

# THE STARLIGHT

No. 3, 2025

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Protecting women's rights  
within a cultural framework:  
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**PHINDIWE CHONA**

The human cost behind  
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workers by Global AI companies

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Tort and business wrongs  
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mechanisms and the role of  
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**OCHIENG ODERO**

Interview with



**HAVANA  
SANDERSON**

Chairperson University of Zimbabwe Moot Society.

# The StarLight

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## EDITOR-IN-CHIEF'S NOTE

Throughout history, the fate of societies has been shaped not only by armies or wealth, but by the courage of voices, those that dared to speak, question, and imagine. It is in this enduring spirit that I present to you, the No 3, 2025 edition of The StarLight Magazine. This edition is a convergence of law and imagination, with the voices of African law students ringing beyond the Savannah and shining a guiding light on the path of justice, innovation, and transformation.

We begin the edition with Phindiwe Chona's "Protecting Women's Rights within a Cultural Framework: Legal Perspectives from Lesotho". Chona navigates the complex terrain where constitutional equality collides with entrenched patriarchal customs, especially in matters of inheritance, chieftainship, and land rights. Rather than dismissing tradition, she calls for its reimagining as a tool for feminist transformation, envisioning a future where culture is not an obstacle but a foundation for gender justice. Stephanie Okoyo takes us into the hidden world of digital labour in her article, "The Human Cost Behind Algorithm: Unmasking the Exploitation of Kenyan Workers by Global AI Companies". Anchored in the landmark *Arendse v. Meta's* case, the piece is both a searing indictment of systemic disregard for labour rights and a call for stronger legal protections to safeguard dignity in the rapidly evolving tech economy.



EZEKIEL ARCHIBONG

Ochieng Odero's article, "Tort and Business Wrongs in Africa: Legal Liability, ADR Mechanisms and the Role of Traditional Justice Systems", turns our attention to how tort law intersects with business practices, and the potential of combining courts, alternative dispute resolution, and traditional justice systems. Odero's proposal for a hybrid model champions accessibility, accountability, and cultural relevance in resolving disputes and building trust in African markets. As final article, Sam Mbago and Ellyne Mwangi's "Balancing Security and Liberty: Police Conduct and the Right to Due Process in Kenya", demystify the legal framework surrounding arrests and police conduct, exposing the tension between state power and individual liberty. Their work reinforces the need for transparency, accountability, and respect for human dignity in law enforcement, an urgent reminder that rights must be lived realities, not distant promises.

The edition will not be complete without an exclusive interview with an exemplary law student. In this edition, we are honoured to feature Havana Sanderson, a third-year law student from the University of Zimbabwe, Chairperson University of Zimbabwe Moot Society and Development Committee Member at Africa in the Moot. Havana embodies a vision of law as both a shield and bridge. Her reflections on discipline, youth empowerment, and her aspirations in diplomacy remind us that the next generation of legal minds carries both the responsibility and the promise of shaping the Africa of our dreams.

My appreciation goes to our editorial team, authors, readers and everyone whose contributions have had a ripple effect on this edition. As you all flip through the pages of this magazine, it is my hope that it kindles your imagination, illuminate your thoughts, and guide you toward new horizons of insight and possibility for our continent.

Thank you!



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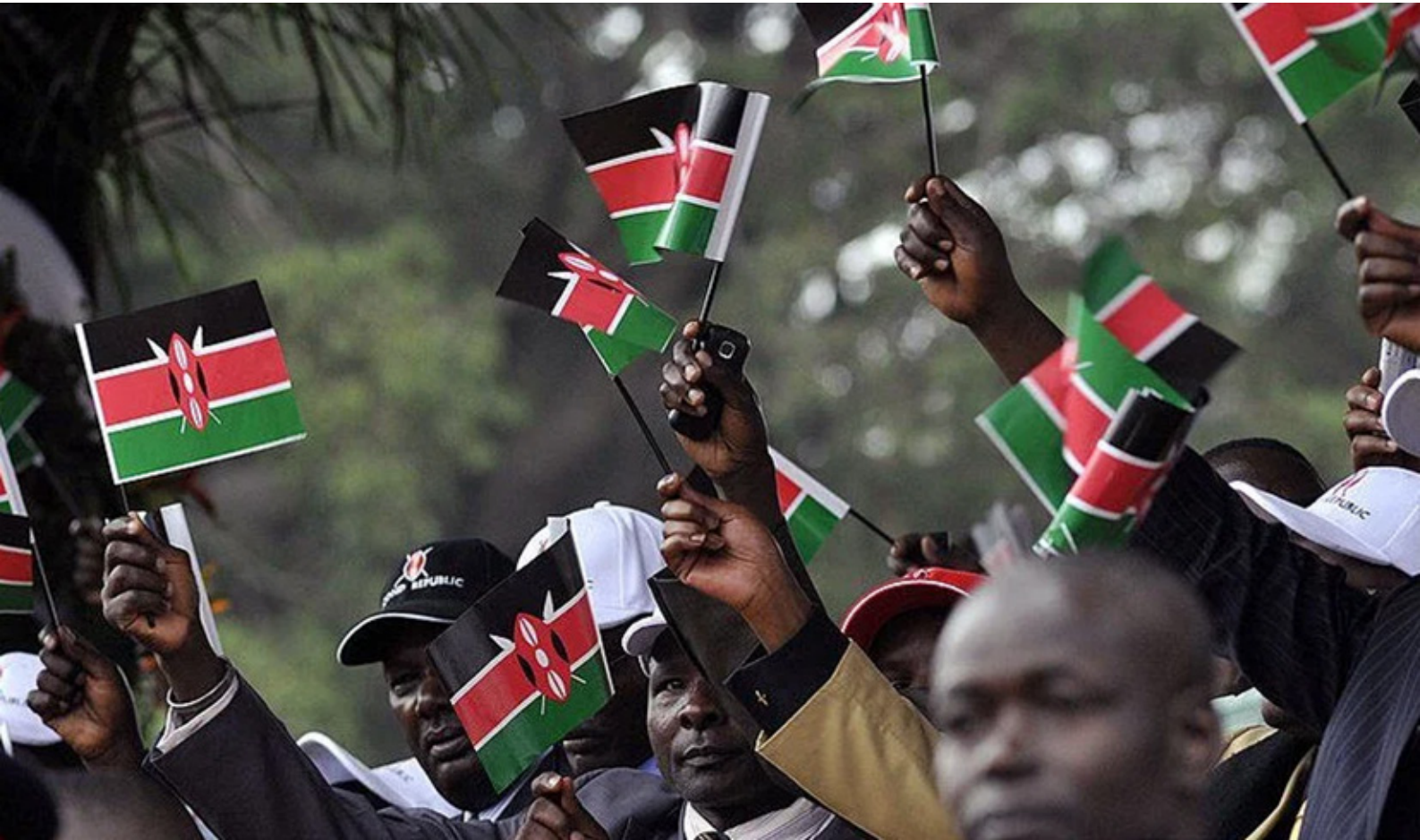
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# THE HUMAN COST BEHIND THE ALGORITHM: UNMASKING THE EXPLOITATION OF KENYAN WORKERS BY GLOBAL AI COMPANIES.

STEPHANIE LORE OKOYO



## Abstract

As Artificial Intelligence (AI) rapidly evolves, an unseen workforce in Kenya, termed as the “ghost workers”, pays the price for its advancements. Behind every filtered image or flagged video lies the psychological burden carried by content moderators and AI workers who endure exploitative conditions. AI workers refers to two distinct concepts; the advanced digital systems designed to perform tasks autonomously, boosting efficiency and collaboration in workplaces and the people (Human AI workers) who label, transcribe and classify data to train the AI models. This paper explores why Kenya became a hub for outsourcing of AI labour (Human AI work), the nature of work done in these AI companies, and also unveils the hidden reality of exploitation of digital labour through the lens of the *Arendse v Meta* case, exposing psychological harm, data misuse and the systemic disregard. It also examines the legal frameworks meant to protect these workers and the problem of enforcement. Furthermore, it highlights how Kenyan courts, through bold judicial intervention, have begun carving a path towards justice in this emerging area. It emphasizes the urgent need for stronger protections in Kenya’s evolving tech landscape. By integrating legal analysis with personal experiences, this paper argues that the future of AI must not be built on broken minds and ignored rights.

## Introduction

**A**rtificial Intelligence (AI) refers to computer systems that emulate human cognitive abilities like reasoning and learning by employing mathematical models and logical operations. They analyze existing data to identify patterns for making predictions or initiating actions. The global AI market, valued at \$136.55 billion in 2022, is projected to grow at a compound annual growth rate (CAGR) of 37.3%, reaching 1.81 trillion by 2030. The rapid advancement of AI is transforming industries and reshaping the global economy, with AI-related technologies expected to contribute over \$15.7 trillion to the global economy by 2030, according to Price Waterhouse Coopers (PWC). As the world marvels at the rapid evolution of AI, few pause to ask: Who trains these intelligent machines? Critics have analysed the supply chain of AI systems and have uncovered that one key aspect of this supply chain is a hidden army of AI data workers outsourced from the global south countries like Kenya to perform the behind-the-scenes work of preparing the datasets used to train the machine learning algorithms that power the AI products. Unfortunately, behind the sleek facade of AI, a deeply exploitative global labour structure underpins its development, one that remains largely invisible to the public.

## WHY KENYA BECAME A HUB FOR GLOBAL AI OUTSOURCING

Tech giants such as Meta (Facebook), Open AI and Google from the Global North continents such as the United States, United Kingdom, and Germany majorly outsource AI labour from the Global South Countries, one of them being Kenya. Kenya is being used primarily as a source of undervalued human labour and a cheap source of natural resource inputs rather than as an equal partner in the development and deployment of AI technologies. Its digital infrastructure, high English proficiency and flexible labour market make it a hotspot for data outsourcing too. It is part of the so-called 'Silicon Savannah'. However, unlike its poetic name, the reality for workers in this field is far less idyllic.

## NATURE OF THE WORK IN THE AI COMPANIES

According to the Ajira Digital 2021 Report released by the Ministry of Information Communication and Technology, over 1.2 million Kenyans are engaged in online work, including in the AI space. These AI workers often perform monotonous, repetitive tasks including collecting, annotating, curating and verifying datasets that serve as training data for AI systems. They are also responsible for monitoring and filtering user generated content to ensure compliance with community standards.

## EXPLOITATION OF KENYA'S AI WORKFORCE

The wealth generated by AI technologies disproportionately enriches a transnational super-rich class, while the labour-bearing population of Kenya endure dehumanizing conditions to sustain this technological progress. In early 2024, nearly 100 Kenyan data labelers and AI workers, employed by companies like Meta, Scale AI and OpenAI, wrote an open letter to the then US President, Joe Biden, describing their working conditions as akin to "modern-day slavery". Despite being crucial to AI systems, their labour is undervalued, contributions ignored, and rights violated.

