, etc.). It aims to make financial products more accessible, and thus competes with more traditional financing mechanisms.

- Dr Anton Didenko, Research Fellow, Business and the Rule of Law, Bingham Centre for the Rule of Law
 - Coryell Stout, Portfolio Engagement Manager, Venture Lab, Accion
 - Tazeen Hasan, Senior Legal Specialist, Gender and Development Unit, World Bank
 - Chair: Charles Cadwell, Director, Center on International Development and Governance, Urban Institute
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12:15-1:00 | Lunch

1:00-1:45 | Keynote Address

Dr Moeketsi Majoro, Minister of Finance of the Kingdom of Lesotho

The Rule of Law-Economic Development Nexus: Why Law Matters (from an Economist's Perspective)

1:45-3:00 | Afternoon Panel – Access to justice through Small Claims and Commercial Courts

The purpose of small claim courts is primarily to make justice inexpensive and accessible to those who cannot afford litigation, and whose claims are relatively small. Often, claimants do not need the aid of a lawyer to defend their cases. Some jurisdictions (e.g. South Africa) provide a legal framework for Small Claim Courts, while others do not. On the other hand, the Court system may be a break for investors, and commercial Courts aim to improve the business environment by addressing business disputes. This panel will map out good practices in this area, discuss challenges and identify ways forward with both Small Claim and Commercial Courts.

- Geoffrey Kiryabwire, Justice of the Court of Appeal and Constitutional Court of Uganda, previously Justice of the Commercial Division of the High Court of Uganda
- Charles Adeyemi Candide-Johnson, Senior Partner at Strachan Partners, President of the Lagos Court of Arbitration (LCA)

- Dr Jan van Zyl Smit, Associate Research Fellow, Bingham Centre for the Rule of Law
 - Judge Eva Mappy Morgan, Chief Judge, Liberia's Commercial Court (via video)
 - Chair: Stuart Kerr, Counsel, Jones Day
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3:00-3:30 | Coffee Break

3:30-4:30 | Closing Panel – Where Next? Making it work for SMEs in Africa

Rounding off the day's discussion, this panel will draw on previous panels to highlight what are the best ways to develop the legal and regulatory framework for SMEs in Africa. The panel will highlight good practice initiatives, practical approaches and existing or proposed policies that would achieve this objective.

- Kazuhiro Numasawa, Principal Investment Officer, Financial Sector Development Department, African Development Bank
 - Andreja Marusic, Global Lead, Business Environment, World Bank
 - Odunoluwa Longe, DIY Law (Nigeria)
 - Chair: Toni Weis, Program Officer, Center for International Private Enterprise (CIPE)
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4:30-4:45 | Closing

4:45-6:00 | Reception

SPEAKER BIOGRAPHIES



Charles Cadwell

Director, Center on International Development and Governance, Urban Institute

Charles Cadwell is director of the Center on International Development and Governance at the Urban Institute. A lawyer with 30 years' experience in economic reform, deregulation, research oversight, and nonprofit leadership in the United States and developing countries, Cadwell joined Urban in 2007. As director of the center, he coordinates the research and technical assistance efforts of Urban staff and partners on projects around the globe. His own work targets governance reform, aid effectiveness, and integrating research and policy reform. Current projects include support for think tank capacity building in Indonesia, collaboration with colleagues supporting public sector system strengthening in Tanzania, developing new multicountry data on the structure and operation of the local public sector and service delivery, and addressing political economy barriers to implementation of poverty-reducing reforms.

Cadwell has also worked in the White House Office of Consumer Affairs, the Office of Advocacy at the US Small Business Administration, in private law practice, and—in the pre-Internet era—in the export information business. From 1990 to 2006, Cadwell was director of the IRIS Center in the Department of Economics at the University of Maryland. IRIS conducted research on economic development and reform in developing countries, working with reform leaders in 70 countries to understand and improve governance and economic policies.

Cadwell is a graduate of Yale College and the National Law Center at George Washington University. He is an adjunct professor at the Elliott School of International Affairs at George Washington University.



Charles Adeyemi Candide-Johnson

Senior Partner at Strachan Partners, President of the Lagos Court of Arbitration (LCA)

Yemi is the senior partner at Strachan Partners and President of the Lagos Court of Arbitration (LCA), an independent, private-sector driven, international centre for the resolution of commercial disputes via arbitration and other forms of alternative dispute resolution (ADR) mechanisms. He is also a supporting member of the London Maritime Arbitration Association, and sits on the Board of Directors of the Nigeria Mortgage Refinance Company, and was Chairman of the Nigeria Bar Association, Section on Business Law.

He was called to the Nigerian Bar in July 1984 after obtaining his LLM degree (University of London) in the year 1985 and appointed as notary public for Nigeria in 1988. He was conferred with the rank of Senior Advocate of Nigeria in September 2003 and is a fellow of the Chartered Institute of Arbitrators of England (FCIArb). He is an approved examiner for the same institute and an honorary fellow at the Centre for International Legal Studies in Salzburg, Austria.

Yemi has also authored several scholarly papers, and co-authored a book entitled 'Commercial Arbitration Law and International Practice in Nigeria', a significant and substantial contribution to arbitration practice in Nigeria and West Africa. He is continuously engaged as leading counsel in on-going major and high profile commercial and public policy litigation across the courts in Nigeria and has been either counsel or arbitrator in several domestic and international commercial arbitrations in the maritime, petroleum, banking and construction industries.



Dr Anton Didenko

Research Fellow in Business and the Rule of Law, Bingham Centre for the Rule of Law

Anton is a Research Fellow in Business and the Rule of Law at the Bingham Centre for the Rule of Law. His primary role is to conduct research and organise events on rule of law issues in banking and finance. Anton holds a Doctor of Philosophy degree from the University of Oxford, where he completed his dissertation on the documentary history of the Cape Town Convention on International Interests in Mobile Equipment. He also holds a Masters degree from the Russian Foreign Trade Academy and a Magister Juris degree from the University of Oxford.

Anton is a Russian qualified lawyer with ten years' experience in the area of banking and finance law and has worked as in-house counsel for major private commercial banks in Moscow and as senior associate at CIS London & Partners LLP in London. His experience covers a wide range of financing transactions, including those involving syndicated and subordinated bank lending, trade finance, ISDA and GMRA documentation, as well as banking regulations and conflict of law matters.



Oulimata Fall Sarr

Advisor, Office of the Executive Director, International Trade Centre, and Mo Ibrahim Leadership Fellow

Passionate about trade and development, Oulimata is a current Mo Ibrahim Leadership Fellow. In this latter capacity, she serves as the Advisor of the Executive Director of the International Trade Centre, a UNCTAD and WTO

parent's organization, based in Geneva. She comes from the Senegalese Export Promotion Agency where she worked as the Head of Trade Promotion and Economic Intelligence Department. She has successfully implemented aid for trade projects that strengthened SMEs' international competitiveness, connected companies to global value chains and helped generate sustainable profits and social inclusion on the ground. Over the past 10 years, Oulimata developed and promoted exports of 'Made in Senegal' products from various sectors, including agriculture, seafood, handcrafts and textiles, in targeted international markets. She holds a MBA in Marketing and Strategies from the African Centre for Higher Studies in Management (CESAG) and a Master in Arts, Literature, Languages, and Communication (major in International Trade) from Charles De Gaulle Lille III University.



