THE STARLIGHT

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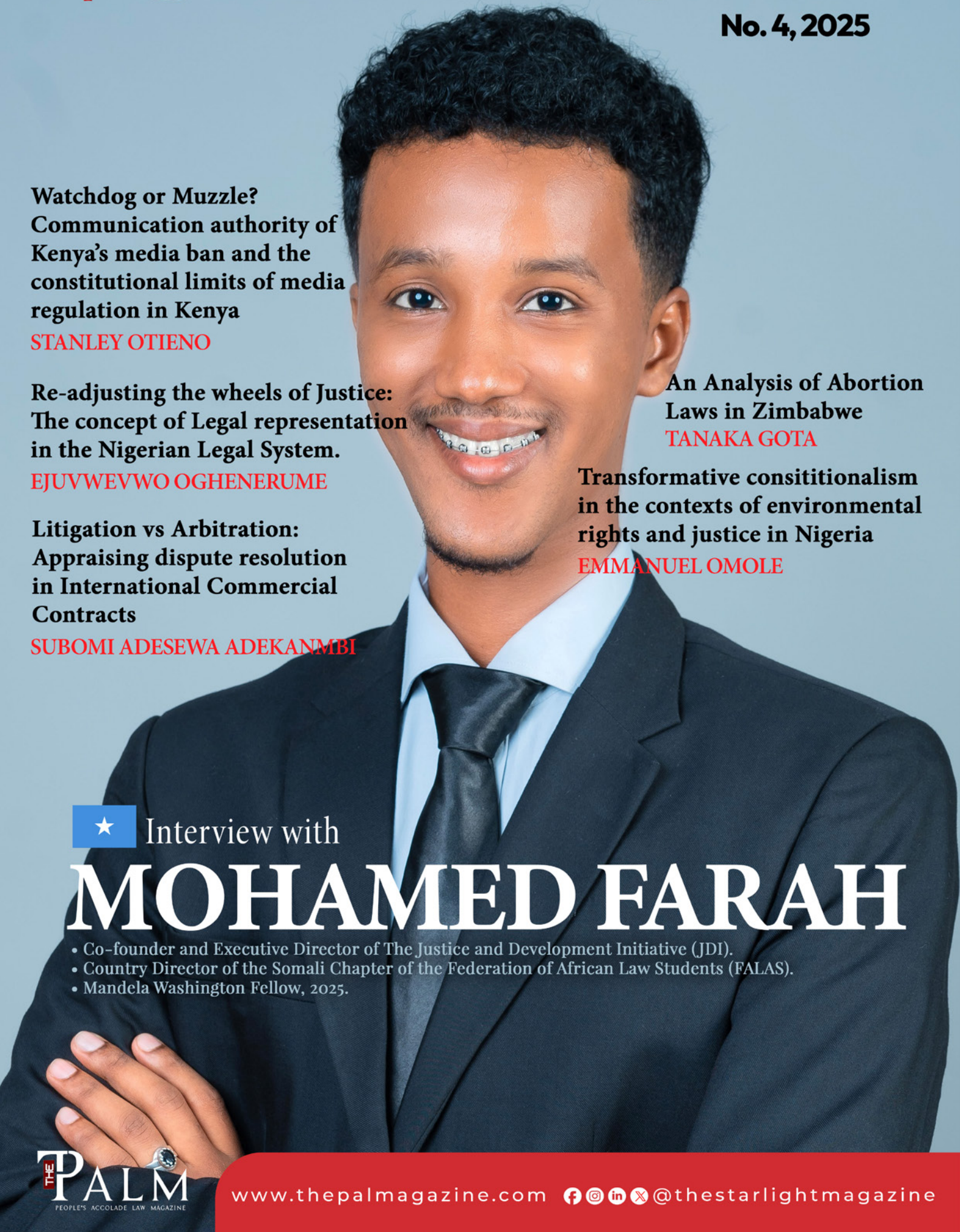

Watchdog or Muzzle? Communication authority of Kenya's media ban and the constitutional limits of media regulation in Kenya
STANLEY OTIENO

Re-adjusting the wheels of Justice: The concept of Legal representation in the Nigerian Legal System.
EJUVWEVWO OGHENERUME

Litigation vs Arbitration: Appraising dispute resolution in International Commercial Contracts
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Interview with

MOHAMED FARAH

- Co-founder and Executive Director of The Justice and Development Initiative (JDI).
- Country Director of the Somali Chapter of the Federation of African Law Students (FALAS).
- Mandela Washington Fellow, 2025.

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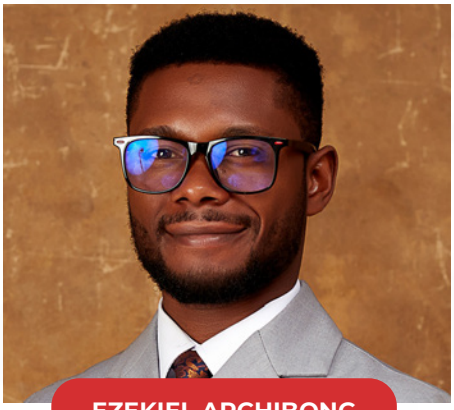


EZEKIEL ARCHIBONG

I write this segment with a quiet smile of retrospection and fulfilment. When I took over in January as Editor-in-Chief of The People's Accolade Law Magazine (The PALM) and by extension, The StarLight, we had stopped publishing for more than three years. Like a book that left the shelf, The StarLight had slowly slipped into oblivion. But we coaxed back to life. Slowly at first, then steadily, the rhythm returned. Consistency was our compass, and quality, the creed we refused to compromise. Our mission was not just to start but to never stop. And today, we are not just proud to have relaunched, but we are delighted to be releasing our last edition which completes the quarterly circle for the year 2025.

We open this Edition with Stanley Otieno's article "Watchdog or Muzzle? Communications Authority of Kenya's Media Ban and the Constitutional Limits of Media Regulation in Kenya". Stanley analyses the 25th June 2025 Directive by the Communications Authority of Kenya barring live coverage of Gen Z-led protests, emphasising that media regulation must balance public order with fundamental freedoms. On the other hand, Ejuvwevwo Oghenerume's article examines the crisis of legal representation in Nigeria, calling for urgent reforms, including automatic legal aid from arrest, better funding, and incentives for pro bono work, to ensure fair trials.

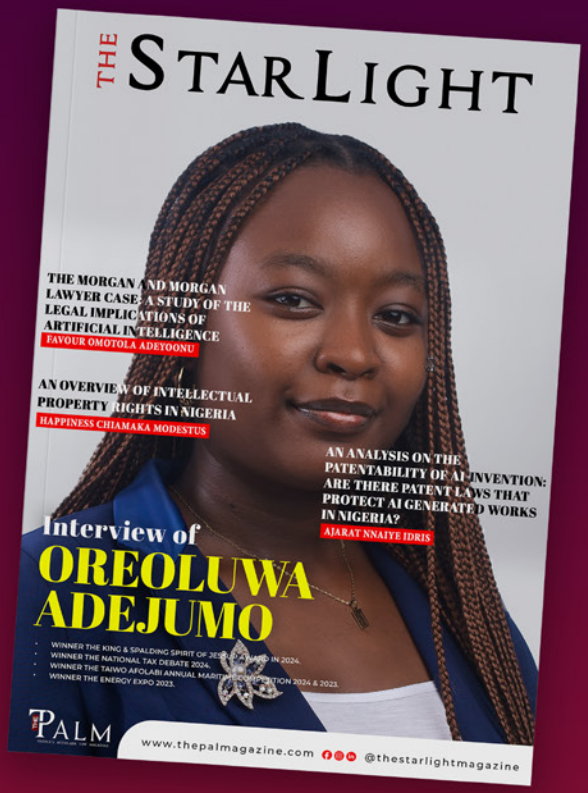
Also on this edition, we captured Tanaka Gota's feelings on abortion. Tanaka demonstrates that restrictive laws do not always deter abortion but instead drive unsafe practices. She ultimately recommended the right to abortion on lawful grounds, such as economic hardship. Also, Emmanuel Omole examines how Nigeria's Constitution can be creatively interpreted to overcome the non-justiciability of environmental rights in the Nigeria constitution. He recommends linking environmental protection provisions to enforceable fundamental rights such as the right to life.

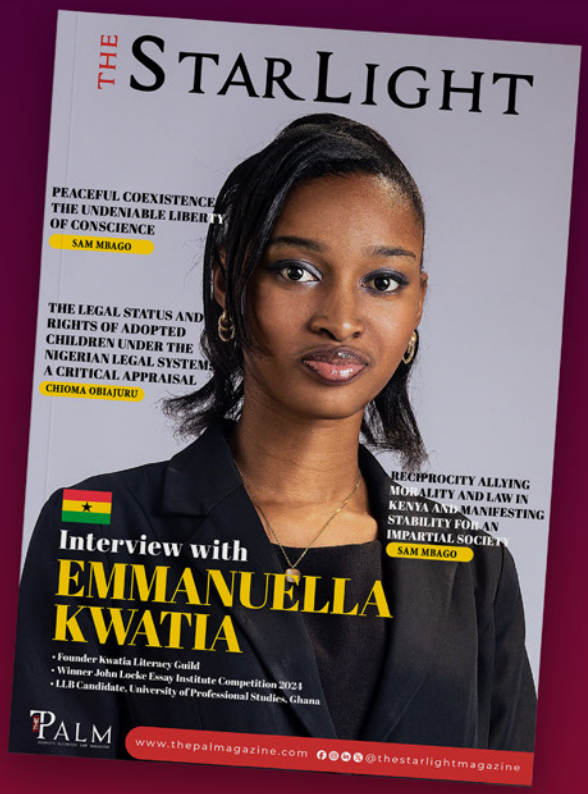
Meanwhile, Subomi Adekanmbi compares litigation and arbitration, highlighting their strengths and limitations in cross-border transactions. She concludes that the choice between litigation and arbitration depends on the nature of the dispute, contractual framework, and the parties' commercial priorities.