## THE ARENDSE CASE: A CRY FOR JUSTICE

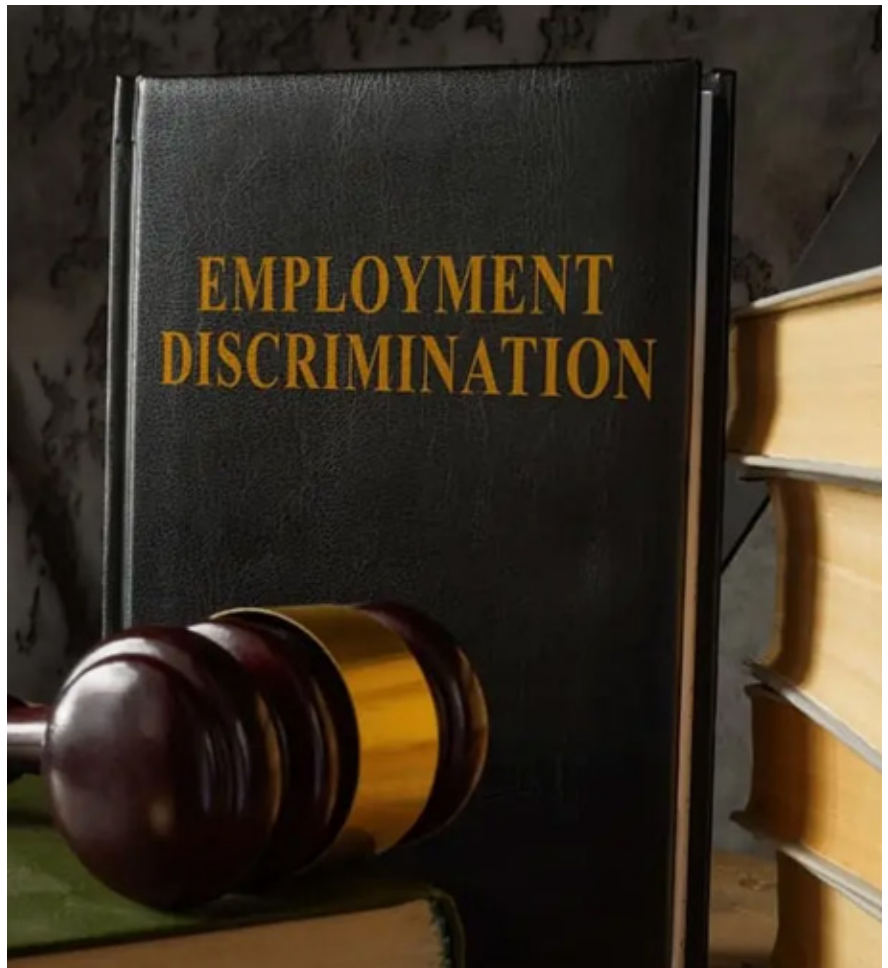
In 2023, former Sama Content moderators filed a landmark case (The Arendse Case) in the Kenyan Employment and Labour Relations Court against Meta Platforms claiming inhumane working conditions, inadequate psychological support and union-busting. Some of the significant facts in this case include:



**Unlawful Redundancy and Termination:** The applicants complained of the fact that their contracts were being terminated through unlawful redundancy because no genuine nor justifiable reason was given for the redundancy and no proper redundancy notice was issued as required under the Employment Act . The payment for terminal dues was also made conditional to signing of Non-Disclosure Agreements. The redundancy was allegedly a retaliation for whistleblowing as they were warned not to speak about working conditions, hence the termination was seen as a way to silence them and escape accountability.

**Employment Discrimination:** The moderators also complained of employment discrimination, stating that Meta had contracted another company, Majorel, to recruit new moderators, while their own reapplications were rejected not for lack of merit or qualifications, but solely because they had questioned the toxic working conditions.

**Mental Harm with no health support:** An applicant described her disheartening job experience as a moderator. Her daily routine at Sama involved watching and reviewing graphic war videos, including footage of mutilated or dismembered bodies, sadistic acts of manslaughter, and people being burned alive, among others. The worst part, she said, was the minimal to nonexistent mental



health support. The in-house wellness counsellors were not qualified to handle trauma and the medical insurance provided was barely enough to afford actual treatment for mental health damage. She stated that “To date I suffer from chronic migraine and insomnia, and I know my life will never be the same again”.

**Non-Disclosure Agreements (NDAs):** Their lives were made even harder as they were forbidden by Non-Disclosure Agreements (NDAs) from even discussing their work with family hence creating deep isolation and loneliness. Essentially, they were forced to endure traumatizing content to survive economically. A moderator stated, “We are being collected...to be tortured in slave-like conditions. We are building the world’s largest platform, and in return, we will never live normal lives again”

**Constant Surveillance:** Michel Foucault in his theory on ‘Disciplinary Power’ argues that there is a change in how power is exercised in the society today. He states that we have moved away from what he called ‘Sovereign Power’- which is control through the threat of force, to ‘Disciplinary Power’- which is control through the monitoring and surveillance of populations. He introduces the concept of ‘Panopticon’ which was proposed by philosopher Jeremy Bentham.



The Panopticon was a design of prison which consisted of a central observational tower and prison cells arranged around it in such a way that the prisoners could potentially be under observation at any time but could not see whether they were being observed or not. Because of this, prisoners had to self-monitor their behaviour so that, in effect, they ended up disciplining themselves because of being under constant surveillance. Foucault argues that the use of disciplinary power has extended everywhere in society. It is not only in prisons that disciplinary power (Surveillance) is used to control people, but also at workplaces and the most obvious examples are the use of CCTV.

However, he warns against the detrimental effects of such surveillance mechanisms on individuality and autonomy. The awareness of being constantly monitored leads to dynamic normalization, wherein individuals conform to societal expectations out of fear of punishment, stifling dissent and fostering homogeneity. Foucault's theory on disciplinary power sheds light on how these AI workers are under constant surveillance and control to ensure productivity and any deviations would lead to punishment. Therefore, they are always working under pressure for fear of being punished even for the slightest of mistakes or even being dismissed from employment.

Shoshana Zuboff in her article on Surveillance capitalism talks of how human behaviour is commodified into data for profit with no consent or form of compensation hence showing that these AI workers are not only exploited for their labour but also for their data, which refine AI systems or predict behaviours, hence their lives are commodified twice.

Unstable Contracts and Insecure Lives: These workers have to endure a minimum of 8 hours every working day with payment as low as 2 dollars per hour which is a remarkable contrast to Kenya's average hourly wage of approximately 8.28 dollars per hour.

Many of these AI workers are employed as independent contractors hence they have short-term contracts meaning they often lack access to the benefits such as paid leave or pension and protections that full-time employees would typically be provided with. During an interview of Sama AI workers, almost all workers interviewed reported feeling insecure and fearful about the possibility of losing their jobs. Hence, most of the work is done under a lot of stress, with people skipping lunch and working overtime to avoid being sacked. If workers failed to meet their targets throughout the week, they would be asked to come in for a 5-6-hour unpaid shift on Saturday to meet their outstanding performance targets. One worker stated, "Physically you

are tired, mentally you are tired, you are like a walking zombie" These among many others are the exploitation experiences of many Kenyan workers in these AI companies.

#### LEGAL FRAMEWORKS ADDRESSING EXPLOITATION OF KENYAN AI WORKERS

Although Kenya does not yet have AI-specific labour laws, there are general laws in place to protect these workers' rights. The Constitution of Kenya, 2010 provides for national values such as human dignity, equity, social justice, inclusivity, equality, human rights and non-discrimination among others that form the rights that Kenyan workers by virtue of being citizens have. It also prohibits forced labour and upholds the right to highest attainable standard of health for all workers. The Employment Act also provides conditions for a lawful redundancy, the legal remedies for unfair termination and also prohibition of the discrimination of workers among many other laws. The Labour Relations Act also protects employees from unfair labour practices and victimization. The Occupational Safety and Health Act also emphasizes the duty of employers in ensuring the safety, health and welfare of all their workers.

Internationally, the Universal Declaration of Human Rights guarantees the right to just and favorable conditions of work, including fair wages that provide a decent standard of

living. The International Covenant on Economic, Social and Cultural Rights (ICESCR) also emphasizes on reasonable work hours and rest. There are also the International Labour Organization (ILO) Conventions that address various employment issues such as Occupational Safety and Health, termination of employment and forced labour.

These among many other laws show that indeed the state has made effort to protect the AI Kenyan workers among other workers. However, even from the Arendse case where employers ignored these regulations, the apparent challenge is the next to zero implementation and enforcement of these regulations.



### JUDICIAL INTERVENTION IN THE PROTECTION OF AI WORKERS

As much as implementation remains a challenge, the Kenyan courts have shown that there may be some light at the end of the tunnel for AI workers. The ruling in the Arendse case stands as a landmark moment, demonstrating how the Kenyan judiciary is beginning to shape the regulatory response to AI-driven labour exploitation.

In this case, the court recognised serious complaints concerning forced redundancy, mental harm, inhumane working conditions, employment discrimination and unfair labour practices. In response, it issued strong interim orders to the respondents to prevent further harm. These included blocking layoffs, requiring adequate physical and mental health support in place of superficial “wellness counselling,” and freezing contract terminations.

It also gave orders requiring the relevant government agencies such as the Kenya National Human Rights and Equality Commission, the Central Organisation of Trade Unions, the Attorney General, the Ministry of Labour, Social Security and Services and the Ministry of Health to review and report on laws and policies that protect workers’ health and safety in the digital work and to also review the status of the employment laws and the steps being taken to sufficiently provide for the rights and obligations of employers and employees around digital workspaces and suggest improvements. The judgment sends a message on the dire consequences and sanctions to be faced by outsourcing global corporations exploiting Kenyan workers. This case also revealed that the Kenyan courts are not ignorant of the realities of virtual workspaces.

### RECOMMENDATIONS

#### ● Enactment of a Digital Labour Protection Policy

In as much as there are general laws on the rights of workers, the fast growth of AI in Kenya implies more job opportunities in the industry and higher probability of exploitation of digital workers. It is therefore recommended that a specific Digital Labour Protection Policy for digital and outsourced labour be developed to address issues of mental harm among many others faced by these workers

## ● Promotion of Public Awareness Campaigns

Some AI workers are exploited simply because they are not aware of their labour rights. Increasing public awareness campaigns will therefore be crucial in educating both workers and the wider public on their rights in digital and AI-related jobs. Such campaigns should also emphasize the importance of data privacy, thereby helping to limit not only workplace exploitation but also exploitation through misuse of personal data.

## CONCLUSION

Kenya's involvement as a source of AI labour has come at the cost of the lives of the invisible AI workers, who majorly carry out the content moderation and other demanding AI-related jobs. A study of the Arendse case has shed some light on how these workers have been exposed to labour exploitations ranging from mental harm and inhumane working conditions to data exploitation. Despite the existing legal protections under the Kenyan and International laws, enforcement remains a problem, hence allowing the powerful Tech giants to operate with minimal accountability. However, the Kenyan courts have proven that there is indeed hope for better implementation of the legal protections for the AI workers. It is anticipated that with time, the government will come up with better laws and policies to address the specific issues of exploitation faced by the Kenyan AI workers in the digital workspaces. This article is a wake-up call to the AI workers not to keep silent about their exploitation, to employers to uphold and respect the labour rights of these workers and to the government to ensure proper enforcement of the labour and employment laws especially in the new areas of employment. Advancement in AI must not and should not come at the expense of human lives and dignity.

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## PROTECTING WOMEN'S RIGHTS WITHIN A CULTURAL FRAMEWORK: LEGAL PERSPECTIVES FROM LESOTHO.

PHINDIWE CHONA

### INTRODUCTION

Culture is the heartbeat of many African societies, shaping identities, social relations, and legal systems. In Lesotho, as in many African countries, the legal framework is pluralistic, combining formal statutory laws with customary laws that have governed communities for generations. This coexistence of customary law and constitutional human rights continues to generate friction, particularly regarding the rights and status of women. While the 1993 Constitution of Lesotho guarantees equality before the law, entrenched patriarchal customs rooted in Basotho traditional norms continue to limit women's access to land, inheritance, and political leadership. This legal conflict undermines gender justice and hinders the country's development by excluding half of its population from full participation in socio-economic and political life.