Tazeen Hasan

Senior Legal Specialist, Gender and Development Unit, World Bank

Tazeen Hasan is a Senior Legal Specialist in the Gender and Development Unit. She is the co-author of a recent book on Empowering Women: Legal Rights and Economic Opportunities in Africa. She was the legal specialist for the World Development Report (WDR) 2012: Gender Equality and Development and the WDR

Companion Report Opening Doors: Gender Equality in the Middle East and North Africa. She worked on a multiregional initiative focusing on legal constraints over fifty years impacting on women's economic empowerment together with the Women Business and the Law Program. Prior to joining the World Bank Group, she practiced as a barrister in the UK and subsequently worked in Kenya as a legal advisor to NGOs. She obtained a Masters in International Law from the London School of Economics and a B.A. in Law from Pembroke College, University of Oxford.



Dr Donald Kaberuka

Former President and Chairman of the Board of Directors, African Development Bank (2005-2015)

Dr Donald Kaberuka is former President of the African Development Bank Group and Chairman of the Board of Directors. He stepped down on September 1, 2015 after ten years, and is considered to be one of the most transformational leaders at the Bank. Between 1997 and 2005, Dr Kaberuka was Minister of Finance and Economic Planning for the Republic of Rwanda where he led the economic team with the government of Rwanda. In that capacity, he served as Governor for Rwanda for the International Monetary Fund and the World Bank. Prior to becoming Minister of Finance, Dr Kaberuka worked in the private sector in the commodities business, including a term as Chief Economist of the Inter-African Coffee Organization.

He is a former Hauser Leader in Residence within the Center for Public Leadership at the John F. Kennedy School of Government at Harvard University (2015 - 2017). In January 2016, he was appointed as the African Union High Representative for the Peace Fund. Dr Kaberuka is also member of the Pan-African Advisory Team on African Union Reforms which is being led by President Paul Kagame of Rwanda. Dr Kaberuka studied at the University of Dar es Salaam as an undergraduate and obtained his MPhil in Development Studies from University of East Anglia in 1979. He received his PhD in economics from the University of Glasgow.



Timothy Kakuru

Head, mSME Garage

Tim is a founding member at BarefootLaw and the Head of the mSME Garage Project. Academically, he holds a Bachelor of Laws Degree (LLB) and a Postgraduate Diploma in Legal Practice (Dip LP). Tim underwent clerkship with the Uganda Law Council, has worked as a researcher/reporter on the law making processes in the Parliament of Uganda and worked in a law firm specializing in commercial transactions. He has carried out research on the effects of the legal and economic environment on enterprises and the factors affecting business survival in Uganda. He led the team which planned and launched the mSME Garage Project in 2016.

**Stuart Kerr**

Counsel, Jones Day

Stuart Kerr has 35 years of experience handling legal, regulatory, trade, dispute resolution, legal reform, and technical assistance issues throughout the developing world. He has advised international organizations, corporations, and governments in scores of developing and emerging economies.

Stuart is a member of Jones Day's Africa Practice. He joined the Firm in 2015 after serving as the legal and regulatory director of the Millennium Challenge Corporation (MCC) for 10 years. MCC, founded in 2004, is an independent U.S. government development agency that provides major project grants — averaging \$350 million per country — to developing countries, primarily in Africa, that demonstrate better governance practices than their peer countries. While at MCC, Stuart developed and helped implement projects in judicial reform (including commercial courts, small claims, arbitration and mediation), trade, and anticorruption. He also was senior counsel for Europe and Eurasia at the Department of Commerce's Commercial Law Development Program for three years and served for 15 years as executive director of the International Law Institute, a 60-year old international nongovernmental organization with branches in several countries that serve senior government officials in 175 countries through legal training, technical assistance, research, and publishing.

Stuart is a regular speaker and writer on law and development subjects. While at MCC, he gave more than 100 presentations on rule of law issues at locations as diverse as the U.S. Embassy in Tokyo, the Supreme Court of Singapore, the Palais Royal (Conseil Constitutionnel) in Paris, and the House of Lords in London. Stuart has served on the boards of academic organizations, foundations, NGOs, and bar groups in the U.S. and internationally.

**Justice Geoffrey Kiryabwire**

Justice of the Court of Appeal and Constitutional Court of Uganda,
previously Justice of the Commercial Division of the High Court of Uganda

Justice Geoffrey Kiryabwire is a Justice of the Court of Appeal and Constitutional Court of Uganda, and was previously Justice of the Commercial Division of the High Court of Uganda. He also sits as a Justice of Appeal at the East African Court of Justice in Arusha, Tanzania. He is also a part time Judge of the Arbitration Tribunal of the East African Development Bank in Kampala Uganda. He is a graduate of the School of Law of Makerere University, Kampala, Uganda and Kings College London School of Law, where he obtained a Master's Degree in Law. Justice Geoffrey Kiryabwire also served as Chairman of the UNESCO Appeals Tribunal in Paris France (2010-2013). Before his appointment as a Judge in 2013, Justice Geoffrey Kiryabwire served as a CEO of Pan World Insurance Company Ltd and a State Counsel at the Attorney General's Chambers in Uganda.

He was first appointed as a Judge in 2003 where he served at the Commercial Court Division of the High Court of Uganda. He went on to become Head of that Court in 2010. While at the Commercial Court, Justice Geoffrey Kiryabwire was involved in a number of case backlog reducing initiatives. One significant initiative was the introduction of Small Claims Court in Uganda which was an instant success and won The Public Sector Process Innovation Award in the category of Winner in 2013. He has also been instrumental in the introduction of court annexed Alternative Dispute Resolution (ADR) and court room technology.

Justice Geoffrey Kiryabwire has presented several professional papers on the subject of ADR and Case Management and is also a contributor to the book "Arbitration in Africa" published by Graham & Trotman.



Katrin Kuhlmann

President and Founder, New Markets Lab

Katrin Kuhlmann is the President and Founder of the New Markets Lab, a non-profit law and development center. Her areas of focus include trade and development, economic law and regulation, entrepreneurship, and international legal and regulatory reform. She is published widely and frequently speaks on these topics, and she has testified before Congress on several occasions.