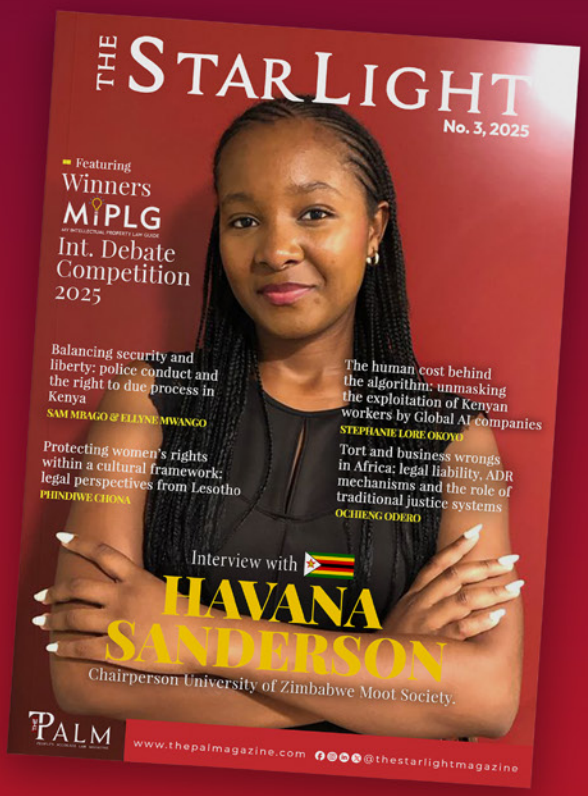
This edition will not be complete without an exclusive interview with an exemplary law student or graduate. We are honoured to feature Mohamed Farah, a recent graduate of Mogadishu University, Somalia, Country Director of the Somali Chapter of the Federation of African Law Students (FALAS), and Co-founder and Executive Director of The Justice and Development Initiative (JDI). Shaped by early human rights work and mentorship, he advises aspiring African lawyers is to pursue excellence through curiosity, purpose-driven action, and community-focused leadership.

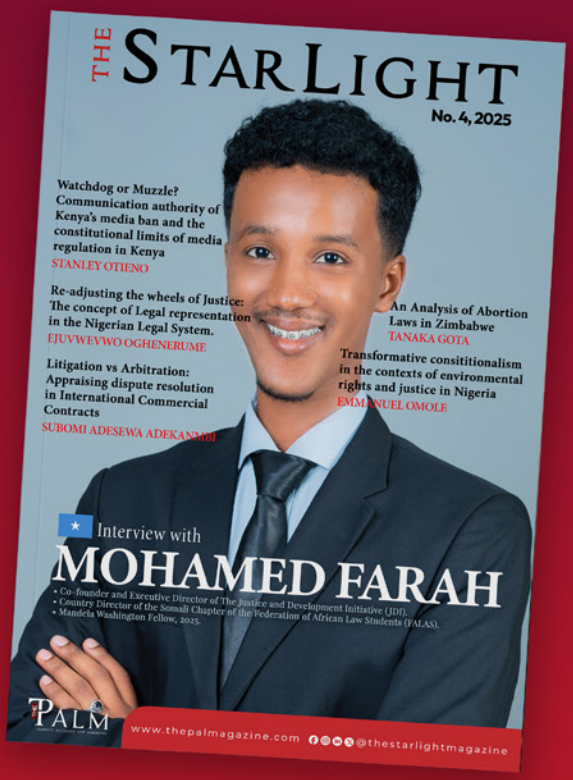
I thank our editorial team, our writers, and everyone who contributed to this edition. To our readers, thank you for continually reminding us why The PALM stands as a voice of thoughtful reflection.
As we draw the curtain for 2025, we hope that you journey with us into the new year as we continue to champion the voices that shape Africa's legal landscape.
Cheers!

2025 EDITIONS









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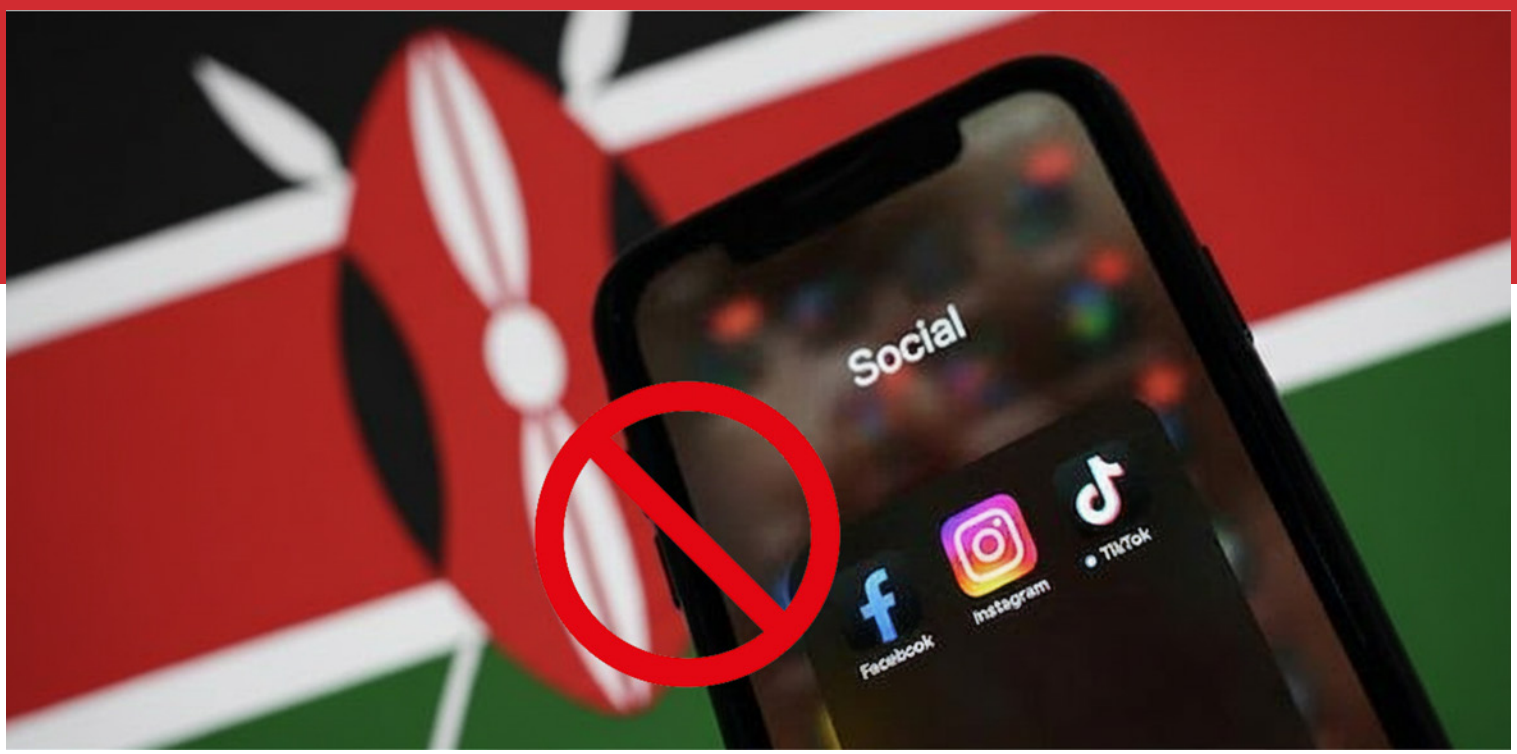
WATCHDOG OR MUZZLE? COMMUNICATION AUTHORITY OF KENYA'S MEDIA BAN AND THE CONSTITUTIONAL LIMITS OF MEDIA REGULATION IN KENYA

STANLEY OTIENO



Abstract

On June 25, 2025, during nationwide anti-government protests led largely by Gen Z and civil society actors, the Communications Authority of Kenya (CA) issued a controversial directive warning media house against broadcasting live footage of the demonstrations. Citing concerns over incitement, public disorder, and national security, the CA threatened punitive action against broadcasters that allegedly violated the directive. This move ignited a national and regional debate: is the directive of the CA within its legitimate regulatory powers? or an instrument of state censorship?

This paper explores the constitutional, legal, and democratic implications of the June 25 media ban, interrogating its alignment with Article 34 of the Constitution of Kenya and regional commitments to press freedom. The paper will analyze the broader trend of state-led media restrictions during times of political unrest, weigh the need for responsible journalism against the dangers of overreaching state directives, and assess the impact, such actions, have on public trust, civic engagement, and democratic discourse.

The paper also explores the role of regulatory institutions, judicial oversight, and civil society in safe-guarding civic space and preventing the misuse of regulatory power for political or authoritarian ends. The author finally argues that while media regulation is necessary in a democratic society, it must be grounded in transparent legal standards that do not erode the very freedoms upon which democratic accountability depends.

Introduction

Freedom of the media is a cornerstone of any democratic society. In Kenya, this freedom is constitutionally guaranteed under Article 34 of the Constitution of Kenya, 2010 , which explicitly provides for the independence of the media and protects it from state control or interference. However, the practical enjoyment of this right has often been threatened by regulatory overreach, especially during moments of political crisis or mass public dissent. A striking example of this tension was when on June 25, 2025, when the Communications Authority of Kenya (CA) issued a directive compelling media houses to halt live broadcasts of the June 2025 Gen Z led protests that had swept across the country.

LEGAL AND CONSTITUTIONAL FOUNDATIONS OF MEDIA FREEDOM IN KENYA

Kenya's 2010 Constitution introduced a progressive Bill of Rights creating a need for comprehensive reforms in media regulation and information management systems. . Kenya's constitutional and legal architecture robustly protects media freedom as a fundamental pillar of its democratic order. The 2010 Constitution marked a decisive break from a past characterized by executive control and censorship, entrenching rights-based governance and strengthening institutional checks. Central to this transformation is the recognition that an independent and free media is essential for public accountability, civic participation, and the realization of other rights and freedoms.