This article examines the ongoing tension between cultural norms and international human rights obligations in Lesotho, focusing on how such conflict affects the legal recognition and empowerment of women. Drawing on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), regional case law, and national legal instruments, it argues that meaningful development cannot occur where cultural relativism erodes constitutional rights. Thus, this essay, seeks to provide insights into how Lesotho can navigate these challenges and advance women's rights within its cultural framework. The piece also offers comparative perspectives from other African jurisdictions that have successfully reconciled tradition with gender equality and explores further the possibilities for harmonising customary practices with gender equality principles in Lesotho, arguing that meaningful progress requires a cultural evolution that honours tradition while promoting justice and equal rights.

### 1. LEGAL PLURALISM IN LESOTHO: A DOUBLE-EDGED SWORD

Lesotho's legal system operates on the principle of legal pluralism, recognising the coexistence of multiple normative orders: statutory law (Roman-Dutch and legislative) and customary law as codified in the Laws of Lerotholi (Poulter, 1981; Poulter, 1976; Lesotho, 2025). The 1993 Constitution is the supreme law and guarantees rights such as equality and non-discrimination (Sections 3 and 18). However, Section 18(4) permits the application of customary law even where it conflicts with constitutional rights,

provided it relates to “customary law or traditional practices” and is not repugnant to natural justice or morality. Customary courts remain the primary forum for dispute resolution for most Basotho, especially in rural areas. These courts address matters such as marriage, inheritance, chieftainship, and land tenure, often following unwritten rules and community practices.

### **1.2 Patriarchy and Gender Inequality in Customary Law**

Despite its role in social cohesion, customary law in Lesotho is predominantly patriarchal, reinforcing gender hierarchies. Women are routinely excluded from inheritance rights, leadership roles, and decision-making within their communities. For example, the law traditionally recognises only male heirs for property succession, and chieftaincy positions are often reserved exclusively for men. These realities conflict with Lesotho’s constitutional commitments to gender equality (Constitution of Lesotho, 1993, Sections 18–19) and international obligations such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Lesotho ratified in 1995 (United Nations, 1995).

### **1.3 Feminist Legal Theory and the African Context**

Feminist legal theory critiques how legal systems—both statutory and customary—often uphold gender inequality. African feminist scholars, however, caution against simply transplanting Western feminist ideas into African Legal System without accounting for Africa’s unique socio-cultural realities. In her article, Professor Sylvia Tamale (2008) emphasises that African feminist law must be rooted in lived realities, recognising culture, rather than simply transplanting Western feminist ideas into African Legal Systems (Tamale, 2008). In Lesotho, this means feminist legal advocacy must engage with the dual legal system, applying feminist theory not only to statutory reforms but also to customary law reform. It requires navigating cultural sensitivities to challenge patriarchy while preserving cultural identity, thereby developing a legal framework that is both decolonial and culturally

authentic—capable of dismantling patriarchy without erasing identity.

## **2. CASE STUDIES: WHEN CUSTOMARY LAW AND RIGHTS COLLIDE IN LESOTHO.**

### **2.1 Succession and Inheritance: Letšolo v Letšolo (2022)**

One prominent case illustrating the tension between customary law and constitutional rights in Lesotho is *Letšolo v Letšolo* [2022] LSCA 54. The Court of Appeal upheld the customary rule of primogeniture, which grants preference to the firstborn male child of the first wife in inheritance disputes under the “Laws of Lerotholi”—a codification of customary succession laws. Despite constitutional guarantees of equality, the court reasoned that this customary rule reflects an entrenched cultural practice integral to Basotho identity. Consequently, daughters and children born outside formal marriage were denied inheritance rights. This ruling reveals the complexity of legal pluralism, where the formal legal system defers to customary norms even when conflicting with equality rights. It highlights how women’s property rights remain submerged under customary regimes.

### **2.2 Chieftainship and Gender Exclusion: Masupha v Senior Resident Magistrate (2013)**

In *Masupha v Senior Resident Magistrate for the Subordinate Court of Berea & Others* [2013] LSHC 9 (Const. Div., Constitutional Case 5 of 2010), Senate Masupha challenged the Chieftainship Act 1968 (Act No. 21 of 1968), which explicitly reserves chieftainship succession for male heirs. Masupha, the eldest daughter of a chief, argued this exclusion violated constitutional equality provisions. The Constitutional Court dismissed her claim, invoking Section 18(4) to uphold customary law as a protected exception. The judgment is a clear scenario of how legal pluralism can serve as a barrier to women’s leadership by entrenching patriarchal customs.



## 2.3 Marriage, Legal Capacity, and Women's Autonomy

The Legal Capacity of Married Persons Act (Act No. 9 of 2006) abolished the doctrine of marital power, which previously rendered married women legally incapacitated. However, many customary practices continue to treat women as perpetual minors under male guardianship, restricting autonomy and property rights. For example, married women often need their husband's consent to buy land or enter into contracts (UN-Habitat, 2015). In cases of widowhood, women may be compelled to marry a male relative of their deceased husband to retain access to property and land (LawGratis, 2020). Historically, customary laws have also prevented women from owning land independently, and despite legal reforms, these practices continue to limit women's full property rights (Land Equity, 2018). In practice, these restrictions expose women to economic vulnerability and undermine their autonomy. This disconnection between statutory reforms and customary norms exemplifies challenges in implementing gender equality in a plural legal context.



## 2.4 Early and Forced Marriages: Violations of Bodily Autonomy

Although the Children's Protection and Welfare Act (2011) sets the legal minimum age of marriage at 18, early and forced marriages persist, especially in rural areas, driven by poverty and cultural expectations. Such practices violate girls' rights to bodily autonomy, education, and freedom from violence. They underscore the need for stronger enforcement and culturally sensitive community education.

## 3. THE IMPORTANCE OF CULTURE AND CUSTOM: BEYOND OPPRESSION

While feminist legal advocacy often critiques cultural practices that disadvantage women, it is equally important to recognise that culture is not inherently oppressive. This section explores the nuanced role of culture in shaping legal identity, agency, and resistance. By moving beyond a binary view of culture as either oppressive or liberatory, we reflect on how women in Lesotho navigate tradition to assert their rights and redefine power on their own terms.

### 3.1 Identity, Community, and Social Cohesion

Cultural traditions transmit values of respect, solidarity, and mutual responsibility. Rituals, communal gatherings, and rites of passage foster social cohesion and intergenerational continuity. Cultural traditions are not only legal or political mechanisms but also vital carriers of identity and social continuity. In many African societies, including Lesotho, customs such as naming ceremonies, initiation schools (Lebollo), marriage rites, and funerals are central to community life. These traditions transmit values of respect, solidarity, and mutual responsibility—values that shape the very fabric of Basotho society.

Rituals and communal gatherings offer more than social bonding; they are also mechanisms of accountability, where individuals understand themselves as embedded in collective identities rather than isolated legal subjects. This collective dimension often stands in tension with Western legal paradigms that prioritise individualism. Yet it is precisely this communal ethic that sustains social cohesion, provides social safety nets, and affirms personhood beyond material or economic contribution.

For women, participation in cultural life can be both affirming and at the same time, complex. While certain customs may encode gender hierarchies, others provide spaces for belonging, recognition, and influence. For instance, women often lead in ritual preparation, serve as oral historians, and uphold the moral authority of the household and the community. These roles, while informal, can carry significant weight and influence within customary legal systems.

Tamale in her article (2008) argues cultural identity should not be discarded in the name of rights, but rather reimagined as a resource for feminist legal transformation. In this light, culture becomes a living archive from which women draw moral authority, social capital, and even forms of resistance to state or patriarchal domination. Lesotho's legal development must therefore be sensitive to the ways in which identity and belonging are rooted in cultural participation. Cultural tradition is not merely a site of gender oppression—it is also a reservoir of meaning, memory, and social resilience. Recognising this duality is essential to any feminist legal framework that seeks to be both liberatory and locally rooted.

### 3.2 Customary Courts and Restorative Justice

Customary courts remain an essential component of Lesotho's plural legal system, particularly in rural areas, where access to formal legal institutions is limited. Unlike the adversarial model dominant in Western legal traditions, customary courts prioritise reconciliation, restoration of social harmony, and communal accountability. Disputes are mediated by elders who act not merely as adjudicators but as moral guides and custodians of cultural wisdom. The primary goal is not to punish but to repair—to restore relationships, reintegrate wrongdoers, and maintain peace within the community.

This restorative justice model is rooted in African philosophical conceptions of justice such as **Ubuntu**—the idea that "a person is a person through other persons." Justice, in this sense, is not abstract or individualised but relational and collective. By centring dialogue, empathy, and restoration over legalistic win/lose outcomes, customary courts offer a more culturally resonant form of dispute resolution for many Basotho communities.

However, from a feminist legal perspective, customary courts must be approached with both cultural humility and critical scrutiny. While they may promote harmony, they also risk reinforcing patriarchal norms, especially when women's voices are marginalised in decision-making processes. Elders who preside over these courts are often men, and their interpretations of custom may reflect entrenched gender hierarchies. This can result in biased outcomes, particularly in cases involving domestic violence, inheritance, or sexual autonomy.

Yet this does not mean customary systems should be dismissed outright. As Tamale (2016) and other African feminists suggest, the solution lies in transformative engagement—not rejection. Customary courts, if reformed with gender sensitivity, inclusive representation, and accountability mechanisms, can complement formal legal systems and expand access to justice. For instance, integrating women as decision-makers in these forums and applying human rights principles within customary reasoning could create a powerful hybrid model that reflects both cultural legitimacy and gender justice.

In this way, customary courts offer both a challenge and an opportunity. They reveal the limits of one-size-fits-all legal reform while opening up space to reimagine justice in ways that are rooted in indigenous values but responsive to modern human rights concerns.

### 3.3 Positive Cultural Practices

Too often, the discourse around culture and gender focuses exclusively on harmful practices—overlooking the many customs that empower, affirm, and protect women. Feminist legal theory must be careful not to universalise oppression or erase the complexity of lived cultural experience. In Lesotho, there exist cultural practices that, when engaged with consensually, serve as important mechanisms for social support, identity formation, and even women's advocacy.

One such example is the **Bo-Mme Ba Khotla**—women's forums within customary court settings. These platforms allow women to voice their concerns, mediate disputes involving other women, and advocate for the fair treatment of parties within their communities. While informal in structure, Bo-Mme Ba Khotla embody indigenous modes of participatory justice that centre the experiences and moral authority of women. They challenge the assumption that customary spaces are wholly male-dominated and reveal how women can exercise influence even in traditional settings.

Another example is the practice of bridewealth (**Likhomo**). Though often critiqued for commodifying women, bridewealth can, in consensual and culturally sensitive contexts, signify the joining of families and the mutual respect between lineages. It creates kinship bonds that extend beyond the

couple, often resulting in reciprocal obligations of care, protection, and social responsibility. For some women, the process provides a sense of pride, recognition, and belonging—particularly when they are consulted and their consent is central to the negotiations.

Feminist scholars like Tamale (2008) urge us to adopt a critical yet open-minded lens—one that recognises that culture is not fixed, but dynamic; not inherently oppressive, but potentially transformative. Customary practices can evolve to reflect contemporary values of gender equality and dignity without losing their rootedness in tradition.