Ms. Kuhlmann is also a Lecturer on Law at Harvard Law School and an Adjunct Professor at Georgetown University Law Center, and she serves as a member of the Trade Advisory Committee on Africa of the Office of the United States Trade Representative (USTR). In addition, she is a member of the Advisory Boards of a number of organisations such as the Law and International Development Society (LIDS) at Harvard and Georgetown Law Schools, the Bretton Woods Committee, the Trade Policy Forum, and the Trade, Finance, and Development Experts Group of the E15 Initiative led by the International Centre for Trade and Sustainable Development and the World Economic Forum. Ms. Kuhlmann also led leadership positions in several non-profit organisations and think tanks, and was previously a Wasserstein Public Interest Fellow at Harvard Law School and a Senior Advisor at the Corporate Council on Africa.



Odunoluwa Longe

Co-founder and CEO, DIYlaw

Odun is co-founder and CEO at DIYlaw, Nigeria's foremost legal technology startup. Odun is also Co-founder and Lead Counsel of The Longe Practice LP, (TLP), a law practice focused on proving legal solutions for entrepreneurship in Africa, representing both founders and early stage investors within Africa.

She is an early stage angel investor and in her former life worked in the investment banking sector. In addition to her LLB from the Lagos State University and BL from the Nigerian Law School, Odun has a Masters in Law

(Business Concentration) from Northwestern University School of Law and a Certificate in Business Administration from the Kellogg School of Management of Northwestern University. Odun is a HiiL Innovating Justice Fellow.

She is a Board member of 'Ventures Platform Startup Foundation', a non-profit that supports entrepreneurs and innovators who leverage technology to create solutions to Africa's most urgent problems and is also a Board member of 'Bunmi Adedayo Foundation', a non-profit focused on improving primary school education for less affluent children in Nigeria.



Dr Moeketsi Majoro

Minister of Finance, Kingdom of Lesotho

Dr Moeketsi Majoro has recently been appointed Lesotho's Finance Minister. He is presently Member of Parliament representing the Thetsane #33 Constituency. He previously served as Minister responsible for development planning in the Kingdom of Lesotho where he spearheaded policies for structural transformation through integrating several cluster solutions and dialogues.

Before joining the Government of the Kingdom of Lesotho as Minister and MP, he served as executive director at the International Monetary Fund representing 21 African countries on the Executive Board (2008-2012). He also served as fiscal analyst and Principal Secretary responsible for public finance as well as teaching economics at the National University of Lesotho during 1991-2000. He also serves as consultant in the areas of business and economics under his company QE, and has served as a director on many boards. Dr Majoro earned his Ph.D at Washington State University.



Andreja Marusic

Global Lead, Business Environment, World Bank

Andreja Marusic is the Global Lead for Business Environment at the World Bank Group's Trade & Competitiveness Global Practice. She has over 20 year's expertise in investment climate and regulatory governance, including implementation of institutional reforms and capacity strengthening with public sector agencies. In her professional career, she worked on designing and implementing business environment and regulatory reform programs in many countries, in Central and Eastern Europe, Central Asia and Africa. Prior to joining the World Bank Group, she held several high level government advisory positions such as Head of the Regulatory Reform Unit at the Prime Minister's Office in Serbia and Chairman of the Board of Directors of the Serbian Business Registers Agency. She also managed her own corporate law firm for a number of years, which enabled her to keep in touch with "real life" problems investors' face in complex regulatory environments.

**Brian Milder****Executive Vice President for Strategy & Innovation, Root Capital**

Brian is the Executive Vice President for Strategy & Innovation at Root Capital, a leading impact investor that provides debt financing and capacity building for agricultural businesses that aggregate smallholder farmers in Africa, Latin America, and Indonesia. He serves on Root Capital's Executive Leadership Team and leads R&D on new products and services, social & environmental impact assessment, and field building related to agricultural finance and impact investing. In this latter capacity, he serves as Coordinator for the Council on Smallholder Agricultural Finance, an alliance of 11 social lending institutions that collectively deploy \$700 million in lending annually to the agricultural "missing middle."

Prior to joining Root Capital in 2007, he served on the leadership team for Health Leads, a pioneer in addressing the social factors affecting patient health in the United States, and was part of the team that launched a venture fund to incubate social enterprises for the Nonprofit Enterprise and Self-sustainability Team (NESst) in Santiago, Chile. He holds an M.B.A. from Harvard Business School and a B.A. in social studies from Harvard College.

**Kazuhiro Numasawa****Principal Investment Officer, Financial Sector Development Department, African Development Bank**

Kazuhiro Numasawa, CFA is a Principal Investment Officer at the Financial Sector Development Department of the African Development Bank. Across more than 15 countries in Africa, he has identified and analyzed more than 30 investment projects - commercial banks, microfinance banks and various private equity funds to support SMEs. He appraised almost USD 1 billion investments in Africa over the past 7 years to scale up investments across sectors. Before joining the AfDB, he worked for the World Bank in Washington, DC, focusing on financial sector reform and poverty reduction; United Nations Development Program in India on various rural development and microfinance projects; and Accenture Co. Ltd as a business management advisor covering financial sector and other industries. He is a CFA charterholder and holds a Master Degree in Development Economics and International Development from the Fletcher School at Tufts University, USA.



Coryell Stout

Portfolio Engagement Manager, Venture Lab, Accion

Coryell is the Portfolio Engagement Manager for Venture Lab at Accion, providing strategic and operational support to portfolio companies across Africa. Coryell has eight years of experience across business strategy and operations in emerging markets. Prior to joining Accion, Coryell advised early-stage, East African-based hardware companies on their manufacturing, distribution, and go-to-market strategies. Previously, she was the COO at One Degree Solar, where she founded the Kenya office, expanded operations across East Africa, and oversaw the launch of 4 new products in 13 markets. She was also COO at Generation Enterprise, a business incubator for youth entrepreneurs in Nigeria, and worked on microfinance initiatives for CARE International and Plan International in Ghana and The Jaipur Rugs Foundation in India.

Additionally, Coryell brings consulting experience from her time at the Foundation Management Group, during which she advised award-winning nonprofits on board governance and donor management, as well as the Corporate Executive Board, where she worked with Fortune 500 companies on customer service and retention strategies. Coryell holds a Bachelor of Arts in Political Science and African Studies Minor from the University of Pennsylvania and a Graduate Certificate in Social Enterprise and Impact Investing from the Monterey Institute of International Studies.



Toni Weis

Program Officer, Center for International Private Enterprise (CIPE)

Toni is a Program Officer at the Center for International Private Enterprise (CIPE, a program of the US Chamber of Commerce), where he manages a portfolio of projects focusing on business collective action and policy advocacy across Africa.

He is also a visiting researcher at Johns Hopkins University (SAIS), where he teaches on state-business relations in Africa, and a research associate at the University of Oxford's Global Economic Governance Program. Prior to joining CIPE, he worked as an independent consultant for the World Bank, risk analysis firms, and private investors.

Toni's work has been published in Foreign Affairs, Africa Confidential, and other academic and news media. He holds a DPhil in Politics from the University of Oxford as well as an MSc in African Studies (Oxford) and an MA in International Relations (Sciences Po Paris).