Article 33(1) of the Constitution of Kenya, 2010 guarantees every person the right to freedom of expression, which includes the Freedom to seek, receive or impart information or ideas; Freedom of artistic creativity; and Academic freedom and freedom of scientific research.

While Article 33(2) limits expression that constitutes propaganda for war, incitement to violence, hate speech, or advocacy of hatred based on any form of discrimination, the burden of justification for any limitation rests on the state, which must demonstrate that the restriction is both necessary and proportionate. This was the position of the Court in Cyprian Andama v Director of Public Prosecution & another; Article 19 East Africa (Interested Party) [2019] KEHC 4927 (KLR).

ARTICLE 34: FREEDOM OF THE MEDIA

Article 34 of the Constitution of Kenya, 2010 is more specific to institutional press freedom and seeks to insulate media from both direct and indirect forms of state control.

It guarantees freedom of the media and prohibits the state from exercising control over or interfering with any person engaged in broadcasting, production, or circulation of publications. It also mandates the establishment of an independent regulatory authority to set media standards and monitor compliance. From the above, the Constitution does not only affirm media freedom but also places a constitutional obligation on the state to protect and promote an independent media environment.

IS THE RIGHT TO MEDIA FREEDOM ABSOLUTE?

Article 24 of the Constitution of Kenya 2010 sets a high threshold for the limitation of fundamental rights and freedoms. Any restriction on media freedom must thus be evaluated against the framework provided under Article 24 of the Constitution. This article mandates that the limitations be based on law; reasonable and justifiable in an open and democratic society; and take into account the nature of the right, the importance and purpose of the limitation, and whether there are less restrictive means to achieve the intended objective.

The principle of proportionality is central to this test, and courts in Kenya have repeatedly emphasized that blanket or vague restrictions fail this standard. In Coalition for Reform and Democracy (CORD) v Republic of Kenya & Another [2015], the Court held that Article 24 demands a proper evidential basis and reasoned justification for any limitation of a fundamental right. The test is not

merely that the law allows it, or that it is administratively expedient, but that the limitation is reasonable and justifiable in an open and democratic society. Blanket or vague restrictions that are not tailored to meet a legitimate aim will not meet the threshold under Article 24.

STATUTORY FRAMEWORK FOR MEDIA REGULATION: THE KENYA INFORMATION AND COMMUNICATIONS ACT (KICA)

The Kenya Information and Communications Act (KICA), as amended in 2013, establishes the Communications Authority of Kenya (CA) as the regulator for broadcasting, telecommunications, and postal services. Under Section 46H of KICA, the Communications Authority of Kenya has powers to license broadcasters and regulate content to ensure compliance with public interest obligations, decency, and national security.

Section 5B of the Kenya Information and Communications Act (KICA) expressly binds the Communications Authority to uphold Article 34 of the Constitution, reinforcing the constitutional insulation of media from state control. Importantly, while subsection (2) allows for limitations on media freedom, subsection (3) reiterates that such limitations must meet the Article 24 threshold they must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. This aligns with the decision of the High Court at Nairobi in the CORD v Republic of Kenya case where it held that "blanket or vague restrictions that are not tailored to meet a legitimate aim will not meet the threshold under Article 24. As such, directives by the Communications Authority like the media ban issued during June 25, 2025 protests must be narrowly defined, clearly justified, and procedurally sound, lest they amount to unconstitutional overreach.

Notably, the Kenya Information and Communications Act (KICA) is subordinate to the Constitution and therefore any action taken under its provisions such as the issuance of a media ban must conform to the constitutional safeguards of due process, legality, necessity, and proportionality.

BALANCING PUBLIC ORDER AND PRESS FREEDOM: NORMATIVE AND JURISPRUDENTIAL ANALYSIS

Normative Foundations: Constitution and Statutory Frameworks

The right to freedom of expression, including press freedom, is entrenched under Articles 33 and 34 of the Constitution of Kenya, 2010.While Article 33 recognizes freedom of expression as a fundamental right, it also identifies limitations such as hate speech, incitement to violence, and advocacy of hatred. Article 34, on the other hand, provides for the independence of the media and expressly prohibits any form of state control or interference.

As such,these rights are however not absolute. Article 24 of the Constitution of Kenya, 2010 allows for the limitation of rights and fundamental freedoms, provided such limitation is based on a law, reasonable and justifiable in an open and democratic society; and pursuant to a legitimate aim such as national security, public order, or public morality.

This constitutional threshold is further echoed in Section 5B of the Kenya Information and Communications Act (KICA) , which affirms that any limitation to media freedom must be strictly construed and justified under the same constitutional framework. Section 5B(3) reinforces that:

"A limitation of a freedom under subsection (2) shall be limited only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."

From the foregoing, it is important to note that the collective effect of these provisions is that any action by regulatory bodies like the Communications Authority (CA) including the suspension of live media coverage must not only pursue a legitimate aim but also be proportionate and based on evidence that such restriction is reasonably necessary to sustain a democratic society.

THE PROPORTIONALITY TEST AND ARTICLE 24

Kenyan courts have adopted a strict proportionality test when determining the validity of limitations on constitutional rights. This was affirmed in the landmark case of ***Coalition for Reform and Democracy (CORD) & 2 Others v Republic of Kenya & 10 Others [2015] eKLR*** , where the High Court stated that:

"Article 24 demands a proper evidential basis and reasoned justification for any limitation of a fundamental right. The test is not merely that the law allows it, or that it is administratively expedient, but that the limitation is reasonable and justifiable in an open and democratic society. Blanket or vague restrictions that are not tailored to meet a legitimate aim will not meet the threshold under Article 24."

This precedent makes clear that vague or overly broad state restrictions such as indiscriminate bans on media coverage are not constitutionally permissible. The State must therefore demonstrate that such limitations are necessary, proportionate and legitimate in purpose.

COMPARATIVE JURISPRUDENCE: REGIONAL AND INTERNATIONAL NORMS

International and regional human rights instruments, such as **Article 19** of the **International Covenant on Civil and Political Rights (ICCPR)** and **Article 9 of the African Charter on Human and Peoples' Rights**, also recognize the right to freedom of expression and media freedom, permitting limitations only when necessary and narrowly tailored to serve a legitimate aim.

Kenya being a signatory to the **ICCPR**, Article 19 of the Covenant provides a critical framework for balancing freedom of expression with legitimate state interests.

Article 19(1) and (2) affirm the universal right to freely hold opinions and to seek, receive, and impart information and ideas through any media and across frontiers. However, Article 19(3) acknowledges that this right is not absolute, allowing for restrictions under specific conditions. It provides that:

"The exercise of the rights provided for in paragraph 2... may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public) [sic], or of public health or morals."

In **Media Rights Agenda and Others v Nigeria** [2000], the African Commission on Human and People's Rights found the Republic of Nigeria to be in violation of various articles of the African Charter on Human and Peoples Rights as well as Principle 5 of the UN Basic Principles on the Independence of the Judiciary. In this case, Niran Malaolu, editor of an independent Nigerian newspaper, was unlawfully incarcerated for his alleged involvement in a coup. The Commission found that the sole reason for Malaolu's detention was his publications and this amounted to a violation of his right to freedom of expression.

The principles highlighted in Article 19 of the ICCPR and Article 9 of the African Charter for Human and Peoples' Rights reinforce Article 24 of the Kenyan Constitution and were echoed in the Kenyan High Court's reasoning in the CORD v Republic of Kenya decision(supra) particularly the requirement that blanket or vague restrictions do not meet constitutional or international thresholds. The June 25, 2025 directive from the Communication Authority barring live coverage of the Gen Z protests by media houses and issuing threats of sanctions on non-compliant media houses is therefore a misapplication of constitutional provisions and a dangerous step towards suppressing fundamental freedoms in Kenya. There is no publicly available evidence that the directive was grounded in a law of general application or that it met the necessity and proportionality test required under Article 19(3) of the ICCPR. The lack of transparency, specificity, and procedural safeguards renders the ban incompatible with Kenya's international human rights obligations.

THE JUDICIARY AS A CONSTITUTIONAL GUARDIAN

The judiciary has consistently been called upon to interpret the scope of freedom of expression and media freedom in light of alleged state overreach. Courts in Kenya have developed a strong body of jurisprudence that emphasizes the supremacy of the Constitution and the strict requirements for limiting rights under Article 24 of the Constitution.

In the Coalition for Reform and Democracy (CORD) & 2 Others v Republic of Kenya & 10 Others [2015] case, the High Court explicitly affirmed that:

> ***"Blanket or vague restrictions that are not tailored to meet a legitimate aim will not meet the threshold under Article 24."***

Similarly, in **Royal Media Services Ltd v Attorney General & 2 Others [2020]** , the Court of Appeal held that regulatory frameworks must not be used to undermine the independence of the media and that state agencies should not exercise control over content in ways that infringe constitutional rights.

THE FUTURE OF MEDIA REGULATION IN THE DIGITAL AGE

The advent of digital media has disrupted traditional regulation in several ways. The ease of content creation and dissemination has made it increasingly difficult for regulators to monitor and control online content. The global nature of the internet has also raised questions about jurisdiction and the applicability of national laws to online activities.

Traditional regulatory models largely designed for print, broadcast, and analog technologies are increasingly ill-suited to the complex, fast-moving, and decentralized nature of digital media. While digital platforms have expanded access to information and enabled widespread content creation,, they

have also introduced new regulatory challenges including misinformation, hate speech, cyber-harassment, and online radicalization.

CONCLUSION

The June 25, 2025 media ban issued by the Communications Authority of Kenya (CA) during the Gen Z led protests served as a sharp reminder of the fragile balance between public order and press freedom in contemporary Kenya. While the state has a legitimate interest in preserving national security and public order, such interests must always be pursued within the bounds of constitutional principles and international human rights obligations.

The Constitution of Kenya, 2010 sets a high threshold for limiting media freedom. Limitations must be shown to be lawful, necessary, reasonable, and justifiable in a democratic society. The courts have reinforced this position, cautioning against blanket or vague restrictions that fail the test of proportionality .