Thus, rather than dismissing all cultural practices as patriarchal, legal reformers and feminists must work to identify, protect, and scale up those traditions that enhance women's status and voice. Doing so not only affirms cultural identity but also deepens the legitimacy and sustainability of gender justice initiatives in Lesotho.

## 4. FEMINIST LEGAL ADVOCACY: RECLAIMING RIGHTS THROUGH CULTURE

Feminist legal advocacy in Lesotho must avoid the error of treating tradition and modernity, or culture and rights, as inherently opposed. Such binaries often stem from colonial legacies that marginalised indigenous practices and perspectives. Obiora (2024) argues for a paradigmatic shift

in understanding culture, viewing it as a resource for advancing women's rights rather than as an obstacle. Mohlabane (2023) emphasises the importance of reclaiming indigenous conceptions of womanhood to inform contemporary feminist legal advocacy in Lesotho. Mahlehle (2024) critiques the exclusion of women from chieftainship succession and inheritance rights, highlighting the need for legal reforms that respect cultural contexts. Where regional comparison is instructive, Wester (2009) discusses the challenges women face in accessing justice across the SADC region, underscoring the continuing impact of colonial histories on gender equality.

Instead, advocacy should recognise both law and custom as evolving, living systems capable of transformation, engaging with them to propose reforms that are culturally grounded and contextually relevant. This approach also creates space to bridge divides, propose practical reforms, and nurture a new generation of justice advocates committed to equitable, culturally informed legal change.

### 4.1 Culture is Not Static; Law Must Evolve Too

Culture is not frozen in time, and law should not be treated as inflexible. Both are human creations—shaped by social needs, power relations, and collective imagination. Legal reform in Lesotho must begin by recognising that tradition, like law, can be challenged, reinterpreted, and reclaimed.



Feminist legal advocacy must therefore resist the temptation to reject culture outright or romanticise it uncritically. Instead, it must engage in the nuanced work of identifying which customs protect, which harm, and which can be transformed. Reclaiming indigenous justice frameworks while embedding gender equity is not only possible—it is necessary.

#### **4.2 Transformative Strategies for Legal Reform**

A feminist legal approach rooted in both cultural literacy and rights-based thinking requires practical tools. The following strategies offer concrete entry points for systemic change:

##### **i. Legal literacy in indigenous languages**

Laws must be made accessible. Translating statutes and rights materials into Sesotho and other local languages empowers rural communities and affirms linguistic dignity.

##### **ii. Community paralegals**

Training grassroots legal advocates who understand both customary and statutory systems creates vital bridges - particularly in areas where formal courts are distant or distrusted.

##### **iii. Participatory legal reform**

Chiefs, elders, women, and youth should be involved in reinterpreting harmful customs. Reform imposed from above is unsustainable; change anchored in dialogue and ownership is more enduring.

##### **iv. Curriculum reform**

Law schools must include African feminist jurisprudence, critical legal pluralism, and case studies from local contexts. Future legal practitioners need tools to navigate both legal texts and cultural subtexts.

##### **v. Women's Land Rights**

Embed joint ownership and usufruct clauses within customary land governance structures, as this secures land tenure, enhances women's autonomy, strengthens their bargaining power, and promotes intergenerational security.

#### **4.3 Youth and Mentorship: Catalysts for Change**

Young people are not just future leaders—they are current agents of transformation. Programmes such as the Legal Luminary Mentorship Programme demonstrate how structured mentorship, grounded in feminist legal theory and community engagement, can nurture a new generation of culturally fluent, justice-oriented advocates.

These initiatives provide space for young lawyers, especially women, to challenge dominant narratives, question inherited norms and engage respectfully with elders and institutions. In this way, mentorship becomes a tool not just of legal education, but of intergenerational feminist resistance.

## **5. COMPARATIVE INSIGHTS: BALANCING CULTURE AND WOMEN'S RIGHTS IN AFRICA**

While Lesotho struggles with reconciling customary law and gender equality, several African countries offer valuable lessons on harmonising tradition with constitutional and human rights protections:

**a) South Africa:** The South African Constitutional Court has been a pioneer in affirming women's rights within customary law. Landmark cases such as *Bhe v Magistrate Khayelitsha* (2004) abolished the male primogeniture rule in inheritance, aligning customary succession with constitutional gender equality (Section 9 of the South African Constitution). South Africa's Recognition of Customary Marriages Act (2008) also safeguards women's legal capacity and property rights within customary marriages.

**b) Kenya:** The 2010 Kenyan Constitution explicitly protects gender equality and mandates the progressive elimination of discriminatory customs. The Land Act (2012) and the Marriage Act (2014) included provisions to protect women's land ownership and inheritance rights under customary law. For instance, the Land Act recognises equal rights for women and men in land ownership and access, explicitly prohibiting discrimination based on gender. Similarly, the Marriage Act requires the registration of all marriages, including

customary ones, thereby providing women with legal recognition and protection of their marital rights. The judiciary has been active in striking down harmful cultural practices that infringe on women's rights. In the landmark case of Attorney General v. Female Genital Mutilation Board (2021), the High Court upheld the constitutionality of the Prohibition of Female Genital Mutilation Act, affirming the state's duty to protect women and girls from harmful cultural practices. Additionally, in Federation of Women Lawyers (FIDA) Kenya v. Attorney General (2019), the High Court ruled that the exclusion of women from inheritance under customary law was unconstitutional, reinforcing women's rights to equal inheritance.

**c) Botswana:** Botswana has made strides in reforming customary land tenure systems to recognise women's rights to usufructuary interests (rights to use land) and promote joint spousal ownership, thereby enhancing women's economic independence within customary frameworks.

These examples demonstrate that customary law need not be incompatible with women's rights; through constitutional guarantees, legislative reforms, and progressive jurisprudence, tradition and equality can coexist and reinforce one another.

## 6. RECOMMENDATIONS FOR ADVANCING WOMEN'S RIGHTS WITHIN LESOTHO'S CULTURAL FRAMEWORK

Building on these insights and the realities within Lesotho, the following practical steps are recommended to advance gender justice while respecting cultural identity:

**1. Legal Reform and Judicial Clarity:** Parliament and the judiciary should revisit laws and interpretations that prioritise customary exceptions over constitutional equality, particularly Section 18(4) of the Constitution. Clear guidelines should ensure customary law is not used to justify discrimination.

**2. Community Engagement and Participatory Dialogue:** Reform efforts must involve traditional leaders, women's groups, and youth to co-create interpretations of custom that promote gender equality without alienating communities.

**3. Empowering Women through Legal Literacy:** Laws and rights must be translated into Sesotho and disseminated through accessible formats. Training community paralegals can bridge formal legal systems and customary courts.

**4. Education and Curriculum Reform:** Incorporate African feminist legal theory and pluralism into law school curricula to prepare future legal professionals to engage with these complex issues sensitively and effectively.

**5. Strengthening Enforcement Mechanisms:** Improve monitoring and enforcement of laws against early and forced marriages, ensuring that girls' rights to bodily autonomy and education are protected.

**6. Land Rights Innovations:** Embed usufructuary rights and joint ownership within customary land reforms to secure women's economic autonomy and inheritance rights.

**7. Mentorship and Youth Programmes:** Support initiatives like the Legal Luminary Mentorship Programme to cultivate a new generation of feminist legal advocates grounded in cultural realities.

## 7. PERSONAL REFLECTION AND COMMITMENT

As a Mosotho woman and feminist, I stand at the intersection of culture and rights. I cherish my heritage and honour my ancestors, while challenging injustices embedded in customary law. My advocacy is a commitment to weaving together culture and feminist justice—not to replace one with the other but to create a framework where equality and identity coexist and thrive.

## CONCLUSION

Lesotho stands at a crossroads where culture and rights intersect in complex and sometimes conflicting ways. Its plural legal system reflects a vibrant heritage but also entrenches gender inequalities that limit women's full participation in society. Drawing on constitutional guarantees, international commitments, and comparative

African experiences, it is clear that protecting women's rights within a cultural framework is both possible and imperative. Culture is not static; it is a living force that can evolve to embrace justice, equality, and inclusion. Real transformation requires bold legal reforms, judicial courage, and meaningful engagement with traditional communities. Lesotho's path forward lies in utilising culture not as a barrier but as a foundation for women's empowerment and societal progress. Only by doing so can Lesotho truly honour its heritage while fulfilling its promise of equality for all Basotho women.

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# BOWEN UNIVERSITY TRIUMPHS AT THE 6TH MIPLG INTERNATIONAL DEBATE COMPETITION

By The People's Accolade Law Magazine (The PALM)

The 2025 edition of the MIPLG International Debate Competition, one of Africa's leading platforms for intellectual property and legal discourse, concluded with an inspiring showcase of advocacy, intellect, and emerging leadership. Hosted under the auspices of the My Intellectual Property Law Guide (MIPLG), the competition once again brought together some of the brightest students from across the continent to engage in rigorous debate on contemporary legal and policy issues. The 2025 debate was proudly sponsored by Stren and Blan Partners, Sir Christian Aniukwu Foundation, and the World Intellectual Property Organization Academy that sponsored the WIPO Awards.

Now in its 6th year, the competition has grown into a premier arena for legal argumentation, combining intellectual rigor with the soft skills of advocacy. Unlike traditional moot courts that focus narrowly on case law, the MIPLG International Debate Competition challenges participants to situate their arguments within broader contexts of policy development, innovation, and global best practices.

The 2025 edition, held from April 26 to August 23, 2025, was centered around the theme: "Securing Our Future: Intellectual Property and the Rhythm of African Music." This theme resonated deeply with the continent's cultural and economic realities, prompting participants to explore how intellectual property can safeguard Africa's music industry, protect creative heritage, and ensure long-term sustainability in the digital age. This year, the competition drew teams, each comprising two members, from countries across two regions of the continent. At the conclusion of the preliminary stage, 8 teams comprising, Nigeria, Ghana, and Tanzania emerged for the quarter finals. The breadth of participation underscored the competition's continental reach and its growing role in fostering cross-border dialogue on intellectual property and innovation.

## JUDGING EXCELLENCE

The credibility of the 2025 edition was anchored in its panels of distinguished judges, drawn from academia, private practice, and policy institutions.

At the preliminary stage, adjudicators included Gesiyé-emi Emiemokumo, Deborah Ikonne, Ayodeji Olufolahan, Kanimozhi Thaninayagam, Chinelu Umeanozie, Lynda Agukwe, Ololade Oluwagbemiro Shobaki, Christian Odo, Ifeoma Chinenye Onuiké, and Andrew Kiloo Mutua.



The quarter-finals brought in experts such as Amara-chi Okpara, PhD, ACIS, Ivy Chege, MCI Arb, Oluwakemi Adeyemi, Chukwubuike I. Obiano, Geraldine Mbah, Maame Akua Mpomaa Boadu, Naa Adorkor Addo, Oloruntobi Opawoye, Emmanuel Agherario, and Onyekachi Eriobu-Aniede, who ensured that high standards were maintained as the competition progressed.

In the semi-finals, evaluators Omonefe Irabor-Benson, Ghati Nyehita, PhD, Michael Akpan, and Adedoyin Fadare tested participants on their ability to integrate nuanced arguments with practical insights.

The grand finale was decided by a panel comprising Nancy Samuriwo (Partner at Samuriwo Attorneys), Oluwatobiloba Moody (Director at WIPO Nigeria), and Lorna Mbatia (Partner at CFL Advocates), whose judgments brought authority and balance to the final stage.