Dr Jan van Zyl Smit

Associate Research Fellow, Bingham Centre for the Rule of Law

Dr Jan van Zyl Smit is an Associate Senior Research Fellow at the Bingham Centre for the Rule of Law, having joined as a Research Fellow in 2013. Much of his work at the Centre has focused on the independence of the judiciary and judicial reform. He is the author of 'The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice', a study commissioned by the Commonwealth Secretariat, and was involved in the development of the Cape Town Principles on the Role of Independent Commissions in the Selection and Appointment of Judges. He has worked for the Judges and Magistrates Vetting Board in Kenya as a consultant and has advised the Truth and Dignity Commission in Tunisia on vetting and institutional reform.



Affiong Williams

Founder/CEO, Reelfruit

Affiong is the CEO/ Founder of ReelFruit a fruit processing, packaging and marketing company focused on being the 'leading fruit agribusiness in Nigeria'. The company, founded in 2012, retails a range of dried fruit and nut snacks through a variety of channels including over 250 Supermarkets, Airlines, Schools, Hotels, and concluding export sales. ReelFruit won the 'International Women In Business' Competition in the Netherlands. Affiong was also recognized by Forbes Magazine as one of the most promising '30 under 30' entrepreneurs in 2015. Previous to founding ReelFruit, she worked for 4 years for Endeavor Global, a global non-profit which catalyzes economic development by supporting small to medium enterprises in developing markets. Affiong obtained a post graduate diploma in Business Administration from Wits Business School, Johannesburg, South Africa.

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CONFERENCE MATERIALS

Additional conference materials are available to download at:
www.binghamcentre.biicl.org/ruleoflawexchange

1. Oulimata Fall Sarr



ENHANCING SMES COMPETITIVENESS THROUGH BETTER REGULATORY TRANSPARENCY

ABOUT ITC

The International Trade Centre (ITC) is the joint development agency of the United Nations and the World Trade Organisation (WTO), which focuses on the international competitiveness of Micro, Small and Medium Enterprises (MSMEs) from developing countries. More than 80% of ITC's interventions are in Sub-Saharan Africa, Least Developed countries (LDCs), Landlocked developing countries (LLDCs), Small Island developing States (SIDS) and post-conflict and fragile economies. Since 1964, ITC has been developing innovative tools and solutions, which help MSMEs connect to international markets using trade as a platform for inclusive growth, and job creation especially for women, young people, and poor communities.

ITC FOCUS AREAS

With support from funders and development partners, ITC works with policymakers, trade and investment support institutions (TISIs), the business community and other stakeholders in the public and private sectors to enable trade success of MSMEs. ITC delivers integrated solutions around a core set of six focus areas:

- Trade and market intelligence for SME competitiveness
- Supporting regional economic integration and South-South links
- Connecting to value chains: SME competitiveness, diversification and links to export markets
- Strengthening trade and investment support institutions
- Promoting and mainstreaming inclusive and green trade
- Building a conducive business environment

STRENGTHENING SME COMPETITIVENESS THROUGH ACCESS TO REGULATIONS

Good knowledge and understanding of trade regulations is crucial for MSMEs to seize trade opportunities, expand their ability to export, connect to markets and be major job creators and engines of inclusive growth.

Addressing access to information, one of the top three most important factors holding MSMEs back from exporting, ITC has developed market intelligence tools that provide MSMEs with the regulatory information they need to conduct market research, identify sustainable trade opportunities, export and grow.

Through its Non-Tariff Measures (NTMs) Programme, ITC:

- brings the concerns of MSMEs about regulatory and procedural trade obstacles to the attention of policymakers and other stakeholders, enabling concrete answers. The objective is to increase transparency of NTMs through company-level data collection and dissemination, contribute to the design of efficient policies, reduce trade costs and scale up MSMEs competitiveness.
- offers to MSMEs, free of charge, a regulatory mapping, which is a comprehensive database of the regulations that products must comply with in order to be exported or imported in a specific market. In 2017, information on more than 18,000 regulations on exports and imports applied by 90 countries was available online through the Market Access Map tool.

Providing better access to trade regulations as well as transparency into its application is one good way ITC uses to level the playing field for MSMEs, and accordingly strengthen their competitiveness and empower them to trade for good and impact.

For more information, please visit www.ntmsurvey.intracen.org – www.intracen.org

2. Timothy Kakuru

BAREFOOT LAW

mSME Garage Project



HOW LEGAL SUPPORT BOOSTS SMALL BUSINESS SURVIVABILITY IN UGANDA

By Kakuru Timothy (LLB, Dip LP) mSME Garage Project Head; BarefootLaw Head of Research

UGANDA is a country in East Africa with a population of just over 40 million people, about 78%¹ of whom are Youth (under 30 years old). Because the population is so young, the country is unable to keep up with the employment needs of the youth. With this background and the increased opportunities availed by modern communications technology, it is perhaps little surprise that Uganda was named the most entrepreneurial country in the world in 2015 by Approved Index² (this means that a higher proportion of Uganda's population has engaged in entrepreneurship than populations of most other countries). Unfortunately Uganda also has a high rate of business failure with over half of the enterprises expected to fail before they reach 3 years old.

THE mSME GARAGE PROJECT: LEGAL SUPPORT FOR SMALL BUSINESSES

The mSME Garage, a project of BarefootLaw has been in operation since April 2016. To date it has registered over 2600 businesses to its platforms and is providing them with the guidance and support they need relating to their legal needs.

The mSME Garage primarily provides services to micro and small enterprises. It also supports a large number of technology start-ups.

When talking of micro and small businesses, the legal needs are quite different from those of larger businesses. The most pressing challenges we have identified small businesses as having include:

1. Business registration/ incorporation. Many business owners have not formalised their business in any way and are not aware of the type of business they should formalise.
2. The challenge of erratic landlords given that they normally have modest premises and do not pay rent advances for long periods of time or sometimes default in payments.
3. Acquiring and renewing business licences tends to be of great concern to small business owners especially given the ever-present danger of interacting with a person pretending to be a city official.
4. Tax liability is another worry of small business owners since they generally cannot afford a tax accountant or lawyer to help them calculate their liability.
5. Intellectual property rights are a huge concern of information technology start-ups.

In this way, small businesses have got legal needs and concerns which they may previously have been forced to ignore for lack of money (or pessimistic opinions of lawyers) to hire legal professionals. These legal needs if not met can however turn into legal challenges which threaten the survivability of a business.

¹ <http://www.youthpolicy.org/factsheets/country/uganda/>

² <http://blog.approvedindex.co.uk/2015/06/25/map-entrepreneurship-around-the-world/>

For this reason, many business owners have reported being willing to lose money rather than resort to legal action. In a survey run by the mSME Garage at the end of 2016, many business owners reported that they had spent between zero to one million Uganda shillings (less than US \$300) on legal fees over that year.