The CA's directive, issued without transparency, specificity, or independent oversight, likely failed to meet this standard.

Ultimately, the digital age introduces additional complexities, demanding new frameworks for content regulation that do not replicate analog-era authoritarianism.

REFERENCE

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RE-ADJUSTING THE WHEELS OF JUSTICE: THE CONCEPT OF LEGAL REPRESENTATION IN THE NIGERIAN LEGAL SYSTEM.

EJUVWEVWO OGHENERUME

ABSTRACT

The position of the law remains unchanged: for fair adjudication of justice, the doctrine of fair hearing is paramount, as it is one of the foundations of every case. The Nigerian judicial arm is often referred by many as “the last hope of the common man”. However, there's only so much the judicial arm can do given the system within which it operates. Presently, legal representation in Nigerian society has become a luxury and when the common man manages to acquire it, he pays through his nose. For a long time, Nigerians have suffered this problem.

The Nigerian Legal Aid Council was set up by the Ministry of Justice to provide free legal representation to defendants in a criminal trial. The key question is: How effective has the legal aid council been since its establishment?

This article looks into the intricacies of the Nigerian legal aid system, points out its weakness if any, and proposes recommendations to further strengthen the system.

INTRODUCTION

Legal representation, simply put, is the act of advocating for or defending the right of an individual in a competent court of law. The focus of this article is legal representation in criminal trials in Nigeria. The state of legal representation for accused persons in Nigeria is at an all-time low. Every day, the average Nigerian suspect approaches the criminal justice system with one silent prayer— to not get lost in the system. The reality of our society has made legal representation for the average Nigerian a luxury, not a basic necessity that everyone should enjoy. Sadly, this is slowly becoming the norm in Nigeria.

The concept of legal representation has been around for a long time. It is not a modern idea of the 20th and 21st century...

The origins of legal practitioners and the first founders of law can be traced to Ancient Greece and Rome. In ancient Athens "orators" would often plead the cases of "friends" because at the time, individuals where required to defend themselves or have an ordinary citizen do so. Although, these ancient legal practitioners were not allowed to take a fee for their service, the law around fees was often violated but was never abolished thus making it still impossible to establish a formal profession. However, in ancient Rome, Emperor Claudius legalised the legal profession and allowed advocates to charge a limited fee. Despite this legalisation, the fees that Roman lawyers could charge were very meagre compared to the services they provided, making it difficult for them to earn a sustainable living.

Subesquently, the early legal profession was classified into two; some specialized in law practice while others in rhetoric – that is the art of persuasive speaking and argumentation, particularly in presenting cases before the courts. The implication of this was that that clients had to visit two separate advocates to handle their case. But this specialization led to greater precision in Roman law practice since there was an entire class of people who focused on just studying and understanding the law.

On the 8, August, 2025, in Abuja during a meeting with the Chairman of the Independent National Electoral Commission (INEC), Prof. Mahmood Yakubu. The Comptroller General of the Nigeria Correctional Service (NCOS), Sylvester Nwakuche, disclosed that out of approximately 81,000 inmates in custodial facilities nationwide, about 53,460 are awaiting trial.

Mr. Aliyu Abubakar, Director-General of the Legal Aid Council of Nigeria (LACON), stated that 70 per cent of Nigerians cannot afford legal representation.

These statistics draw our attention to the number of people in the criminal justice system who require legal assistance but are unable to secure one. This is a growing concern that should be checked.

THE LEGAL AID COUNCIL

The Legal Aid Council was established to provide legal support for people who cannot afford legal representation. It is a system that has been in place in Nigeria for years now. Legal aid in Nigeria has evolved from an informal concept to a formal scheme with the establishment of the Legal Aid Council in 1976, initially focusing on criminal cases and later expanding to civil matters. The 2011 Legal Aid Act further broadened the scope to include various vulnerable groups and established public defender offices. Despite these advancements, challenges like funding, shortages and limited awareness persist.

Functions of the Legal Aid Council of Nigeria

The following are the functions of the Council and their operation in Nigeria

1. Provides free legal advice to indigent citizens on various legal issues.
2. Offers practical assistance in navigating the legal system, including filling out forms and understanding procedures.
3. Represents eligible individuals in court to safeguard their rights and interests.
4. Provides legal aid to people detained, arrested, or imprisoned, as well as to victims and witnesses in criminal matters.
5. Assists indigent individuals in civil matters, including securing, defending, enforcing, or protecting their rights.
6. Ensures fair trial rights for individuals who cannot afford legal representation.
7. Promotes alternative dispute resolution methods such as mediation and arbitration.
8. Develops and implements a National Operational Guideline for paralegal services in Nigeria.
9. Utilizes a Technical Working Group to implement resolutions on paralegal services.
10. Formulates strategies for improving legal aid services nationwide.

SCOPE OF THE LEGAL AID COUNCIL

The Operational horizon of the Legal Aid Act is divided into three main areas. The Act makes room for addressing criminal cases, civil cases and Alternative Dispute Resolution.

1. Criminal Defence Service

This covers the provision of legal advice, assistance, and representation to indigent people involved in criminal investigations or proceedings. The scope of this service is guided by the offences listed in the Second Schedule to the Act, as well as offences of a similar nature. These include serious crimes such as murder, manslaughter, grievous harm, robbery, rape, stealing, and other related offences, along with charges brought against accessories to such crimes.

2. Civil Litigation Service

The Council also offers assistance, advice, and representation in civil matters where the interests of justice require intervention. This includes securing, defending, enforcing, protecting, or otherwise exercising the rights and obligations to which a person is entitled under Nigerian law. Legal aid may be granted in respect of any breach or denial of such rights, allowing indigent persons to pursue or defend civil claims they would otherwise be unable to afford. The Second Schedule identifies eligible civil matters, such as accident and compensation claims, breaches of fundamental rights under Chapter IV of the 1999 Constitution, and civil claims arising from criminal activity.

3. ADR Services

Beyond courtroom representation, the Act recognises the importance of non-litigation support. Community Legal Services include the dissemination of public legal information, dispute prevention and settlement, assistance in enforcing ADR outcomes, and the provision of limited financial support for specific claims — with the Director-General empowered to set applicable limits. The Council may also assist with claims against public authorities or individuals, ensuring that vulnerable persons can access remedies outside formal litigation processes.

Applying for Legal Aid and Meeting Eligibility Requirements

Section 19(2) of the Legal Aid Act, 2011 (the Act) states that it shall be the duty of all police officers and courts to inform an accused person of their entitlement to the services of a legal practitioner from the moment of their arrest; and if such suspect cannot afford the services of a legal practitioner, to notify the Council of their desire to be represented.

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Under the Act individuals who cannot afford legal representation may apply to the Legal Aid Council for assistance. Applications can be made at the Council's headquarters, any zonal office, or a state office within the applicant's state of residence. They may also be lodged through approved partner organisations such as registered law clinics, non-governmental organisations, or accredited community legal service centres.

Applicants are required to complete a prescribed form, providing details of the legal matter for which aid is sought, as well as information on income, assets, and expenditure. Supporting documents relevant to the case must also be submitted. Upon receipt, the Director-General or an authorised officer will assess the application in line with the Act's eligibility criteria.

The eligibility is primarily determined by the applicant's means and the nature of the case. Legal aid is available to individuals whose income does not exceed the national minimum wage, provided that the case falls within the scope of matters covered under the Act (for example, specified criminal offences, breaches of fundamental rights, or civil claims such as accident and compensation matters). The case must also be reasonably meritorious in the Council's view.

The Act allows for flexibility in exceptional circumstances. The Governing Board may approve aid for applicants earning above the national minimum wage where the interests of justice require it. Similarly, contributory legal aid may be granted to those with slightly higher incomes, on the condition that they bear part of the costs, which may later be recovered from any monetary award received.

The legal aid council as a body has done the best within its means to ensure that citizens/accused persons have access to legal representation when necessary but there's only so much an organisation can do in a system that has now become a yoke on the accused person's neck.

Challenges of legal aid council

The Legal Aid Council is an applaudable institution with ribbon worthy objectives, however it is currently being hindered by certain factors. Some of the challenges that the Legal Aid Council face are as follows; Legal Aid Council face are as follows;

1. Improper investigations by law enforcement agencies
2. Insufficient funding
3. Corruption
4. Non-committed personnel at the Council
5. Logistical problem

OTHER FORM OF LEGAL AID

The Administration of Criminal Justice Act, 2015.

The Administration of Criminal Justice Act has made necessary provisions for the legal representation of unrepresented defendants. Section 349 (4) and (5) of the Act provides as follows;

(4) Where the defendant fails or is unable to secure a legal practitioner arranged by him after a reasonable time, the court may direct that a legal practitioner arranged by way of legal aid to represent the defendant.

(5) The court may assign to any legal practitioner whose place of practice is within the jurisdiction of the court, any case of a defendant who has no legal representation, and the legal practitioner shall undertake the defence of the defendant with all due diligence; in which case the legal practitioner shall not pay any filing fee or service fee in respect of the case so assigned.

The section above brings to light the power of the court to appoint any legal practitioner who is within the territorial jurisdiction of the court to handle

the case for free and he would not be charged for anything as regards filing his processes in court. He is bound to represent the defendant to the best of his abilities and ensure the defendant has a fair trial. It begs the question— how often is this practiced in our legal space?

PRO BONO AMONGST LAWYERS

The legal profession is universally regarded as one of the noblest callings, tasked with safeguarding constitutional liberties and upholding the institutional pillars that hold society together. Regrettably, only a small fraction of Nigerian lawyers consistently renders pro bono services to indigent persons caught in the criminal justice system. According to the Legal Aid Council of Nigeria, barely 15% of lawyers in the country engage in pro bono work, underscoring the still-nascent culture of voluntary legal assistance.