## BUILDING THE FUTURE OF IP LEADERSHIP

This year's theme reinforced the broader mission of MIPLG: equipping African students to not only engage in legal discourse but also shape future policy in intellectual property and innovation. By anchoring debates in the rhythms of African music, the competition highlighted the intersection between cultural heritage and modern legal frameworks, underscoring the need for systems that both protect creators and promote global competitiveness.

For Bowen University, the triumph of Oyerinde and Ogunyemi stands as a milestone achievement that will inspire future cohorts. For Imo State University, the runner-up finish reflects its rising stature as a stronghold of legal talent. And for all participants, the competition served as an invaluable platform to refine their advocacy, sharpen critical thinking, and gain visibility in Africa's intellectual property landscape.

The 6th MIPLG International Debate Competition reaffirmed its place as a premier forum for cultivating the next generation of African intellectual property leaders. With its rigorous structure, esteemed judging panels, and timely theme, the 2025 edition showcased the continent's potential to lead global conversations on innovation, creativity, and legal reform.

As the debate season comes to a close, the legacy endures: a celebration of intellect, advocacy, and the power of ideas to secure Africa's cultural and economic future.

## CHAMPIONS AND RUNNER-UP

After weeks of oral rounds and high-stakes knockouts, Bowen University, Iwo, in Nigeria, emerged as the overall champion. The winning duo, Temiloluwa A. Oyerinde and Samiat Ogunyemi, impressed the judging panels with their clarity of thought, persuasive delivery, and ability to address complex arguments under pressure. Their victory underscores Bowen University's growing reputation as a hub for legal excellence and innovative thinking in Nigeria.

Finishing as first runner-up was the formidable team of Somto Nwachukwu and Nwosu Lorretta from Imo State University. Their performance reflected not only strong preparation but also a commendable command of the nuances of intellectual property law, earning them high praise throughout the competition.

Together, both teams exemplified the brilliance and resilience that MIPLG seeks to cultivate among Africa's next generation of legal and policy leaders.





# INTERVIEW WITH HAVANA SANDERSON

**Q** Kindly tell us a bit about your background and experience.

**Answer:** Thank you for having me. My name is Havana Sanderson, and I'm a proud Zimbabwean, born and raised in Harare. As the eldest of four children, I suppose I live up to the high-achieving firstborn stereotype, a path I've been fortunate to walk with the guidance of my father and uncle. My father and uncle instilled in me a voracious reading culture. I have vivid memories of going to the local library with my father to renew my library card and exchange stacks of books. My uncle even bought me my first dictionary in primary school, a gift that ignited a lifelong love for words. This extensive and diverse reading, from fiction to non-fiction, gave me a nuanced understanding of the world, nurturing a deep sense of curiosity and confidence that has guided me ever since. While my reading today is more focused on law, my passion for learning and exploring new ideas has never faded.

After high school, I embarked on a new chapter in the public health sector. This experience was profoundly transformative. I gained invaluable knowledge about public policy, public administration, and the intricate collaboration between government and non-profit organizations. It was here that my perception of advocacy was completely redefined. The younger me believed advocacy was loud and confrontational, but this job taught me that the most effective change often comes through diplomatic negotiation, thoughtful compromise, and strategic collaboration.

This experience was a pivotal moment, leading me to a crossroads where I sought to merge my public health background with a legal education. I was accepted into the law degree program at the University of Zimbabwe, and it was here that I truly began to grasp the immense power of law. I realized that legislation and policymaking could solve problems before they even began. This



understanding fueled my passion, and I decided to focus entirely on my studies. Since then, I've had the opportunity to explore several interests and continue to learn and grow each day. My background, a blend of early curiosity, hands-on professional experience, and a deep appreciation for the law, has prepared me for the challenges and opportunities ahead.

**Q** Please share with us what inspired your decision to pursue a career in law.

**Answer:** My path to the law wasn't forged in a courtroom or a political debate, but in the quiet, dusty aisles of my neighbourhood library. From a young age, I was a voracious reader, and my literary diet consisted of thrilling adventures and intricate puzzles. I didn't just read the 'Famous Five' and the 'Secret Seven'; I became an honorary member, meticulously mapping out their strategies. I didn't just follow Nancy Drew and the Hardy Boys; I was their silent partner, piecing together clues and feeling the surge of satisfaction when logic and persistence inevitably unveiled the truth. These stories were more than simple entertainment; they were my first lessons in the mechanics of justice. They taught me that the truth is something to be actively pursued, that evidence must be gathered with care, and

that a conclusion must be built upon a foundation of reason. The sense of adventure was the hook, but the underlying process, the methodical, intellectual pursuit of a just outcome—was what truly captivated my imagination and began to shape my worldview.

As my reading list matured, so did my ambition. The childhood fascination with solving fictional crimes evolved into a more profound and sophisticated ideal, an image of what I like to call the 'old school lawyer.' This archetype became the scaffolding of my professional aspirations. She was not merely a practitioner of law but an embodiment of its highest principles.

In my mind, her being 'well-travelled' wasn't about collecting passport stamps; it was about collecting perspectives, understanding that the human experience is diverse and that a just legal mind must be able to navigate different cultures and contexts with empathy and intelligence. Her being 'well-educated' transcended to a framed degree; it signified a deep curiosity about history, philosophy, and the arts, the very disciplines that explore the human condition, which is the law's ultimate subject. Her ability to speak a foreign language or two was a symbol of her commitment to building bridges, to communicating directly rather than through the filter of a translator.

But at the unshakeable core of this image was her 'high moral compass.' This was her true north—an unwavering commitment to ethics, integrity, and fairness, especially when it was difficult. She was someone who could not be bought or intimidated, whose primary allegiance was to the principle of the matter. I was, and remain, completely drawn to this image. My ambition is not simply to obtain a law degree but to cultivate these very qualities within myself. I hope to become a custodian of the law, a guardian of its integrity. For me, this means more than just representing clients; it means ensuring the legal system functions as a shield for the vulnerable and a pillar of a stable, equitable society. It is a lifelong commitment to embodying that ideal I first pieced together from the pages of childhood books.

## **Q What has your journey as a law student been like so far, and what key experiences have shaped your perspective along the way?**

**Answer:** My journey as a law student so far has been an incredible exploration of the sheer breadth and diversity of the legal world, with my experiences in the University of Zimbabwe Moot Society marking the key highlights that have profoundly shaped my perspective. The most formative part of my journey has been my participation in three distinct international moot court competitions, each of which exposed me to a different facet of the law and its application across the globe:

1. The Nelson Mandela World Human Rights Moot Court Competition in Geneva, Switzerland: This experience immersed me in the world of international human rights law. It was a powerful lesson in how legal principles can be used as a tool for advocacy on a global stage, defending fundamental rights and engaging with issues that transcend national borders.
2. The ZIMCodd Constitutional Law Moot Court Competition in Zimbabwe: This competition brought my focus back home, grounding my legal education in the specific constitutional and socio-economic issues facing our nation. It demonstrated the critical role lawyers play in public interest litigation and in shaping the development and governance of our own country.
3. The Willem C. Vis International Commercial Arbitration Moot in Vienna, Austria: This was a complete change of pace, plunging me into the complex, high-stakes world of international commercial contracts and arbitration. It revealed a side of law that is less about the courtroom and more about the intricate mechanics of global trade and dispute resolution.

This journey across three different continents and three vastly different areas of law has been the most eye-opening aspect of my education. The exposure has fundamentally shaped my perspective by shattering any narrow, preconceived notions of what a legal career must be.



I've learned that the law is not a monolithic profession confined to courtrooms. Instead, it is a vast and adaptable field with a space for every kind of personality and passion. My experiences have shown me that you can build a successful and impactful career whether you are a passionate advocate arguing in court, a meticulous drafter working on large commercial contracts in the corporate world, a policy advisor in non-profit organisations, or a diplomat in intergovernmental spaces. My journey has taught me that a law degree is a key that can unlock countless doors, and the most important task is to find the one that is the right fit for you.

**Q What has been the most challenging aspect of your journey in the study of law so far, was it all you hoped and imagined it would be and how did you overcome it?**

**Answer:** Yes, it is all I had hoped and imagined it to be. I am surrounded by intelligent people and it is something that I enjoy. I look forward to each semester and every course is very fascinating. Reading case law is very much like reading a gossip column. There's no end to learning new things, and there's no end to reading material. Which, depending on how you look at it, can be exciting or it can be daunting.

However, law school is not as easy as one would imagine. It's not just the academic side of things that could be uncomfortable. It's also a new environment with new people, and a new atmosphere to acclimatize to. It can be lonely, but one thing for certain is that everyone wants to make friends as much as you do, so don't hesitate to reach out. You'd be surprised at the support you receive from the legal community. For those of us on our journey to becoming a legal professional, one of the most challenging aspects is finding a balance. It's about balancing your personal life with the demanding academic requirements and finding a supportive community while also learning to be comfortable with solitude.

While law school can be a deeply rewarding experience, it is also a marathon of intense study and a new, often demanding, environment. The sheer volume of material, from textbooks to intricate case law, can be overwhelming. This constant intake of information can feel like a daunting task, but it can also be a thrilling expedition into the nuances of law. Beyond academics, the shift to a new social environment can be an unexpected challenge. It can feel lonely at first as you adjust and everyone finds their footing. While you're surrounded by brilliant minds, it takes time to build connections. The good news is that most of your peers are in the same boat, eager to form new friendships and create a support system. Here are a few tips to help you navigate the journey through law school and find your own sense of balance.

- **Embrace the Reading:** Think of reading case law as a mystery or a captivating story. Instead of seeing it as a chore, view it as a puzzle to solve. This can make the process more engaging and less of a burden.
- **Lean into Your Community:** Don't hesitate to reach out to classmates. Attend study groups, join student organizations, or just grab a coffee with a classmate. You will discover that the legal community is more supportive than you might imagine.
- **Balance Solitude and Socializing:** Learn to be comfortable with your own company. You'll need focused, quiet time for all the reading and studying. However, be intentional about connecting



with others. The friends you make in law school can become an invaluable support network that keeps you grounded and helps you through the tough times.

● **Be Patient with Yourself:** It may take time to find your rhythm. Don't feel pressured to have it all figured out on day one. Give yourself a year or two to adapt to the new environment and academic demands. Once you find your stride, the experience becomes even more fulfilling.

Finding your footing in law school is a unique journey for everyone. By proactively seeking balance and support, you can transform what seems like a daunting challenge into a rewarding and enjoyable experience.

**Q** **Balancing the academic demands of legal studies with extracurricular and community engagements can be quite challenging. How do you manage to stay grounded and effective across these commitments?**

**Answer:** Yes, it can! Balancing academics and a second thing (whether it is working or extra-curriculars) is difficult. I have tried to do both. And, I am convinced that it is impossible to excel at multiple things at the same time. I have found that it is best to do things one at a time. The best way to do this is to have a journal with your daily tasks and a wider calendar with long-term goals that may come with your extra-curricular. I have a yearly journal that I use to keep track of goals, assignments and the reading I need to complete for my law courses. This system can be customised to fit your needs, for example the "journal" doesn't have to even be a big book, a small pocket-sized book will do, and a larger calendar to keep the broader picture in mind. Nothing fancy, just as long as it's functional. I make use of a small whiteboard that I hang on the wall as a visual reminder, so I do my best to stay up to date with everything that needs to be done.