THE UNIQUE LEGAL CHALLENGES FACED BY FOREIGN BUSINESS OWNERS

Uganda has got protectionist laws regarding foreigners engaging in business within its borders. Foreigners are forbidden by law from carrying out certain businesses especially where the business is a micro or small business and can just as easily be carried out by a Ugandan. Foreigner business is encouraged for large and multinational investors, and discouraged for foreign entrepreneurs with modest sums of money.

Foreigner owned businesses have shared with us their difficulty traversing the legal system not knowing the correct procedures of incorporation, licensing, contracting and enforcing economic rights through lawsuits. Foreigner owned businesses are therefore extremely susceptible to exploitation by unscrupulous persons who claim to be government officials as well as being charged extremely highly for services.

FACTORS THAT HAVE PROMOTED SME GROWTH

The availability of modern technology has created numerous fields making way for numerous Information and Technology Service companies.

Modern technology has also made communication and advertising much easier and cheaper than in the past, social media platforms like Facebook are making it very easy for people to literally start businesses in their living rooms at home and meet clients/ customers through social media.

Emphasis on entrepreneurial education by the Government has also played a role in encouraging youth to venture into business rather than wait for formal employment.

OTHER FACTORS THAT AFFECT SME GROWTH IN UGANDA

The hostile attitude many entrepreneurs have towards regulatory authorities stands out as a huge challenge. Many businesses have failed to grow even with the potential because they believed that registration with the regulatory authorities would be harmful to their business' growth.

Even with compliance to the regulatory authorities, entrepreneurs have reported difficulty utilising their systems, very few of which can be utilized remotely such as paying for licences or registering a Company which still require largely manual actions like physically going to government office buildings.

CONCLUSION

Just like the large companies cannot do without a legal department, the smallest entrepreneur who doesn't make enough profit to keep a lawyer on retainer nevertheless needs legal services. This need may not manifest itself the moment the business is started as the need for financial acuity might, but in the long run ignorance of the laws regulating businesses proves fatal. With more businesses able to receive legal information, guidance and support, entrepreneurs can avoid the mistakes and oversights which lead to businesses facing hefty fines, lawsuits or closure from regulatory officials.

To learn more about what we do, visit us at www.msmegegarage.org and www.barefootlaw.org

3. Stuart Kerr

Reforming Civil Courts to Enhance the Business Environment in Lesotho¹

Abstract

A well-performing commercial court with speedy resolution of cases can have direct and powerful effects on levels of investment and economic activity. If commercial cases are resolved in a timely fashion with well-established rules and procedures, investors perceive less risk and are more willing to invest. Civil legal reform was a small piece of the MCC compact with Lesotho but a critical activity for enhancing the business environment in the country.

Background

For Thabo Mpaka, a commercial lawyer based in Maseru, Lesotho, the introduction of a fully functional commercial court to this southern African nation of 2 million has brought clear benefits to his clients.

Consider the case of a local citizen who sold land in 2004, but then found himself embroiled in a lawsuit brought by a real estate agent who falsely claimed he had brokered the transaction. In fact, the agent had merely suggested the name of a potential buyer. Languishing in the High Court since 2005, costing him both time and money, the case was suddenly resolved in 2010, with the advent of the newly reformed specialized commercial court in Lesotho. Within a week after the presentation of evidence in the case, the presiding commercial court judge dismissed the case. The defendant was elated with the verdict, telling Mpaka, “Thank you for helping me—this guy had been breathing down my neck for years!”

This swift delivery of justice—rare for commercial disputes in Lesotho before 2010—was a result of legal reforms initiated through the Lesotho Compact. The Civil Legal Reform Activity undertaken as part of the MCC compact sought to ensure faster, fairer and less costly resolution of commercial disputes for all people and businesses in Lesotho. The activity consisted of the following components:

- Establishment of a **fully functional commercial court** dedicated exclusively to commercial matters, with specially-trained judges and rules designed to promote rapid resolution of disputes.
- A **small claims process** administered by the Magistrate Court, enabling individuals and informal businesses to seek redress for commercial disputes that might fall below the value threshold of the
- Commercial Court. Lawyers are not required in these simplified proceedings, making the process available to the poor.
- **Mandatory court-annexed mediation** before acceptance by the Commercial Court, promoting expeditious dispute resolution without the greater expense, time and uncertainties of litigation.

¹ KIN: Knowledge Information Network, Volume 2, Issue 1, Spring 2015, Published by Millennium Challenge Corporation, an Independent U.S. Government Development Agency

- Development of a **computerized case management system (CMS)** for the entire High Court (of which the Commercial Court is one chamber). CMS speeds case resolution, assists with court management and reduces the opportunities for corruption.

These reforms have improved the investment environment by reducing the risk for commercial transactions, from large bank loans to small sales. As more investments are made, and “risk premiums” are reduced, the gross domestic product should grow more quickly. Moreover, the risk to the poor of exclusion from official means of dispute resolution can be particularly dire in an urbanizing society. Civil court reform serves all strata of society.

Though representing less than 1 percent of the total compact investment—MCC invested \$3 million, and the Government of Lesotho contributed \$1 million for additional project needs—the impact of the activity has already been sizeable. A fully functional commercial court is operating in its own refurbished courthouse, mandatory court-annexed mediation of civil and commercial cases is underway and a small claims process is expeditiously resolving disputes. In the two years since the new commercial court began operating, the number of days to resolve commercial disputes has decreased from 962 to 343 days.

“Cases are being fast-tracked now,” said Mpaka, who counts large banks as his primary source of clients.

Monyake Hlabanyane is a first-class magistrate who hears small claims cases. “Landlord-tenant disputes populate the docket,” he said. “We try to encourage amicable settlement. But we also let people know their rights and inform them they can appeal if they are not satisfied.”

One of the disputes he recently resolved arose over the return of a security deposit of less than \$200. The parties were both professional staff at a bank in Lesotho. While the decision was in favor of the landlord, the tenant was satisfied with a formal ruling that he understood and could accept. Without a small-claims process, there would have been no practical means of dispute resolution available, and animosity between the parties could have lingered.

Origins of the Civil Legal Reform Activity

In designing the activity, the Government of Lesotho and MCC looked to the flourishing commercial courts in other African countries. Commercial courts have grown in popularity across the continent since the mid-1990s. Most Commonwealth African countries have now established commercial courts, with the courts in Ghana and Rwanda posting particularly impressive results. Some Francophone countries—including Côte d’Ivoire and Burkina Faso—have recently established similar specialized courts.

Commercial Courts

Generally, the features that distinguish commercial courts from ordinary courts are:

- Specialized, limited and carefully-defined subject-matter jurisdiction.
- Higher threshold value of the disputes adjudicated.
- Specially trained judges focused solely on commercial matters.

- Rules designed to promote rapid resolution of disputes.
- Mandatory mediation procedures prior to commencement of litigation.