Although some practitioners do accept pro-bono matters, the majority do not, primarily because there is no general legal obligation to provide such services. The notable exception arises in the conferment of the rank of Senior Advocate of Nigeria (SAN), where evidence of substantial pro bono contribution is a statutory requirement under the Legal Practitioners' Privileges Committee Guidelines. Consequently, a number of lawyers undertake pro bono cases primarily to fulfil this eligibility criterion rather than out of sustained commitment to access to justice. Others cite practical constraints—lack of time, the considerable personal and financial investment required to acquire their legal education and professional qualification—and maintain that free legal services cannot reasonably be made compulsory. Now, having established the necessary foundation and painted out the reality of things as they are in the Nigerian society, one can only come to one conclusion:

The legal aid system as good as it is, is in dire need of a restructuring. The statistics have shown that number of persons awaiting trial in our Correctional centers are increasing as the years go by. The obvious challenge is that while the system is barely improving, the number of unrepresented accused persons keeps increasing. Lack of funding and minute public awareness has almost crippled its operations. At best, the only sustenance of the system is the zeal and passion of the persons who run the operations behind the scenes.

Section 349 of the ACJA provides an assurance for accused persons who stand before the court without legal representation: that the court would provide one for them, as the court can mandate a lawyer to step up and take up the case pro bono and such lawyer is to diligently represent the defendant. This provision in reality seems more like an academic exercise, a mere page off the Administration of Criminal Justice Act for the sake of completion. Many defendants today are at the mercy of the prosecution and most times the court simply ensures the bare minimum of fair hearing as to ensuring the presence of the defendant and does nothing more.

RECOMMENDATIONS

Having gone through this discuss of the deficiency of representing defendants without legal representation, there are several ways we can adjust this wheel of justice.

The government, just as it has prosecutorial bodies readily on standby to prosecute offenders, should also ensure that the body responsible for shielding the defendants are properly set in place to do their jobs in the most efficient way. The Legal Aid Council should be funded properly so as to enable it carry out its goals and objectives efficiently. The Legal Aid Council should be able to employ full-time lawyers and place them on a stable payroll to increase accountability and enthusiasm. With more lawyers actively participating in the legal aid system, defendants would have a fair chance with the sword of justice.

In addition to proper funding, the Legal Aid Council representation process should not be dependent on whether an accused person has applied for legal aid; it should be automatic. Defendants should not have to go to them first to be screened for qualification. Everyone should have access to legal representation at any point in a criminal trial.

The legal representatives from the Legal Aid Council should be available upon the arrest of a defendant. Nigeria should adopt a system similar to the United States' Miranda rights, ensuring representation from the investigation. The Miranda rights in the United States of America says; "... you have the right to an attorney. If you cannot afford one, one would be provided for you. " This speaks to the fact that there are legal practitioners readily available for a person even before the case goes to court, as to ensure fair representation in the investigation process or interrogation. This way, the law enforcement officers are checked in the exercise of their powers as the bite force of the State. Having legal representative assigned to people within a reasonable time after arrest would also serve as a form of improvement in the justice system

As regards pro bono services offered by lawyers, the Nigerian Bar Association should introduce a reward system (similar to Continuing Professional Development Points (CPD points)) to encourage lawyers to take up pro bono matters. Nigeria has over 250,000 lawyers, on its roll as of the time of the query, and about 5,000 new lawyers being called to the bar each year. Having these many lawyers running at least 3 pro bono cases every year would lead to drastic improvement in the criminal justice system.

CONCLUSION

In summary, the Nigerian criminal justice system has come a long way in its growth and development. However, there is still a long journey ahead of us in this regard. Accused persons have constitutionally guaranteed rights which must be upheld at all cost, because when the innocent man suffers unjustly as a result of a broken system, justice would be defeated. Many persons have lost years of their lives because they lacked proper legal representation.

Today, with over 53,000 inmates awaiting trial—most of them indigent and unrepresented—and only a small fraction of Nigeria's more than 250,000 lawyers consistently engaged in pro bono or legal aid work, the crisis is undeniable. The Legal Aid Council and Section 349 of the ACJA remain largely paper promises, crippled by chronic underfunding, systemic inertia, and a weak pro bono culture.

Until the Legal Aid Council is adequately funded and staffed with full-time counsel who intervene automatically from the point of arrest, until courts enforce Section 349 with diligence rather than indifference, and until the Nigerian Bar Association transforms pro bono service into a genuine professional obligation, the judiciary cannot truly be "the last hope of the common man." Reforming the system is no longer optional—it is an urgent constitutional and moral imperative. The time to readjust the wheels of justice is now.

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AN ANALYSIS OF ABORTION LAWS IN ZIMBABWE

TANAKA GOTA

Abstract

This paper examines the nature of the statutory framework that governs abortion in Zimbabwe. It applies the ultra vires test against the laws to investigate the constitutionality of the restrictive spirit on abortion. The primary Acts under investigation are the Constitution of Zimbabwe, 2013 and the Termination of Pregnancy Act, 2016 (TPA). The paper will argue that the current legal framework is restrictive in spirit and limits women's rights to privacy, reproductive health and autonomy.

However, in its restrictive sense, the TPA passes the Constitutionality test. Its limitation on the aforementioned rights is provided for in the Constitution. Despite passing the ultra vires test, legislating restrictive laws count for little if anything, in deterring abortion. Lawful grounds for abortion must be extended, without making abortion an absolute right.

Keywords: Abortion, Abortion Laws in Zimbabwe, Constitution of Zimbabwe, Termination of Pregnancy Act, Women's Rights.

INTRODUCTION

The right of a woman or a girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy, concerning matters of physical and psychological integrity (Article 3 and 17 of the International Convention on Civil and Political Rights). Women must be protected from arbitrary state interferences in their personal affairs, and state parties must ensure the realization and full enjoyment of this right.

However, how one enjoys her right to privacy and reproductive health when pregnant is not business as usual in Zimbabwe. One cannot exercise discretion or make independent decisions concerning their own pregnancy because the law asserts an interest in the life of the unborn child. Therefore, abortion is not a private affair in Zimbabwe.

Activists on reproductive justice have branded restrictive abortion laws as unconstitutional. They allege that such laws infringe the right to privacy and access to reproductive health care services under sections 57 and 76 of the Constitution respectively. In Gaertner and Others v minister of Finance and Others , the right to privacy was explained as follows,

"The right to privacy embrace the right to be free from intrusions and interferences by the state and others in one's personal life."

Simply put, it can be argued, except in exceptional circumstances, unjustifiable intrusion by the government upon the privacy of an individual, whatever the means employed, must be deemed to be a violation of privacy, as further buttressed by Langa CJ in Christian Education South Africa v Minister of Education (CC) [2000] ZACC 11.

This paper will examine the veracity of these arguments.

RIGHTS OF THE UNBORN

This paper will not answer the following questions. When does life start? Must a 1week old foetus have a right to life? Is an unborn child a person? This is because this writer submits that such questions are unimportant points of inquiry in legal matters. Whether or not a foetus is a person who must have rights is more of a theological question than it is legal.

What is important, however, is the investigation and inquiry of whether or not an unborn child has rights recognized by the law, whatever it is, human or non-human. It might not be a person, but that does not deprive it from enjoying any right conferred to it by law, if any. If it does have rights, what are the nature of those rights and their implications on a woman's right to privacy, autonomy and reproductive health.

THE LEGAL FRAMEWORK ON ABORTION.

Section 48(3) of the Constitution reads as follows,
48. Right of Life.

3. An Act of Parliament must protect the lives of unborn children, and that Act must provide that pregnancy may be terminated only in accordance with that law.

The above constitutional provision gave birth to the TPA, which provides that,

3. Prohibition of termination otherwise than in accordance with this Act.
(1) No person may terminate a pregnancy otherwise than in accordance with this Act.
(2) Any person who contravenes subsection (1) shall be guilty of... ... ...

4. Circumstances in which pregnancy maybe terminated
Subject to this Act, a pregnancy maybe terminated-

(a) Where the continuation of the pregnancy endangers the life of the woman concerned or so constitute a serious threat of permanent impairment of her physical health that the termination of the pregnancy is necessary to ensure her life or physical health, as the case may be; or,

(b) Where there is a serious risk that the child to be born will suffer from a physical or mental defect of such nature that he will be permanently seriously handicapped; or,