Unfortunately, there is no prize for doing a million things at once, and doing them poorly. It is much more impactful to compartmentalize things into smaller tasks, and to pace yourself one task at a

time. Another way I make the most of my time is to save up free time during the quieter moments of the semester for my extra-curriculars. The moments when you do not have a mountain of assignments to complete or when you do not have exams looming in the near distance is the best time to participate in extra-curricular activities or in community engagements.

One thing I have noticed is that students are afraid to say no to opportunities that arise and may clash with important academic responsibilities. My take on that is to develop a mindset of abundance, because the qualities that opened that door for you, will open other doors. Students should learn to advocate for themselves to find alternative solutions or to politely excuse themselves from engagements that may lead to them absconding their legal studies. Always have your academics be your main priority.

**Q** **Congratulations on your recent election as Chairperson of the University of Zimbabwe Moot Society! How would you describe the transition from Moot Project Coordinator to this distinguished leadership role?**

**Answer:** Thank you! When I initially ran for the role of Projects Coordinator, I was very eager to learn. I was a second-year law student, and was very interested in contributing to the moot society. Basically, I wanted to immerse myself in the world of mooting. I initially expected to learn more about legal research, but I found myself working on multiple avenues of the society that it became more of a community, than a role for me to develop my own ambitions. I was involved in public relations, organisational management and event planning. Which means, I was able to identify and weak points that I felt needed improvement. For instance, I was pleasantly surprised to see how students were eager to volunteer and participate, but we needed systems to keep track of volunteer judges and memorial reviewers. At the time, I took the initiative to develop a research team and of course, the uptake was impressive.

As Chairperson, I have found that my role is a more delegation and advisory role. It is very easy



to fall into the pattern of Projects Coordinator and do all the work. But, that does more harm than good. It takes away opportunities from my board members to build their own capacity, and to innovate new mechanisms to improve our society, because it is not a unit, it is a community. The goal should always be to make life easier for the next generation of mooters, and to have knowledge and skills passed down for sustainability. So, I would say that the transition is a lot of unlearning and learning leadership and management.

**Q You are known for your active involvement in youth empowerment. Could you elaborate on the work you do in this space and what drives your passion for it?**

**Answer:** My involvement in youth empowerment began with a transformative experience working on the MOSAIC Project, an initiative under USAID focused on preventing HIV, particularly among young women. This project aimed to accelerate the introduction and scale-up of new biomedical prevention products, which became my first deep dive into the practical application of health law and policy.

The MOSAIC Project was a pivotal moment for me. It was my first exposure to diplomacy and negotiation as powerful tools for advocacy. Before this, I had a preconceived notion that advocacy required a more forceful, confrontational approach. Instead, I learned to navigate the complex world of policy creation and implementation, witnessing firsthand how strategic dialogue and collaboration could bring about meaningful change. This experience not only solidified my interest in health law but also instilled a profound appreciation for its potential to shape public health outcomes through informed policy. The project's focus on empowering young women to take control of their health deeply resonated with me. I saw how providing access to critical information and resources could transform lives. This work illuminated the urgent need for young people to have a voice in the decisions that affect their well-being. My passion grew as I met other young people in leadership positions who were advocating for their communities' needs in rooms where youth voices were not typically heard.

This collective effort to champion health rights and access solidified my commitment to empowering youth through the lens of health law and advocacy.



**Q Your passion for legal research is clear. Do you envision building a long-term career around this interest, and if not, what other capacities do you envisage?**

**Answer:** My passion for legal research isn't something I view in isolation; it's a foundational skill I'm constantly working to hone, in order to become an excellent lawyer. It's fascinating you ask about a long-term career in this, because most of the paths I've envisioned have a large research component. As a naturally curious person with a lot of questions, this makes a lot of sense to me. My ultimate goal is to work in diplomacy and foreign service. My experience with the MOSAIC Project, where I witnessed the power of diplomacy and negotiation in creating and implementing policy, was a pivotal moment. It's clear to me that these fields are where my research skills would be invaluable.

In a diplomatic role, whether with an embassy, a government agency, or an international organization, my ability to conduct thorough legal research would be a critical asset. I would be tasked with analyzing international treaties, researching the legal implications of foreign policy decisions, and advising complex cross-border issues. This work is fundamentally about understanding how laws and policies can shape relationships between nations and influence global issues like health and economic development. An area I'm deeply passionate about, as evidenced by my work on the MOSAIC Project. A career in foreign service isn't just about negotiation; it's about a deep, continuous investigation into new laws, emerging global challenges, and the policies that govern them. It's where my research would directly contribute to creating and implementing solutions, moving beyond theory and into the tangible world of international relations.

For anyone who finds themselves drawn to the intersection of law and global affairs, I would say this view your curiosity as your greatest professional tool. Every question you ask, every case you research, and every policy you analyze is a step toward building a skill set that can change the world. The world of diplomacy isn't just for those with a specific title; it's for anyone who is willing to do the research, ask the tough questions, and advocate for change. Your passion for legal research can be the key to opening doors you never even knew existed.

**Q Are there particular mentors or role models who have significantly influenced your journey in law and leadership? What lessons or values have they imparted to you?**

**Answer:** I have had several mentors and role models over the years. Not all of them are lawyers, but their work resonates with me. Dr. Varaidzo 'Vee' Kativhu, Lamia Farah Both of these women are involved in work relating to development and education, With Dr Vee Katichu having her own non-profit that supports young Zimbabwean girls to access high school education by funding it.

And, Lamia, having done an internship with UNESCO, and working to contribute meaningfully in non-profit spaces. Of course, Advocate Regina Mabwe and Advocate Francisca Chinwawadzimba as well as Advocate Fadzayi Mahere have to make my list because this list would be bare without adequate representation of powerful women dominating the Zimbabwean legal system. All three women are advocates of the Superior Courts of Zimbabwe and are examples of the legal brilliance of women in Zimbabwe that serve as torch bearers by existing. I have learnt the following from observing and conversing with some of the women I have listed:

1. There is no substitute for hard work.

Good things come to those who are prepared for it. Whether it is through reading, polishing up your legal writing or it is through gaining valuable experience by volunteering at a firm to simply learn, even if you may not gain monetary compensation for it. For example, if there is an internship abroad you have your eye on. You need to come up with a strategy on how you would like to build your resume and skill set to ensure that you set yourself apart. There is an endless pursuit of improvement, and hard work ensures that you stay set apart and be the best candidate.

2. How you do one thing, is how you do everything.

There is no way you can skimp on one thing and expect to do well on other aspects. A reader is evident through their vocabulary and knowledge.

In order to show up as the ideal version of yourself, you have to learn to show up for yourself. That means, take care of the little details, be well groomed, be intentional about the content you consume and the company you keep as well as read widely so you gain confidence and legitimize yourself and your capabilities.

The seemingly small pieces of your daily habits come together to form a tapestry of your character, and the lawyer you are or want to become.

**Q** As we wrap up, do you have any final thoughts or words of inspiration for fellow students and aspiring young leaders in the legal profession?

**Answer:** Final thoughts? I'd say the most valuable assets a law student or aspiring young leader can cultivate are not just in the books, rather, they're in the connections you make and the reputation you build. Once you master these, the rest of your journey in the legal profession will feel much smoother. It might sound simple, but it's often the most overlooked aspect of law school. First impressions are powerful and lasting, so it's essential to present yourself as a polished and polite professional from day one. You'll be surprised how many doors will open for you when you take the time to build a solid, respectable rapport with your peers and superiors. But it goes beyond appearances. True professional growth comes from a genuine willingness to learn. Listen more than you speak and always be ready to ask thoughtful questions. Your conversations with lecturers and senior professionals can provide insights that a textbook never will.

And please, do not ignore your peers. The people you sit next to in class could be your future colleagues, co-counsels, or even judges. Be intentional about building a good reputation among them. Treat every interaction as an investment in your future network. Beyond relationships, your academic record is your permanent professional passport. It can influence your opportunities for grad school, job prospects, and scholarships. So, take your studies seriously. Your grades are a testament to your discipline, work ethic, and ability to handle the rigorous demands of the legal field. They're a direct reflection of your commitment to excellence.

Ultimately, my advice is to do your best, explore what truly interests you, and enjoy the process. The world of law is vast and full of opportunities. Don't be afraid to follow your curiosity. Find a niche that sparks your passion, whether it's health law, foreign service, or something else entirely. Your time in law school is a unique chance to grow not just as a student, but as a person. Embrace it and remember that every small step you take is building the foundation for the lawyer you are destined to become.

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# TORT AND BUSINESS WRONGS IN AFRICA: LEGAL LIABILITY, ADR MECHANISMS AND THE ROLE OF TRADITIONAL JUSTICE SYSTEMS

OCHIENG ODERO

## INTRODUCTION

**T**ort law plays an essential role in holding individuals and businesses accountable for harm caused to others, whether through negligence, defamation, nuisance etc. In Africa's fast growing and changing business environment where formal and informal market blend, tort law supports consumer protection and economic balance. Majority of African countries face court delays, high level fees and limited access to formal justice. These drive many to seek alternative dispute resolution methods such as arbitration or mediation. Others go to the extent of seeking traditional justice methods, which includes the involvement of village elders for quicker solutions. Tort law often overlaps with business and contract law, especially when poor service or misinformation harms a customer or partner. This essay explores how tort law applies in business settings, and how Alternative Dispute Resolution (ADR) together with traditional systems help resolve such disputes. Focusing on Kenya and Nigeria, it shall highlight the challenges and opportunities in making justice quickly accessible and effective across Africa.

## II. Commercial Wrongs in African Business: Tort Law in Action

Tort law helps people and businesses seek justice when they suffer harm from the actions of others. In the business world, this harm may result from careless actions, false information, unsafe products, or damage to one's good name. These issues are particularly serious in African economies, where both formal and informal businesses are active, and many small businesses still have limited knowledge of the law. One of the most common business-related torts is negligence. This happens when a person or company fails to take reasonable care, and that failure causes harm. For example, if a factory produces faulty goods that hurt customers, it may be held responsible. A famous case from England, *Donoghue v Stevenson* [1932] AC 562 (HL) involved a woman who found a snail in her ginger beer. This case laid the foundation for the legal duty of care. Many African countries have adopted this principle in dealing with product safety and similar issues. In today's world, negligence could include things like poorly built buildings, accounting errors, or ignoring workplace safety.

Defamation is also a serious tort in business. This occurs when someone spreads false information that harms another person's or company's reputation. For example, in *Catherine Nyambura Kamau v. Nation Media Group & 2 Others*, [2015] eKLR (HC Nairobi Civil Case No. 706 of 2009), the court considered a defamation claim, where it was argued that a publication which damaged the reputation of a business could give rise to liability in tort. In such cases, the affected party must prove that the information was false, harmful, and shared without any legal excuse.

Businesses may also be responsible for the wrongful acts of their workers. This is known as vicarious liability. If an employee harms someone while doing their job, the employer can be held liable. A good example is *Muwonge v. Attorney General of Uganda* [1967] EA 17 (EACA), where the court held the Government liable for the wrongful acts of a policeman committed in the course of his duty. This case established a strong precedent on vicarious liability in East Africa, showing that employers





can be held accountable for harm caused by their employees. The principle is especially important in areas like delivery services, where staff regularly interact with the public.