In 2000, the High Court of Lesotho set up a commercial court as a chamber of the High Court. However, the initial rules differed little from ordinary court procedures, and very few cases were filed. Banks, in particular, continued to criticize the courts over the excessive time it took to enforce contracts in the courts. The Central Bank of Lesotho voiced concerns that the slow pace of High Court decisions not only reduced profits for existing businesses, but also negatively impacted investment overall.

"There had been complaints that the investment environment in Lesotho was not conducive to private sector growth," said Acting Chief Justice Tseliso Monapathi, then a judge of the High Court and a key architect of the activity. "The complaints focused not only on trade but resolution of disputes and execution of judgments, recovery of money by the banks."

"The courts were identified as the fulcrum, the point at which things would evolve," he said. "The disposal of cases, the delays in resolving disputes in general terms and tardiness of overall execution were identified as key constraints."

When Lesotho became eligible for a MCC compact in 2004, the government identified commercial dispute resolution and the Commercial Court as an important area of focus. The Law Society of Lesotho, working with the Law Society of England and Wales, prepared a primary study from which the project was developed. By the time the compact was approved in 2007, additional components—court-annexed mediation, small claims procedures and the computerized case management system—had been included to bring additional benefits to the activity.

MCC's early analysis of the economic rate of return—which considered only the costs of litigation, not the broader economic impact—nonetheless showed a strong economic basis for the project.

Strengthening the investment climate

In the short time that the Commercial Court has been fully operational, the court and associated reforms are already strengthening the enabling environment for private sector-led economic growth in Lesotho.

Local banks—once the most vocal critics of lengthy dispute resolution delays in Lesotho before the advent of the Commercial Court—are seeing the impact.

"Loan-to-deposit ratios have increased from 30 percent to 60 percent for the Lesotho banking industry as a result of speedier resolution of loan non-payment through the commercial court," said Standard Lesotho Bank CEO Mpho Vumbukani. "The Commercial Court has brought a lot of loan discipline to bank clients who previously thought they could hide behind slow judiciary decisions. Now they know that they need to repay their loans on time."

Banks are also pleased that the time to enforce contracts in Lesotho has decreased as a result of the commercial court's improved efficiency in resolving commercial disputes. The time required to enforce contracts is one of the indicators in the World Bank's annual *Doing Business Report* rankings, a key measure of investment climate competitiveness around the globe and one scrutinized by investors.

"Now a key challenge is the enforcement of decisions by the deputy sheriffs," said Vumbukani. "The Commercial Court issues a judgment, but enforcement still lags."

Making justice accessible

In addition to the commercial benefits brought about through the reforms, the activity has helped to increase access to justice for ordinary Basotho in Lesotho.

In particular, the inclusion of the small -laims processes in the activity has made the judicial system more widely accessible in Lesotho. Traditional means of dispute resolution historically dealt with smaller disputes outside of formal judicial proceedings. As the Basotho have become increasingly urbanized, traditional means of resolving smaller disputes are less available. However, taking a small dispute to the regular court was impractical because of the associated costs. The new small claims process has made judicial resolution of commercial disputes available to all Basotho regardless of their financial status. Hundreds of small claims are now decided each year—rapidly and at low cost—in the Magistrate Court.

Similarly, the introduction of court-annexed mediation in resolving commercial disputes has made ordinary Basotho more active participants in the judicial system. According to Palesa Phenethi, a mediation administrator with the Commercial Court, mediation has increased the engagement of ordinary Basotho in resolving their own disputes. "They become active participants in the legal system," Phenethi said. In an effort to resolve disputes, parties must meet with court mediators prior to trial, and Lesotho has already reached a resolution rate of approximately 60 percent. Mediated decisions, once agreed to by all parties, have the full weight of a court decision. Time and costs of litigation are avoided, and the judges' dockets are reduced.

Key success factors

Overall, the activity's success to date derives from a number of design and implementation factors. Implementation challenges included budget shortfalls, delays in implementation, staff shortages, and the perceptions of lawyers toward mediation. The Government of Lesotho bridged the budget shortfalls. Addressing understaffing—particularly of information technology personnel—took some time but was resolved with the relevant ministries. Lawyers' perceptions were tackled through training and continuous sensitizations via meetings and dialogues, as well as advertisements and stories in radio, television and the print media.

Strong project champions

The activity benefited throughout compact development and implementation from the strong support of Chief Justice Mahapela Lehohla—who served as chief justice for the duration of the Lesotho Compact—as well as numerous sitting judges. Their regular and vocal support for these reforms from the very beginning made clear that there would be no foot-dragging in implementing the changes.

Early and regular outreach to key constituencies to allay concerns about the changes

Given the impact these changes would have on the status quo for judges, court staff and lawyers who use the courts, there were concerns upfront that there would be resistance to the reforms from these groups. Would lawyers fear loss of business? Would judges and other court workers resist—even sabotage—a new system? Could the transition from paper to a computerized case management system be made successfully? In Lesotho, the relations between the court and legal bar had a sometimes troubled history, with lawyers at times feeling that court would too often impose its rules without consulting users. Early and regular outreach to the lawyers was critical in gaining useful feedback about the activity's design and implementation, as was ensuring the needed buy-in from the judges, lawyers and court staff who would ultimately implement the reforms.

Moving forward

"As we grow, we need more support and expertise," Monapathi said. "The indirect result is the improvement of the lawyer's profession in Lesotho—it becomes more sophisticated and solid. This, in turn, affects other aspects of the court system—a positive spillover. I can only wish that what has been done for the Commercial Court can be done for other aspects of dispute resolution like the Land Court."

"South-South" Technical Assistance From Other Countries That Have Successfully Established Commerical Courts

The International Law Institute, a Ugandan NGO, played a key role in helping the High Court of Lesotho develop and implement these reforms. A former chief judge of the Ugandan Commercial Court served as the chief advisor to the activity, with support from other experts from Uganda, Kenya and Australia. The primarily "south-south" nature of this technical assistance from Uganda was unusual and significant, bringing the practical perspectives of another African country that had successfully set up a commercial court. The International Law Institute also provided extensive training to judges, court staff, lawyers, and others. They remain in-country, supported by the Central Bank, to help consolidate the activity's initial results.

The courts of Lesotho, in cooperation with the European Union, are now expanding some of the civil legal reforms pioneered under the Lesotho Compact. Building on the foundation of the Civil Legal Reform Activity, Lesotho has the opportunity to develop one of the more successful civil legal systems in Africa.

In many other countries the resolution of commercial disputes remains slow, expensive and prone to corruption. Where the will to address these challenges exists, reforms can be achieved with modest cost and great impact.

The Lesotho Compact's end of program review, conducted by international consultants DRN from Italy and JIMAT from Zimbabwe, note that because of the Civil Legal Reform Activity:

"... it can be generally concluded that businesses and citizens have more faith and much easier access to the courts and have also rising expectations that their disputes will be settled successfully within a reasonable period of time. This is anticipated to be beneficial for citizens and businesses for the long term and could impact the climate in Lesotho as an investment destination positively."