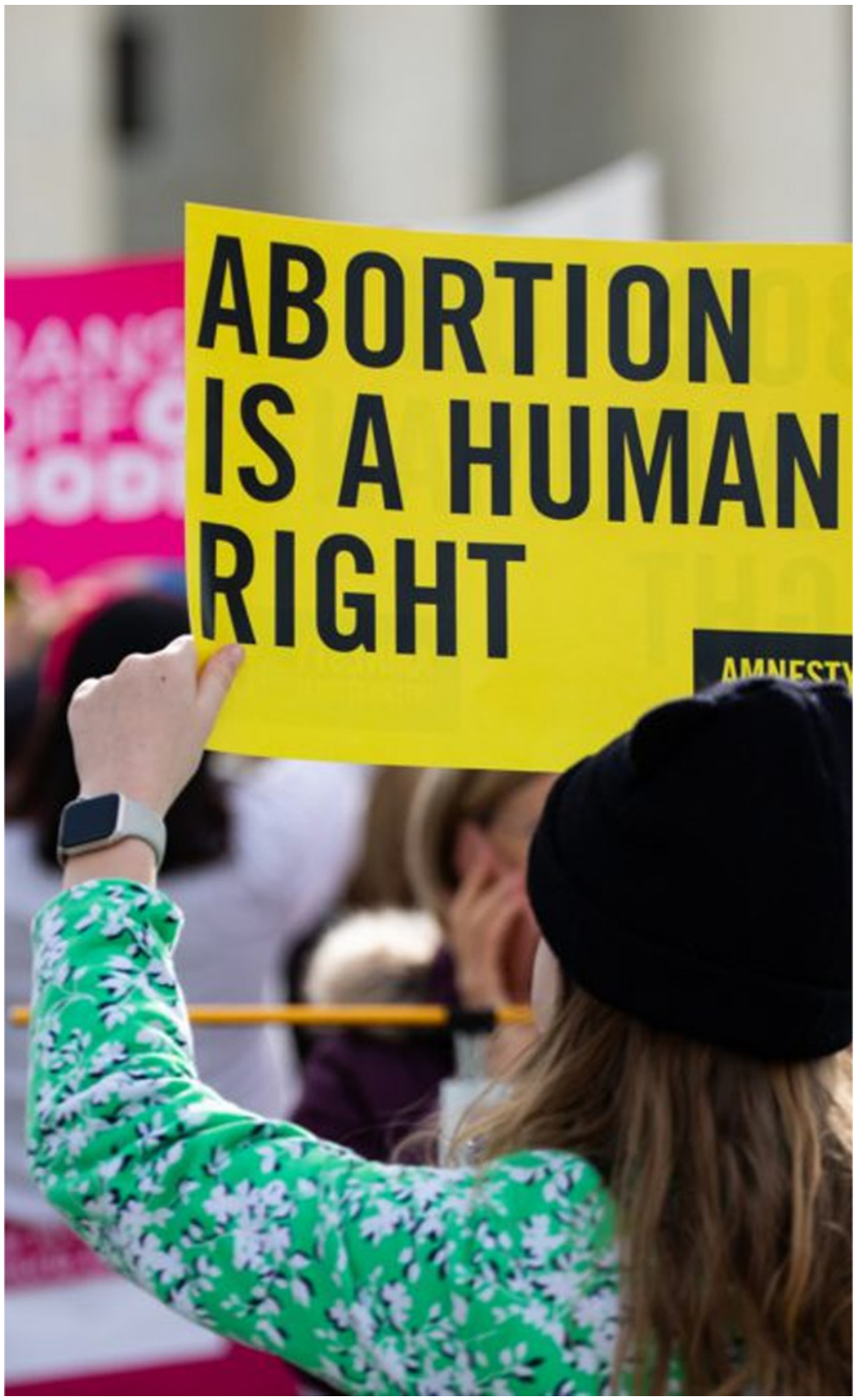
(c) Where there is a reasonable possibility that foetus is conceived as a result of unlawful intercourse.

The above statutory provisions are a testament to the argument that an unborn child does have a right to protection, and this right can only be limited on grounds provided above in the TPA. In Zimbabwe, abortion however is not an absolute right. The Constitution, properly understood and interpreted, only provides for an implied right to obtain an abortion.

Abortion is legal, only when the reasons provided for by the woman concerned are within the limited circumstances provided above and is illegal for all other reasons, regardless of how reasonable and justifiable they may appear to be. The strict application of the TPA results inherently in the limitation of the privacy and reproductive health of women. Reproductive health implies that people have the capability to reproduce and the freedom to decide if, when and how often to do so.

Notwithstanding the foregoing, the TPA does not allow one to have the liberty to decide whether or not to have a child once pregnant. It is a common unfortunate event for one to be pregnant before feeling ready for parenthood, but the law thus far does not recognize this circumstance. Potential life must have its life protected. Once pregnant you must bear the child unless the surrounding circumstances regarding the pregnancy can reasonably fit within the permissible circumstances for termination under section 4 of the TPA quoted above. So basically, one's rights to reproductive liberty and privacy is directly infringed by the TPA.

Notably, that the TPA limits of these reproductive rights does not infer that the TPA is unconstitutional except where the limitations are shown to be ultra vires section 86 of the Constitution. This constitutional provision it is necessary, reasonable, fair and justifiable.



Application of Section 86 of the Zimbabwe Constitution against Section 4 of the TPA.

IS IT NECESSARY?

There are two main reasons why abortion is illegal in Zimbabwe. Firstly, because there is a need to protect what they term as 'potential life' and lastly, because the cultural, religious and ethical motif in Zimbabwe frowns upon abortion. The founding values and principles of Zimbabwe under section 3 of the Constitution, includes recognition of the cultural, religious and traditional values. The TPA intends to recognize these cultural and traditional concerns by limiting permissible grounds for abortion. Abortion presents a

The fact that a majority of the States reflecting, after all, have had restrictions on abortions for at least a century is strong indication that the asserted right to an abortion, is not so rooted in the traditions and conscience of our people to be ranked fundamental.

The dissenting judge in this case, in other words, was indicating the fact that, abortion is not part our natural law. It is often viewed as an immoral act, at least, by most societies, hence the reason why in most nations, it is an illegal matter.

The highlighted remarks made by J Alito, in Dobbs v Jackson Women's Health Organisation , fully capture the right attitude of the Constitution towards abortion, and they were as follows:

Abortion presents a profound moral issue on which people hold sharply conflicting views. Some believe that abortion... ... ends an innocent life . Other feels just as strongly that any regulation of abortion invades a woman's right to control her own body and prevents women from fully achieving equality. There is a third group that thinks that abortion should be allowed in some but not all circumstances, and those within this group hold a variety of views about the particular restrictions that should be imposed.

Therefore, limitations imposed on women's rights are necessitated by the need to preserve the traditions and conscience in which Zimbabwe is founded upon, while simultaneously permitting abortion in some but not all circumstances so as to ensure that potential life is protected.

On the issue of enforcing society's traditional, cultural and religious beliefs on women, what about one's right to freedom of conscience under section 44 of the Constitution?

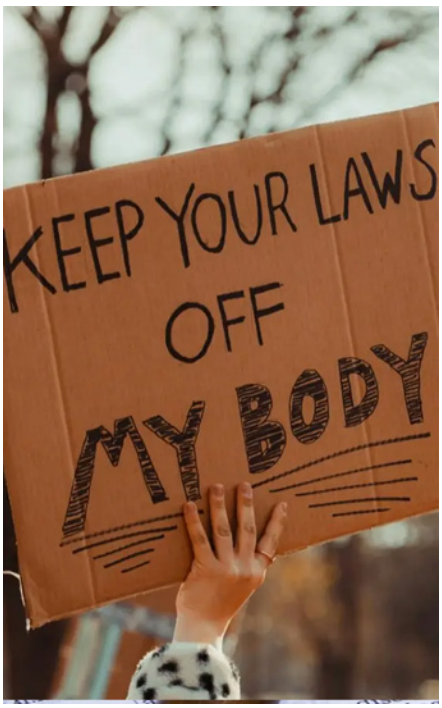
The very same Constitution provides for the right to freedom of conscience under section 60. Also, some of the treaties Zimbabwe has ratified, provide for the right to freedom of thought and conscience, namely, Article 18 of the ***Universal Declaration of Human Rights*** and ***International Covenant on Civil and Political Rights*** read jointly with Article 12 of the ***African Charter on Human and People's Rights.*** This shows how constitutionally protected and internationally recognized this right is.

Freedom of Conscience has been interpreted to mean freedom to have your own opinion, belief and values. It also embodies the right not to have other people's beliefs and opinions imposed on oneself. Society must not interfere with profoundly personal views that governs one's perception of nature, reality and humankind. So by imposing the majority's traditional, religious and cultural beliefs on abortion, on women who do not envision abortion as immoral is to hinder them from manifesting their beliefs in practice and that is against freedom of conscience.

However, this right can be subjected to limitations. It is unfortunately, a derogable right, which can be limited in order to preserve 'public morality' and Zimbabwe's founding values. Such is the case in Zimbabwe.

IS IT JUSTIFIABLE OR FAIR?

The TPA is fair and justifiable. It is fair in accordance with the law. Abortion must only be done when necessary. Except for Rape, pregnancy is not a vis major nor is it an accident. Two people willingly or negligently participate with consensus. It is important to bear in mind that, Volenti non fit injuria. That which man consents cannot be regarded as an injury. One cannot consent to an injury and expect legal relief to mitigate its consequences. This is one of the reasons why the law is reluctant to legalize abortion.



However, an unborn child may be a threat to the mother's life, the foetus might be physically impaired to the extent of being permanently handicapped if born and the pregnancy might have been conceived through unlawful intercourse. The TPA is not ignorant to these harsh realities.

Zimbabwean women therefore are not necessarily deprived completely, the right to access reproductive health services. Where one conceives without consent or in undesirable situations (rape, incest etc) the law provides for recourse.

The Act strikes a balance between two forces, the interests of a woman seeking abortion and the interests of the constitution in protecting potential life. The need to provide reproductive services against the need to protect unborn children.

The TPA ultimately passes the ultra vires test.

RECENT DEVELOPMENTS ON ABORTION LAWS.

Recently, grounds for pregnancy termination were extended. In Women In Law in ***Southern Africa (WILSA) and Talent Forget v Minister of Health and Child Care and Others,*** the court was persuaded to extend its definition on unlawful intercourse, to allow children and married women, who are victims of marital rape to have access to legal abortion. Anyone below 18 years of age can have lawful abortion because any sexual intercourse with a minor is unlawful in Zimbabwe, therefore such pregnancy would have emanated from unlawful intercourse.

Illegal teen abortions which caused maternal mortality amongst young girls necessitated this court application to protect children. Unlike before, children and victims of marital rape can now access legal abortion.

Outside the Zimbabwean jurisdiction, in the United States, the Court changed its interpretation and legal lenses towards abortion. The stare decisis in Roe v Wade (supra) which established that abortion is a right and its denial interferes with the right to privacy and autonomy was overturned in the case of Dobbs v Jackson Women's Health Organisation (supra).

In the Dobbs case, the Court ruled that abortion is not a right. It is not absolute. What the law currently provides is the right to obtain it in accordance with the law.

DOES THE TPA PASS THE REASONABLE TEST.

Are these laws serving their purpose? Reality seems to sing a different tune.

Statistics prove that abortion occurs more in countries that have restrictive laws. In 2016 alone, more than 65 000 induced abortions happened in Zimbabwe despite having stringent laws on abortion. In Africa, where most countries have restrictive laws, only 1 in 4 abortions, is safe, on average, in all other cases it is unsafe because there is no access to this reproductive health service because it is illegalized.