Other torts such as public nuisance, which involves unlawful interference with the public's rights, health or safety, and economic loss, which occurs when negligent acts cause financial harm without accompanying physical damage, also affect businesses, especially when the public or environment is harmed. In countries like Nigeria, oil spills caused by large companies have led to many court cases, with whole communities losing income and suffering damage because of poor handling of environmental risks. From these examples, it is clear that tort law does more than protect individuals from physical harm. It also safeguards business reputation, economic interests, and public welfare. For large business owners, knowing the basics of tort law can help avoid legal problems and encourage responsible conduct. For small businesses and consumers, it offers a way to seek justice when harmed by more powerful entities.

### III. Where Contract Meets Tort: Overlapping Duties in Business Disputes

In business, problems don't always arise from broken promises, they may come from careless actions. Contract law mainly deals with promises and terms agreed between parties, while tort law focuses on duties set by the law, especially the duty not to harm others. In many business situations, both areas of law can apply at the same time. A person may break a contract and, at the same time, be negligent in a way that causes damage. In professional services, a client may sue for both breach of contract and negligence where a professional fails to exercise due care. For example, if a lawyer negligently omits filing a claim within time, causing the client to lose the case, liability may arise in both contract and tort, with tort law providing an additional remedy beyond the contractual framework.

The English case of ***Hedley Byrne & Co. Ltd*** v. Heller & Partners Ltd (1964) introduced the idea that people can be held responsible for careless advice, even without a contract. If someone gives information, knowing the other person will rely on it, and harm results, they may be liable in tort. This principle has been used in countries like Kenya and South Africa, especially in cases involving banks, insurers, and consultants.

Employment relationships also show how contract and tort overlap. An employer must follow the contract, like paying salaries and offering safe workspaces. But they also owe a tort duty not to expose workers to harm. If an employee is injured due to unsafe conditions, they can sue under both laws. In many African settings where verbal or informal business deals are common, tort law becomes useful. It helps protect people when contracts are not clear or even missing. If someone breaches trust or acts carelessly, the law can still provide a remedy even without a written agreement. For service providers, knowing how contract and tort connect helps reduce risk. It reminds professionals that legal duty goes beyond paperwork thus they must always act with care, honesty, and responsibility in every business dealing.

#### **IV. Dispute Resolution in Tort Cases: Courts, ADR, and Custom Traditions**

In many African countries, taking a tort case e.g. defamation, injury, or negligence to court is often costly, slow, and confusing, especially for small business owners or individuals who can't afford legal services. Although courts are the main way to enforce tort rights, other flexible and affordable options have become common. These include Alternative Dispute Resolution (ADR), like mediation and arbitration, as well as customary justice handled by elders or local leaders.

#### **1. Formal Courts and Their Challenges**

Courts still play the central role in solving tort cases. But civil suits can take years and need lawyers, expert witnesses, and many documents. As a result, access to court for redress is , difficult particularly for people in rural areas and those unable to afford legal fees. For example, a case on professional negligence or defamation might involve many court visits and formal procedures that are not friendly to small businesses. Also, court processes are often adversarial, meaning each side fights to win, which can damage business relationships. These drawbacks have led many African countries to promote out-of-court options.

#### **2. ADR: Mediation and Arbitration in Tort Disputes**

ADR offers a quicker, less stressful way to settle tort disputes. Mediation involves a neutral person helping both sides reach an agreement, while arbitration leads to a binding decision from a certified arbitrator. These methods are now widely used in business torts, such as negligence by service providers or false statements that damage a business.

In Nigeria, the Lagos Multi-Door Courthouse (LMDC) works with the courts to settle civil matters through ADR, including tort claims. Issues involving landlords, hospitals, and business partners are often resolved here faster than in court.

In Kenya, Article 159 (2)(C) empowers the Court-Annexed Mediation Program such as, the Milimani Courts, to handle many tort cases, like injury claims and property loss. A 2022 report showed that most cases were settled in under two months, far shorter than court timelines and thus saved the Kenya's economy approximately Kshs 52Billion. ADR is mostly useful in defamation or broken business relationships, where both sides prefer to protect reputations and avoid public court battles.

#### **3. Customary Justice: Solving Disputes at the Community Level**

In rural Africa, many people first recourse to local elders, chiefs, or clan leaders, rather than the courts when wronged. Customary justice has long handled tort-like issues such as injuries, land disputes, or insults. These cases were resolved through dialogue, apology, and compensation, focusing more on restoring peace.

In Kenya, barazas and councils of elders often hear such matters based on local customs. In Ghana, family tribunals mediate small disputes like broken agreements or minor damages. Rwanda's Gacaca courts helped heal communities after the genocide by allowing victims and offenders to speak openly and seek restoration.

These traditional systems are usually faster and easier for communities to understand. However, they are often criticized for inconsistency, gender bias, and lack of legal force. For this reason, most African constitutions recognize them only to the extent that they comply with human rights standards. For instance, Article 159(2)(c) of Kenya's Constitution.

#### 4. A Blended Approach for African Justice

The best way forward may be a hybrid system, mixing formal law, ADR, and traditional methods. Courts could refer simpler tort cases to mediators or accept fair outcomes reached by local elders. At the same time, community systems should be trained to respect constitutional rights and avoid bias. This way, justice becomes not just legally correct, but also accessible, affordable, and trusted by the people it serves.

#### V. Case Study: Tort Law in Kenya and Nigeria

To get a clear picture of how tort law works in African business settings, we'll look at Kenya and Nigeria. Both have well-established legal systems and are making efforts to make justice in tort cases easier to access. This is being done not just through the courts, but also through Alternative Dispute Resolution.

##### 1. Kenya: Making Tort Justice More Accessible

Kenya has a well-established legal system for handling tort

cases. Businesses and individuals often go to court over issues like negligence, defamation, or professional misconduct. Courts in Kenya recognize both direct and vicarious liability, and judges have made important decisions in commercial torts. A good example is the case of *Catherine Nyambura Kamau v. Nation Media Group & 2 Others*, [2015] eKLR (HC Nairobi Civil Case No. 706 of 2009), where the court dealt with defamation involving a business. It helped balance freedom of the press with the right to protect one's reputation. In another case, *Trusted Society of Human Rights Alliance v. Attorney General* (2012), the court stressed the need for accountability in public appointments, showing that tort principles also apply in matters of public interest.

To reduce delays and costs, Kenya's judiciary has introduced court-annexed mediation, especially for civil and commercial disputes. According to a 2022 report, more than 60% of referred cases were settled within a few weeks. These include tort cases such as personal injuries or damage to business property. This has been especially helpful for small businesses that cannot afford prolonged court cases. Kenya's Constitution also allows the use of traditional justice methods, provided, they respect basic rights. In rural areas, elders and local leaders handle disputes involving land damage, community defamation, or lost livestock. This system focuses

more on restoring peace than legal punishment.

##### 2. Nigeria: Tackling Corporate Torts and Promoting ADR

Nigeria, which has Africa's largest economy, and concurrently has many tort cases related to oil, transport, and industry. Common issues include pollution, injuries at work, and business negligence. One key case is *Gbemre v. Shell Petroleum Development Co. of Nigeria Ltd & Ors* (2005) AHRLR 151 (NgHC 2005), where the Federal High Court of Nigeria held that gas flaring by Shell violated the fundamental rights to life and dignity. This landmark decision demonstrated how multinational corporations can be held accountable when their activities cause environmental harm and threaten community rights.



Nigeria also stands out for its Lagos Multi-Door Courthouse (LMDC). This court helps in disputes resolution through mediation, arbitration, and neutral evaluation, without going through full court trials. The LMDC has handled many tort cases, including those involving tenancy relate issues, defamation, and professional negligence. Their reports show high settlement rates, low costs, and faster resolutions.

Like Kenya, Nigeria also recognizes customary courts in civil matters, especially in land, family, and small community disputes. In rural states like Benue, Kano, and Ogun, local forums handle complaints related to unfair business dealings, insults, or small-scale harm, even if they don't call them "torts" in the legal sense.

### **Shared Takeaways**

Kenya and Nigeria both show that tort justice in Africa is changing. Today, formal courts, ADR programs, and community-based systems work together in providing fair outcomes. Kenya's model shows how a collaboration between courts and mediation can speed up justice, while Nigeria shows how to handle large corporate torts and promote out-of-court solutions. Together, these countries highlight the need for flexible, affordable, and culturally accepted systems that give all businesses quicker access to justice when wronged.

## **VI. Corporate Liability and the Role of Business Associations**

Noting that companies are among the biggest players in African economies, they employ thousands, manage resources, and provide essential goods and services. However, when businesses cause harm, the law has to step in. Tort law allows companies to be held responsible for such wrongs, because once incorporated they acquire legal personality. This section looks at how businesses can be liable in tort, and how professional groups help promote accountability.

### **1. Companies Acquiring Legal Personality**

The idea that a company is a separate legal person was confirmed in the famous case of *Salomon v A Salomon & Co Ltd* [1897] AC 22 (HL). This means a company can sue or be sued just like a person.

For example, if a truck belonging to a transport company causes an accident due to poor maintenance, the company and not just the driver, can be sued for negligence. A hospital can also be held responsible if a nurse or doctor makes a careless mistake during surgery. In both cases, the law holds the employer liable because the staff acted during their normal duties.

### **2. Vicarious Liability: When Employers Are Held Responsible**

Tort law uses the concept of vicarious liability to make companies answerable for what their workers do during employment. In *Peterson v. Posta Uganda Ltd* (2013), where the court found the postal company responsible for damages caused by careless employees. Similar rulings exist in Kenya, Nigeria, and Ghana.

But new issues are now emerging. For example, if a driver working with a ride-hailing app such as Uber causes an accident, the key question is whether the company can be held responsible. Courts in countries like South Africa and Nigeria are beginning to address such questions. As more people work on flexible contracts or rely on online applications for employment, the law is increasingly being tested on how to assign responsibility in tort cases.

### **3. Lifting the Corporate Veil: When Owners Are Personally Liable**

Usually, a company's owners or directors are not held personally responsible for the company's actions. But in special cases, courts may "lift" the corporate veil. This means looking beyond the company to hold individuals personally accountable mostly when the company is being used in fraudulent activities or avoid legal duties.



In *Prest v. Petrodel Resources Ltd & Others* [2013] UKSC 34, [2013] 2 AC 415 the UK court allowed this exception. African courts have followed similar reasoning, especially in cases involving procurement fraud, environmental damage, or fake companies used to avoid responsibility. In Nigeria, some oil pollution lawsuits have tried to make parent companies, not just the local branches, answer for the harm done.

#### **4. Business Associations and Internal Discipline**

Besides the courts, many professional bodies and trade associations help deal with tort-related issues through internal systems. For example, Law Societies and Medical Boards etc., may investigate and resolve complaints of professional negligence or misconduct. These bodies often use ethics panels or informal mediation to settle disputes.

Even chambers of commerce and business councils help sort out minor issues like unpaid services, defamation, or poor customer treatment. While these methods don't replace the law, they help resolve disputes quickly and promote responsible business behavior.

Holding these companies accountable when they cause harm is about more than just the law, it's about good business ethics and goodwill in the business environment. As Africa's economy grows, businesses must be expected to respect the people and communities they



deal with. Courts, regulators, and professional associations all have a role to play in building a culture of fairness and responsibility.

### **VII. Challenges and the Way Forward**

It is noteworthy that tort law plays an important role in making sure businesses act responsibly and that people can get justice when they are harmed. However, in majority of the African countries, there are still big challenges that stop the system from working well. These problems range from delayed or prolonged litigation process in courts to a lack of legal support for community justice. If these issues are not fixed, then majority of the victims, especially small enterprises and ordinary people, may never get fair treatment.