Stuart Kerr, director, legal and regulatory at MCC, was involved with designing and implementing the Civil Legal Reform Activity from 2005 to 2012.

Alice Riedel served as deputy resident country director in Lesotho and supported activity oversight in-country.

Libete Selapane is an attorney in Lesotho who served as MCA-Lesotho's project coordinator in the High Court, supporting all elements of the Civil Legal Reform Activity.

4. Justice Geoffrey Kiryabwire

The Development of Small Claims Procedure in Uganda

By The Hon. Mr Justice Geoffrey Kiryabwire

Justice Court of Appeals Uganda and Chairman of the Uganda Small Claims
Implementation Committee

Statement of the problem.

Uganda in the mid-1990s embarked on the reform of the commercial justice system with a view to improving access to justice to the courts by the Ugandan business community so as to unclogged capital that was locked up in disputes and ultimately release that capital back into commerce and trade so as to facilitate overall economic growth for the country. Previously all commercial disputes were handled as part of the civil justice system together with claims in torts, land disputes and family disputes. The civil justice system as a result was congested, not specialised and slow in resolving disputes, which negatively impacted commercial and economic growth.

Re-engineering the civil justice system.

In 1996 the Uganda Judiciary in response to an outcry by the business community to have the Judiciary be responsive to the quick resolution of commercial disputes, carved out of the civil division of the High Court a new division known as the Commercial Court Division (or Commercial Court as it is better known). The Commercial Court was specialised and exclusively dealt with commercial disputes. The Commercial Court largely lived up to its expectations and revolutionised the resolution of commercial disputes in Uganda. This success notwithstanding, the Commercial Court came under significant criticism as a big business court, which was not suitable for the small and medium type Enterprises (SMEs) and the informal business sector which comprised the bulk of the local Ugandan business community. In a bid to address this imbalance in the Commercial Court a study led by myself (Justice Geoffrey Kiryabwire) and a select group of legal professionals identified the need to start a form of small claims court in Uganda to handle monetary disputes from the SME and informal business sector.

As a result of the study, in 2011 **The Judicature (Small Claims Procedure) Rules [SI 25 of 2011]** were made. The Small Claims Procedure was a totally home grown version of small claims court found in other parts of the world. These new Rules put in place a new innovate procedure whereby litigants who seek to recover a monetary debt of Ug Shs 10,000,000/= (Ten Million shillings or about US \$ 2,700) and below from another person could institute a fairly simplified case in court by themselves and use the court services to have it served on a defendant. The defendant equally through a simplified process could file a defence to the claim against him or her. The procedure was simplified to such an extent that the parties to the case do not need to hire a lawyer and indeed the procedure excludes representation by lawyers in such courts. The idea was decongest courts of cases of debt recovery of the value of Shs 1 to 10,000,000/= which are the bulk of claims of the small and medium business community.

The procedure started at the end of 2012 in 6 pilot courts around the country and by the end of 2013 the Judiciary, won the Public Service Innovation Award for introducing this simplified procedure in the courts. The Small Claims Procedure was a popular innovation and broke records when a few cases were actually settled on the same day in which they were filed. The Small Claims Procedure quickly acquitted itself as true fast track court procedure.

The Results of the Procedure.

The recoveries of money made through this procedure have continued to grow from Ug Shs 1.5 billion in 2013 (US \$ 417,000) in 6 pilot courts to about Ug Shs 8.0 Billion (US \$ 2,222,222) on 2016 in 25 pilot courts. The half year report for 2017 shows that already about Ug Shs 4 Billion has been recovered, which is an early indicator that the performance of the previous year will be surpassed. Given that these figures represent fairly small amounts of monies that are claimed, the overall value of the annual national recoveries points to wide use of the procedure by claimants in a manner never before achieved in Uganda.

An independent evaluation baseline study carried out by **M/s Akiijul Ltd** in partnership with **LASER** and **LDP** of the UK in 2016, shows that the Small Claims Procedure is highly rated with an 80% satisfaction rate by polled respondents. This independent study is also backed up by experiences in our magistrates' courts, where the filing of small claims led to a 55% decline in the number of claims filed in court using the regular track for the equivalent amounts. The study also found that the Small Claims Procedure increased access to civil –commercial justice in the pilot courts and improved the business environment for its users. The procedure has improved access to justice to a more marginalised business sector in Uganda, is fast, efficient and cost effective. The Independent Study also established that the value of claims finalised under the small claims procedure in the Government financial year 2015/16 exceed the costs of running the programme by 11:1. The Small Claims Procedure in Uganda has already started to be recognised as a significant innovation by other African Countries and has inspired the creation of small claims procedure in the Kingdom of Lesotho and the benchmarking of the Ugandan model from the judiciary of Rwanda.

Challenges.

What remains is the need to roll out this procedure to all magistrates' courts in Uganda. Though the most significant magistrate's courts now operate the small claims procedure in Uganda, this still amounts to less than half of the said courts in Uganda. The roll out of the small claims procedure to other courts has been slow largely due to limited funding. The independent study established that the cost benefit return of rolling the procedure country wide would exceed costs by 8:1. Development Partner support in this area in addition to Government budgetary support would lead to a faster roll out of the procedure throughout the country.

Conclusion.

The award winning small claims procedure in Uganda has become a "people's court" responsive to the needs of the SMEs and informal sector. It has also improved the culture of contract compliance in the country and facilitated business growth and credit worthiness. The future projections of this fast track is bright and it undoubtedly improve Uganda's overall business climate.

5. Katrin Kulmann



SMEs and the Rule of Law in Africa: Legal Developments, Regulatory Challenges, and Prospective Solutions

2017 Annual Global Rule of Law Exchange Conference

Thursday, 12 October 2017

Panel: Challenges of Regulation in Africa

10:15 – 11:15 AM

Chair: Katrin Kuhlmann, President, New Markets Lab (www.newmarketslab.org, a non-profit center focused on the intersection between law, economic development, entrepreneurship, and social issues that gives small enterprises and the economically disadvantaged a more direct role in shaping regulatory systems while providing hands-on training for lawyers from developing and developed countries alike)

Panelists:

- Timothy Kakuru, mSME Garage (Uganda)
- Affiong Williams, Founder/CEO, Reelfruit (Nigeria)
- Brian Milder, Root Capital
- Oulimata Fall Sarr, Advisor, Office of the Executive Director, International Trade Centre, and Mo Ibrahim Leadership Fellow

Description: Good, clear and accessible laws and regulations are necessary for SMEs to thrive. The session will discuss what hampers the development of good laws and regulations, the impact this can have on SMEs and development in Africa, and how legal and regulatory challenges facing SMEs operating in different sectors can be addressed.

Objective: The main idea objective of this panel, which opens the conference after the keynote address, is to **identify challenges that impact the enabling environment for SMEs and development in Africa**. Although the participants will focus mainly on challenges in order to set the stage for the day's discussion, they will also share some approaches that can help address these challenges.