It therefore defeats the whole purpose of limiting grounds for lawful abortion. Restrictive or permissive, the law does little in determining abortion. By enforcing restrictive laws, potential life is risked more. Enacting restrictive laws does not in itself protect the lives of unborn children but inversely leads to high abortion rates. The intended effect is not the resultant effect.

Countries with less restrictive abortion laws generally have lower abortion rates than countries with highly restrictive laws. Criminal regulation of abortion serves no known deterrent value. The restriction on abortion is just on paper, as in practice, abortion is not foreign. The TPA intends to maximize the protection of unborn children but ironically, the only effect it has on abortion is the lack of safety of those abortions, not their reduction.

SUGGESTIONS

Economic hardship is one of the leading incentives for unlawful abortion in Zimbabwe. Most women resort to abortion because they do not have the necessary financial muscle to provide

essential needs for their children, if born. The strength of the economy has a bearing on abortion rates as most women resort to abortion as a means to avoid foreseeable financial struggles and future impoverishment if they become parents.

The law must recognize economic hardship as a lawful ground for abortion. Zimbabwe should adopt the South African approach. Zimbabwe must adopt the South African approach, but abortion must not be an absolute right.
Not only will abortions be safe, but reproductive justice will also be realized, and abortion rates will drop. The South African Choice on Termination of Pregnancy Act, 1996, legalises abortion on economic grounds between the 13th and 20th week of pregnancy. It protects women in South Africa against all the inevitable vices that emanates from unsafe abortion which include but not limited to, maternal mortality.

Abortion laws must be relaxed to this extent. It must not be totally legal but the grounds for lawful terminations must be extended by including economic hardship as a recognized ground for abortion. It is of no practical use to enact restrictive laws that fail to ensure the practicality of their purpose.
The law must further provide a legal definition for 'economic hardship' to avoid floodgates of abortions and arbitrary subjective claims.

CONCLUSION

Abortion is a matter that humans will never have the same attitude towards. The law must strike a balance between these two often contrasting opinions. The law must provide for abortion for some. Women's rights to privacy, reproductive justice and autonomy are currently limited by abortion laws in Zimbabwe. Although, such limitations are constitutional, they do not necessarily serve their purpose. Restrictive laws negate the protection of potential life. The law must not be over generous in permitting abortion but must also relax the rigid rules governing abortion.

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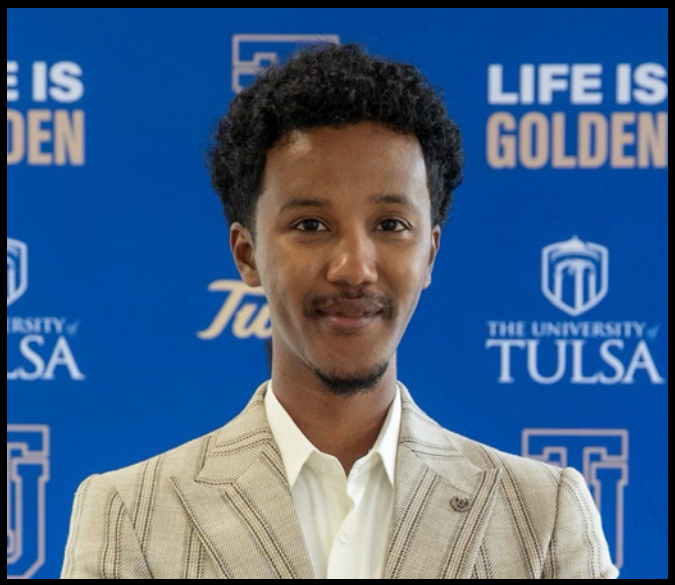
INTERVIEW WITH
MOHAMED FARAH

* Co-founder and Executive Director of The Justice and Development Initiative (JDI).
* Country Director of the Somali Chapter of the Federation of African Law Students (FALAS).
* Mandela Washington Fellow, 2025.



Q Kindly tell us about Mohamed Farah

Answer: Professionally, I am a Candidate Attorney at the Supreme Court of the Federal Republic of Somalia, a proud alumnus of Mogadishu University's Faculty of Law, and a passionate advocate for human rights, social justice, and the rule of law. My leadership journey began during my undergraduate years through the Mogadishu University Moot Court Society and later within the Federation of African Law Students (FALAS), where I now serve as the Somali Chapter's Country Director for 2024–2025. I am also the Co-Founder and Executive Director of The Justice and Development Initiative (JDI), a youth-led nonprofit advancing civic education and community empowerment across Somalia.

Aside my professional life, I am deeply curious about people, culture, and ideas. I enjoy reading historical nonfiction and African literature, listening to music, and taking quiet evening walks to clear my thoughts. I love good conversations—especially about philosophy, politics, or films that make one think—and I have a soft spot for photography and creative writing. When I am not working, you'll probably find me creating civic explainer content for social media, curating legal newsletters, or engaging in spirited discussions about governance and human rights reform in Africa. I believe deeply in the transformative power of informed citizens and often describe myself as "a bridge between law and the people it serves." Friends often describe me as reflective, witty, and grounded; someone who can debate law one moment and talk about art, travel, or fashion the next.

Q You hold an impressive academic record while actively engaging in numerous extracurricular pursuits. How were you able to maintain such balance?

Answer: For me, maintaining balance is a thing of perspective. I've never viewed academics and extracurricular activities as competing forces, but as complementary parts of one learning journey. My studies gave me depth, while my extracurricular involvements gave me breadth — together, they shaped the person I am.

I approached both with structure and intention. I learnt early on to plan ahead, set achievable goals, and remain adaptable when things changed. Rather than trying to do everything at once, I focused on doing each thing with purpose and attention. I also developed the habit of reflection — taking time each week to assess what was working and what needed adjustment. That helped me stay focused without losing momentum.

Most importantly, I think balance comes from passion. When you're genuinely invested in what you do — whether it's studying, mentoring, or leading — it stops feeling like a burden and starts becoming part of your growth. In that sense, balance for me was less about managing time, and more about aligning my time with what truly mattered.

Q How did your early experiences, particularly your internship at the Ministry of Women and Human Rights, shape your understanding of what it means to be a lawyer in a society?

Answer: My internship at the Ministry of Women and Human Rights profoundly shaped how I view the role of a lawyer in society. It was my first encounter with how law and policy truly meet the human experience — how mere words on paper can either empower or oppress the people they were meant to protect. I saw up close the resilience of women seeking justice, the bureaucratic hurdles they faced, and the power of empathy in legal work.

That experience helped me understand that being a lawyer is not only about knowing the law but also about understanding people. It reminded me of something President Obama once said — that "the best way to not feel hopeless is to get up and do something." For me, that meant choosing a path where the law becomes a tool of service, not privilege. It taught me that justice begins long before a case reaches the courtroom — it begins in listening, in advocacy, and in the everyday defense of dignity.

As a Candidate Attorney today, I carry those lessons forward. They remind me that the practice of law is as much a moral duty as it is a professional one. It's about standing at the intersection between principle and humanity, and choosing, every day, to make the law mean something real to those who depend on it most.

Q Could you share with us some of your proud moments?

Answer: One of the moments I'm most proud of in my leadership journey was the founding of The Justice and Development Initiative (JDI). What began as a simple idea among a few young law students—to make the law more accessible to ordinary citizens—slowly grew into a real organization with structure, programs, and a sense of purpose.

I still remember the early uncertainty: no funding, limited experience, and countless nights of planning and rewriting proposals. Yet, what made me proud wasn't the launch itself, but the moment I realized that others began to believe in the vision too. When young people from different backgrounds joined JDI, not for recognition but for impact, I understood what leadership truly means—it's about turning conviction into collective action.

That moment changed how I define success. It taught me that leadership is less about standing out and more about standing with others; less about titles, and more about building something that serves. Watching JDI evolve from a conversation into a movement reminded me that transformation often starts quietly—with an idea, a team, and the courage to begin.

Q From your experience, what are the most pressing human rights issues facing Somalia today, and how can law students and young lawyers contribute meaningfully to addressing them?

Answer: Somalia continues to grapple with several human rights challenges, the most pressing of which include gender-based violence, weak access to justice, violations of children's rights, and systemic gaps in accountability within public institutions. These issues are often compounded by limited legal awareness, underdeveloped enforcement mechanisms, and the slow pace of constitutional and judicial reforms.

Law students and young lawyers can meaningfully contribute by using their legal knowledge to advance civic education, legal aid, and strategic advocacy. They can work with communities to raise awareness of fundamental rights, support victims through pro bono initiatives, and contribute research to strengthen ongoing reforms—particularly those related to the Constitution, justice sector, and gender equality. Ultimately, their most powerful contribution lies in reimagining the role

of law as a tool of service and transformation—helping to rebuild public trust and ensure that justice in Somalia is not selective, but accessible to all.

Q You represented Mogadishu University in several prestigious international moot competitions, what key lessons did you take away from those experiences?

Answer: Representing Mogadishu University in international moot competitions was one of the most transformative parts of my legal education. It taught me that law, at its best, is not about memorizing rules but about reasoning, persuasion, and empathy. Standing before international judges and peers from across the world challenged me to think critically, listen actively, and defend ideas with both logic and respect.

Beyond advocacy, mooting taught me the value of preparation and humility. You quickly learn that confidence is built on discipline, and that even the strongest arguments can fall flat without clarity or teamwork. It also broadened my global outlook — engaging with complex legal problems reminded me that justice issues are shared across borders, even if their contexts differ.

Most importantly, those experiences instilled in me a quiet conviction: that Somalia's young lawyers can compete, excel, and contribute meaningfully on the world stage. That belief continues to shape how I approach both my work and my mentorship of those who are just beginning their own career journeys.

Q You have held leadership positions in regional bodies such as the Federation of African Law Students. In your view, what impact do such continental networks have on legal education and collaboration across Africa?

Answer: Continental networks like the Federation of African Law Students (FALAS) play a vital role in shaping the future of legal education and cooperation across Africa. They create spaces where young legal minds from different systems can exchange ideas, compare experiences, and build a shared vision of justice rooted in African realities. Through FALAS's partnership with the African Union, these collaborations extend beyond debate — they influence conversations around governance, human rights, and institutional reform at continental level.