#### **1. Difficulty Enforcing Court Judgments**

A common problem is that even when someone wins a tort claim in court, such as a defamation or injury claim, they may wait years before getting the judgment sum awarded. Some companies or government offices delay payment by filing endless appeals or using legal loopholes. This discourages people from seeking justice, especially if they lack resources.

In Alternative Dispute Resolution (ADR), the situation is similar. Some countries, like Kenya and Nigeria, have tried to make ADR decisions stronger by setting up bodies like the Mediation Accreditation Committee in Kenya and LMDC in Nigeria. But in other places, there is no law that forces parties to follow the outcome, making these settlements weak and uncertain.

## 2. Uneven Outcomes in Traditional Justice

Community-based justice systems are often cheaper, quicker, and more familiar to local people. But their decisions are not always fair or consistent. Because they are based on customs, outcomes can change from one village to another. Some systems may even ignore the rights of women or minorities. While Kenya's Constitution allows for traditional justice, it must respect human rights. In real life, that balance is hard to maintain, especially in remote areas where legal training is limited.

## 3. Low Awareness Among Small Businesses

Many small and informal businesses don't fully understand tort law. They may not know they can be held liable for things like negligence or false advertising. Most use verbal agreements instead of written contracts, which increases the chance of disputes. On the other side, people who are harmed by businesses as well may not know their rights or how to make a complaint. As a result, many cases go unreported, and the wrongdoers are not held accountable.

## 4. A Stronger, Mixed Approach to Justice

The way forward is not to choose one system over another, but to combine courts, ADR, and customary justice into a hybrid model that works for all. Courts should refer minor tort cases to ADR when possible. Mediation outcomes should be supported by law so they are enforceable. Community justice forums, when fair, should also be respected and included in the bigger justice system. Also, legal education should go beyond lawyers. Small business owners, youth groups, and community leaders need to learn about tort law and how to resolve disputes. Law schools, law associations, and trade bodies can help spread this knowledge.

At the regional level, institutions like the African Union should consider creating model laws or shared guidelines to help African countries improve access to civil justice and set clear tort standards. Tort law must grow alongside society. A fair and simple system for handling civil wrongs is not just for lawyers or big companies, it's a basic need for everyone in business and community life.

## CONCLUSION

Tort law ensures businesses and professionals take responsibility when their actions cause harm. With Africa's growing commercial sector, issues like negligence and defamation affect more people. Tort law prevents such harms by setting duties and providing remedies. Yet, access to justice is often limited by costly and lengthy court processes. ADR and customary systems offer simpler, more accessible options for small businesses and communities. Tort law also links closely with contract and commercial law — it's not just about promises, but about acting responsibly and avoiding harm in all business dealings. Going forward, African countries should build hybrid systems where courts, ADR, and traditional justice work together. Reforms should simplify tort procedures, strengthen enforcement, and raise awareness among youth and small businesses.

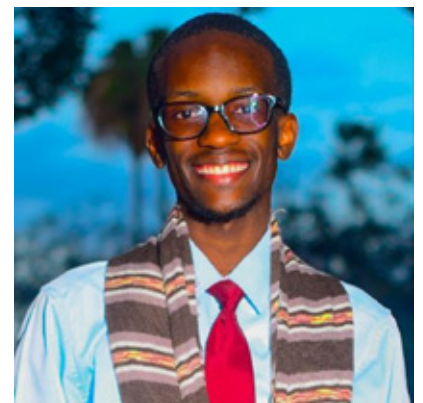
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## **BALANCING SECURITY AND LIBERTY: POLICE CONDUCT AND THE RIGHT TO DUE PROCESS IN KENYA.**

**SAM MBAGO & ELLYNE MWANGO**

### **ABSTRACT**

This article explores the critical intersection between citizens' rights and police authority in Kenya, shedding light on what every Kenyan should understand about lawful arrests and appropriate police behavior. Drawing from the Constitution of Kenya, the National Police Service Act, and real-world case studies, it demystifies the legal framework governing arrests, detention, and due process. It further examines common misconceptions, highlights the limits of police power, and outlines the obligations of both the state and its citizens. By emphasizing the right to legal representation, protection from arbitrary detention, and avenues for recourse in cases of misconduct, the article aims to empower individuals with practical knowledge to navigate encounters with law enforcement confidently and safely. Ultimately, it advocates accountability, transparency, and respect for human dignity as cornerstones of justice in a democratic society. The methodology majorly used is doctrinal legal research which includes reviewing primary sources such as the constitution and statutes, secondary sources such as journal articles and websites. Findings indicate that every citizen should be aware of their rights regarding arrest as well as how to expect Kenyan police officers to carry out their obligations.

### **UNDERSTANDING YOUR RIGHTS DURING ARRESTS AND KNOWING WHAT TO DO WHEN ARRESTED**

"An arrest is the actual seizure or touching of a person's body with an intention of taking them into custody or detention." In other words, it is a forced restraint on the liberty of an individual which, in law, can be done with or without a warrant. When making an arrest, there may be actual touching or confinement of the body. As a result, when one cooperates in the process of an arrest, the use of force or restraints such as handcuffs are prohibited.

#### **Role and conduct of police officers**

Additionally, once an individual has been arrested, the police officer has the powers to do a quick search on them and take them into custody. It is prudent to note that these rights are not privileges or Favors but are guaranteed to every citizen. Moreover, the rights of arrested persons include:



### 1. Right to be informed of the reason for arrest

One has the right to remain silent and to that effect police cannot coerce, beat, threaten or trick an individual into confessing, and any confession made under duress is considered null and void.

### 2. Right to legal representation

entitlement to communicate with a qualified advocate of your choice, time and facilities to confidently consult a lawyer and opportunity to be given legal representation in a situation where one lacks such.

### 3. Right to be presented in court within 24hours

An individual cannot be held in custody indefinitely since the law requires that each be charged or presented in court within 24hours, excluding weekends and public holidays.

### 4. Right to bail or bond

An arrested person is as well entitled to right of bail or bond pending investigation or trial unless there are compelling reasons to deny it.

## WHAT ONE OUGHT TO DO WHEN ARRESTED

While it may stir up fear, unrest or any other negative emotion, arrests don't have to be gruesome. It is important to know that the law protects even the arrested persons through the rights stipulated in Article 49 of the Constitution of Kenya 2010. Additionally, it is important to note that, when arrested, it is important that one remains calm and keeps their hands visible. Physically resisting arrest could prompt an officer to use reasonable force proportionate to the resistance and it should be justifiable and documented. Resisting arrest, in many jurisdictions, is a crime on its own and in Kenya, it is contrary to Section 103(a) of the National Police Service Act no.11A of 2011 hence punishable by law.

## POLICE IDENTIFICATION DURING ARREST

It is very important to ask for identification of the one conducting the arrest, for example details like the officer's name and badge number as well as the police station are crucial for one's safety. If possible, note the number plate of the vehicle

used. This guarantees the safety of citizens and minimizes cases of kidnappers causing harm while masquerading as police officers. Furthermore, it is the constitutional right of every arrested person to demand to know the reason for arrest. By article 49(1)(a) of the Constitution of Kenya 2010, an arrested person has the right to be informed about the reason for the arrest in a language that they understand. Article 49(c) and (d) of the 2010 Constitution outlines that an arrested person has the right to communicate with an advocate and other persons whose assistance is necessary and the latter article holds that one should not be compelled to make any confession or admission that could be used in evidence against them. The above articles of the constitution also provide that an arrested person should be careful not to sign anything without legal advice. They should also insist on calling a lawyer or a trusted person to inform them of the arrest. Notwithstanding these enshrined rights above, the police have breached their code of conduct hence committing heinous acts with regards to brutality.

For instance, *"A street Boniface Kariuki was shot in the head by police during protests and after two weeks of admission, died a day after being declared brain-dead in hospital, his family says."- Boniface is no more. We have just viewed his body," family spokeswoman Emily Wanjira said Boniface Kariuki was shot as police cracked down on a protest in Nairobi, the capital, against the death in detention of blogger and teacher Albert Ojwang, 31 Kariuki, a mask vendor, was shot at close range on 17 June, and later admitted to the main public referral hospital in Nairobi for treatment. He spent nearly two weeks on a life-support machine, before his family were told by doctors that his heart was still beating but his brain had ceased to function. Doctors had carried out several operations, but some bullet fragments were reportedly still lodged in his brain. News that he was brain dead had sparked further public anger over alleged police brutality, with increasing demands for justice."*

## Oversight

However, in Kenya, we are privileged to have police oversight bodies which play a vital role in holding law enforcement agencies accountable and reinforcing public trust in policing. These entities, which may be internal or external, are tasked with investigating complaints of misconduct, monitoring police practices, conducting audits, and making recommendations for reform. Internal units, embedded within police departments e.g. Internal Affairs Units, may struggle with impartiality, while external bodies e.g. civilian oversight boards, ombudsman, or specialized authorities particularly civilian-led or independent institutions like Kenya's "Independent Policing Oversight Authority (IPOA), offer a more neutral perspective.

Apart from IPOA, Kenya National Commission on Human Rights (KNCHR) and Office of the Director of Public Prosecution (ODPP) which has had 773 complaints referred by IPOA within the last six years, and achieving a 72% success rate, play major roles in ensuring police accountability in Kenya." Though some bodies lack the power to enforce discipline, their ability to highlight concerns and suggest improvements significantly contributes to transparency, prevents abuse of power, and upholds the integrity of policing systems.

## ROLE AND CONDUCT OF POLICE OFFICERS

Kenya has a well-structured police rank, at the top being the Inspector General to the Constable. With reference to article 27 of the National Police Service Act 2014, the functions of the Kenya Police Service shall be; provision of assistance to the public when in need; maintenance of law and order; preservation of peace; protection of life and property; investigation of crimes; collection of criminal intelligence; prevention and detection of crime; the apprehension of offenders; enforcement of all laws and regulations with which it is charged; and performance of any other duties that may be prescribed by the Inspector-General under the National Police Service Act or any other written law from time to time.

The National Police Service Act Cap 84 Laws of Kenya as well states the conduct of police officers, this conduct required revolves around human rights, professionalism, and accountability. The National Police Service has an obligation to attain the highest standards of professionalism and discipline among its members, to uphold human rights and fundamental freedoms in all their actions, to be transparent in their services and



exercise accountability in operations and decision making. Additionally, members of the National Police Service are expected to maintain objectivity and impartiality by avoiding political bias or discrimination, refrain from torture or any cruel, inhumane, or degrading treatment, uphold ethical conduct with honor, integrity, and public sensitivity, and actively engage with the community to build trust and foster effective policing.

## CONCLUSION

The true strength of a nation lies not only in its laws, but in the ability of its citizens to understand and submit to them. In Kenya, where police misconduct continues to dim the light of justice for many, awareness becomes both shield and sword. Knowing your rights during an arrest is not just a legal safeguard it is an assertion of your dignity as a human being. As citizens, therefore we are called upon to stay vigilant by being informed of equity aids only the vigilant and not the indolent. As law enforcers, police officers should remember their duty is not to rule over the people, but to protect them. The Constitution of Kenya 2010 is not only a document reserved for courtrooms but also a daily guardian of our freedoms. Together let us build a society where the law is respected, rights are upheld, and no Kenyan lives in fear of those sworn to protect them. The slogan for every Kenyan remains, know your rights! Demand your dignity! Defend your freedom!

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