Key Themes:

- Common legal and regulatory challenges facing entrepreneurs and SMEs;
- Gender aspect of the enabling environment;
- Informal vs. formal markets and the implications for rule of law;
- National law vs. regional and international legal frameworks;
- Differences in common law and civil law approaches; and
- Possible solutions to improve the enabling environment for SMEs.

Illustrative Questions for the Group:

- What are some of the most pressing legal/regulatory challenges you have encountered working with entrepreneurs and SMEs?
- Given that a great deal of trade is informal, how do you see the distinction between informal and the formal markets in light of these challenges and efforts to improve rule of law?
- Could you briefly touch upon the differences between Civil Code and Common Law legal systems as they relate to in the enabling environment for SMEs?
- What approaches have you seen that have helped to address issues in the enabling environment for SMEs?

Questions for Specific Panelists:

- **Oulimata:** Do you think that women entrepreneurs face different challenges than other SMEs when seeking to engage in trade, and, if so, how? How does your work with the International Trade Centre in Geneva help address challenges in the enabling environment and build capacity for entrepreneurs to engage in trade?
- **Timothy:** How can legal services be best tailored to SMEs? Do you see differences in legal issues facing SMEs, perhaps speaking specifically to women and foreign participants in the market? Have regional harmonization efforts under COMESA or the EAC resolved some of the legal challenges faced by SMEs in the region (or how could they)?
- **Affiong:** How do regulations in Nigeria impact entrepreneurs in the agricultural sector? Do you think that high-level legal frameworks like the WTO's Trade Facilitation Agreement or regional harmonization efforts under ECOWAS could help unleash market opportunities for entrepreneurs in Nigeria? If so, in what ways?
- **Brian:** What are some of the most pressing legal challenges that impact access to finance? How has the enabling environment in Africa impacted Root Capital's work, and can you offer any comparison with other regions in which Root Capital is active? Do you think good practices could be drawn from other countries and tailored to the African context in order to address some of the issues faced by SMEs?

6. Odunoluwa Longe



DIYlaw
Legal, Simplified

Regulatory Challenges faced by African SMEs

-

Odunoluwa Longe

29 September 2017

Regulations & regulatory burdens



DIYlaw

- Compliance regulations are needed in order to achieve communal, economic and social benefits including protecting consumers, managing an efficient market and raising revenue for the government for social benefits.
- As essential as these regulations are, for small businesses, often times, these regulations become a burden.
- Regulatory Burdens are the regulatory, compliance and administrative costs, disincentives, inconveniences and other factors that may negatively affect the productivity of an SME and frustrate its overall performance.
- The fixed-cost nature of regulations is more likely to hamper the effectiveness and efficiency of SMEs than larger firms because the strength of SMEs stem from their flexibility.
- An equitable balance therefore needs to be achieved to balance the need for regulations and creating an enabling environment for businesses to thrive
- The continuous debate therefore is whether regulatory treatments should vary based on the size of a business, (i.e. tiering) and the fairness of such tiering.

: Source: "Reducing the regulatory burden: Does firm size matter?"
Ian Bickard, Iie & Ralph Laffon

The Nigerian situation

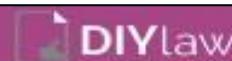


Whilst most regulators offer a flat regulatory regime, a few agencies offer a tiered structure

Non- Tiered	Tiered
Taxes Taxes are a flat rate across board irrespective of size, e.g. VAT 5% for all valuable companies and 30% company's income tax	Food and Drug Regulation SMEs (cottage industries) pay less regulatory fees with less hurdles to cross.
Pioneer Status, i.e. tax exemption only attainable by large companies with SMEs who need it not being able to meet with the minimum asset requirement to get tax exemption	Requirements to meet for SMEs also less stringent than larger companies, however bureaucracy and corruption still make the process burdensome for SMEs

3

Government Solutions



- Exemptions: SMEs may be exempted from certain regulations where compliance will be onerous and negatively impact the productivity of the SME and its overall performance.
- Flexibility: SMEs may be given less stringent regulation requirements and given some flexibility in complying with the regulation requirements.
- Cost reduction: Government can ensure that the SME costs for compliance with regulations is reduced
- Set up a One-stop shop for SMEs to ease compliance with regulations and ensure efficiency of business; for example, the Nigerian Government plans to launch a series of one-stop shops to interface with entrepreneurs and agencies in order to ease business.*
- Set up a regulatory body specifically for SMEs; for example, Small & Medium Enterprise Development Agency of Nigeria.

SME Solutions



- Strategic Relationships with regulatory bodies.
- Create an association of SMEs that will focus on information and process dissemination to SMEs. Association can also serve as a pressure group for interfacing with government agencies
- Participate in existing business and trade associations
- Facilitate availability of resources
- Support programs and information networks.

Source: <https://guardian.ng/> Begum et al, 2017

5

7. Andreja Marusic



SMEs and the Rule of Law in Africa

Emerging business regulation topics relevant for MSMEs in Africa
Washington DC, October 12th, 2017

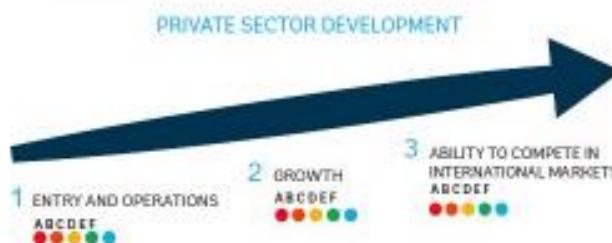
Andreja Marusic
Global Lead, Business Environment
Trade and Competitiveness Global Practice

 WORLD BANK GROUP
Trade & Competitiveness

BUSINESS ENVIRONMENT

WHAT WE DO

- ① help design business regulation
- ② improve regulatory delivery



We assist governments improve the policies, institutions, regulations and procedures that affect business activities in a country – from business entry to growth to competitiveness in the international market.

100 projects in over 70 countries



EMERGING TOPICS IN BUSINESS REGULATORY REFORMS RELEVANT FOR MSME's IN AFRICA

Re-thinking Informality
– differentiating informal firms and looking at long term vs. short term incentives to formalize

Recognizing the importance of transparency and quality data on businesses giving governments tools for policy making and investors tools to value investing in and accessing new markets

Supporting high-growth businesses: how can governments support high-growth businesses rather than supporting businesses just based on size?

How can **businesses** work on improving the business environment without government involvement?

Private Sector as G2B services providers: outsourcing as a way of accessing external expertise and delivering services more cost-effectively

Improving trust between the government and private sector: e.g. applying behavioral insights in policy making



3



BINGHAM CENTRE FOR THE RULE OF LAW

"...the rule of law is one of the greatest unifying factors, perhaps the greatest... It remains an ideal, but an ideal worth striving for, in the interests of good government and peace at home and in the world at large." The Rt Hon Lord Bingham of Cornhill KG



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BinghamCentre #ruleoflaw



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