For Somalia, this connection has been particularly meaningful. For instance, the Somali Chapter of FALAS has participated in national dialogues such as the ongoing constitutional amendment process; ensuring that the voice of young legal professionals is heard in shaping the country's foundational law. That engagement reflects what FALAS stands for — empowering students and young lawyers to move from the classroom to the policy table.

In my view, these continental networks build the next generation of African jurists to not be only well-trained, but also be interconnected, reform-minded, and attuned to the collective progress of the continent. Networks like FALAS remind us that Africa's legal future will not be defined by isolation, but by collaboration, innovation, and shared commitment to justice.

Q Who are your mentors or role models and what are the most significant lessons you have learned from them?

Answer: I've been shaped by the influence of several remarkable leaders whose lives and principles continue to guide my journey. President Barack Obama has been a profound source of inspiration — not only for his eloquence and vision, but for his belief that leadership begins with empathy and moral courage. As a participant in one of the flagship programs of YALI, the Mandela Washington Fellowship, I had the privilege of seeing his legacy in action — a generation of young Africans empowered to serve rather than rule. One of his mantras that stay with me is, "If you're walking down the right path and you're willing to keep walking, eventually you'll make progress." That simple truth reminds me that

meaningful change is often steady, not instant.

In the realm of law, I deeply admire Judge Abdulqawi Ahmed Yusuf — Somalia's first President of the International Court of Justice — whose intellect and quiet dignity reflect the best of our legal tradition. I also look up to Professor P.L.O. Lumumba for his fearless defence of Pan-African ideals and constitutionalism, and to former President Ellen Johnson Sirleaf for proving that resilience and integrity can coexist with power. From the late Kofi Annan, I learned that true leadership is service — that "you are never too young to lead, and never too old to learn."

Each of these figures, in different ways, has shaped how I define leadership: as an act of purpose, not position; of conviction, not convenience. They remind me that the measure of one's influence lies not in titles held, but in lives touched.

Q You have transitioned from student leadership to national and international engagement in a relatively short time. What personal habits or guiding principles have supported your rapid growth?

Answer: I think what has guided my growth most is a quiet commitment to excellence and intentionality. I've always believed that success is not accidental — it's the result of clarity, discipline, and consistency. From my days in student leadership to my current national and international roles, I've tried to approach every responsibility with preparation, focus, and a genuine desire to add value.

A principle I live by is that integrity must precede ambition. I've learned that titles come and go, but credibility endures. I don't rush growth — I build it. Every role, whether big or small, is an opportunity to learn something new, refine my thinking, and serve better the next time. I also rely heavily on reflection — taking time to evaluate what worked, what didn't, and how I can improve. That habit keeps me grounded even as opportunities expand. Another principle that shapes me is curiosity. I ask questions, I listen more than I speak, and I'm never afraid to start from "I don't know." I believe growth happens when you are both a student and a leader at the same time. Ultimately, my journey has been guided by the conviction that leadership is not about speed, but about substance — to grow deeply, not just quickly, and to always align progress with purpose.

Q Finally, what inspiring message do you have to share with law students across Africa who wants to excel just like you?

Answer: To every law student across Africa, I would say this: never let where you begin define how far you can go. Excellence doesn't start with privilege; it starts with purpose. Your law degree is more than a certificate — it's a calling to use knowledge as a tool for justice and transformation. The law is not merely about statutes and procedures; it is about people — their struggles, their hopes, and their dignity.

To excel, cultivate curiosity. Read beyond your syllabus and allow yourself to question, explore, and connect ideas across disciplines. Learn to write and speak with conviction, because clarity is a lawyer's most powerful tool. Lead with integrity, even when no one is watching, and let your values be stronger than your ambitions. Take initiative instead of waiting for permission — start projects, mentor others, and serve your community in whatever capacity you can. True growth begins when you act on what you believe, not just when you talk about it.

And above all, remember that collaboration will take you further than competition. Seek out mentors who challenge and inspire you. Learn also from your peers — growth is rarely a solo journey. Our generation has the responsibility to make the law more humane and accessible, to reimagine justice through empathy and innovation. Africa's future will not be built by those who follow paths already made, but by those bold enough to create new ones. So walk boldly, think deeply, serve selflessly — and remember, excellence is not a destination; it's a daily discipline.

TRANSFORMATIVE CONSTITUTIONALISM IN THE CONTEXTS OF ENVIRONMENTAL RIGHTS AND JUSTICE IN NIGERIA.

EMMANUEL OMOLE

"Transformative environmental constitutionalism involves not only the letters of the constitution protecting the environment, but also ensuring access to environmental justice by citizens."

Keywords:
Environment, environmental pollution, environmental rights, Transformative Constitutionalism, sustainable development, environmental justice.

Abstract
This Article highlights environmental pollution problems in Nigeria, particularly in the Southern region; how they affect constitutionally recognised environmental rights, and how the Constitution can be used to protect and improve the environment, enhance and achieve access to environmental justice by citizens, through the means of transformative constitutionalism, in line with exemplary case studies from other jurisdictions.

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The Constitution of the Federal Republic of Nigeria, 1999 , as amended (the Constitution), in Section 20, provides that 'the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife (resources) of Nigeria'. However, the provision of this Section is seemingly non-justiciable by virtue of its being entrenched in Chapter II of the same Constitution. Section 6(6)(c) provides that the powers of the court shall not, save as otherwise provided, extend to the determination of any question relating to the government's achievement and or fulfillment of the policies and objectives stated in Chapter II.

This has created a waterloo for litigants and concerned citizens looking to the court for the enforcement of the provisions of the Constitution as regards environmental rights and responsibilities by the government. It is more like the proverbial giving of gifts with one hand and taking the same gifts with the other. Scholars have lauded the bold step of the direct recognition of environmental rights in the 1999 Constitution, the first time such a thing occurred in Nigeria's constitutional history . It was indeed a landmark step in the fulfillment of Nigeria's obligations as regards the protection of the environment, pursuant to numerous treaties signed and ratified by it However, it appears to be a cosmetic effort in taking the right path towards improving and protecting the environment.

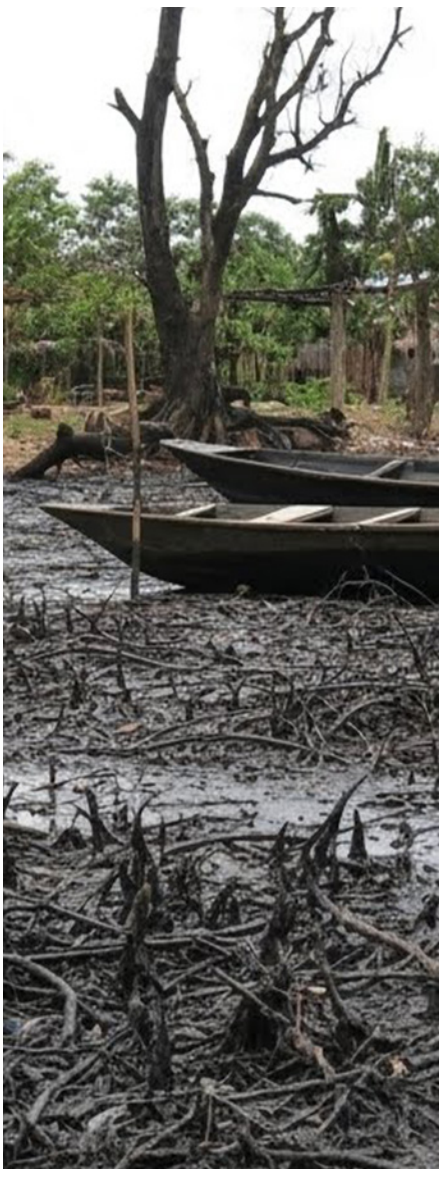
Environmental pollution is a recurring and alarming problem in Nigeria, particularly in the oil-rich Southern region. It is estimated that while the European Union experienced 10 incidences of oil spills in 40 years, Nigeria recorded 9,343 cases within 10 years . Numerous cases of oil pollution, land depletion and degradation, ozone layer depletion, air pollution and other environmental hazards like fire outbreaks have plundered the once-beautiful and environmentally rich Delta

region. Also, there have been incessant cases of health issues, property damage and even deaths resulting from the environmental problems posed by oil exploration activities in the region . Several litigants looking to the Court for remedies have constantly been denied justice and turned away by what had once been termed the “last hope of the common man”. This is due to the fact that the Constitution does not expressly and categorically guarantee the right to a safe and healthy environment. Attempts to use common law principles have proved to be a futile adventure, a point of no return . Common law is strict and full of rigidities and technicalities that deny unfortunate victims of remedies due to archaic and abysmal 'loopholes' and 'uncircumventable' laws and principles.

Ironically, the Constitution that is supposed to clear the eyes of the common man has ‘blown hot pepper’ into the same eyes. In the case of Oronto Douglas v. Shell Petroleum Development Company & Ors , the court held that the provisions of Chapter II are generally non-justuciable and unenforceable. It is seemingly 'a waste of time' seeking to use it for anything remedial in the court. This harsh rigidity has registered loss of hope in the hearts and minds of victims of environmental pollution. Most of these victims have become apathetic and have even sought to help themselves through illegal ways like forming militant groups to enforce their rights . This is a sad and pathetic situation. The law is supposed to help victims of human rights violation and injury, not support unapologetic oil moguls and pollutants. This reality has made joke out of the common latin maxim,'Ubi jus, ibi remedium'.

However, all hope is not lost. Brilliant lawyers have canvassed 'backdoors' and leeways to circumvent this pathetic headache aforementioned. One way in which lawyers and scholars have helped in the enforcement of environmental rights is through the concept of Transformative Constitutionalism . This involves using the Constitution to radically and aggressively achieve its fundamental purpose, which is to promote “good government and welfare of all persons in our country, on the principles of freedom, equality and justice. . .” Hence, Transformative Constitutionalism entails using the Constitution to advance the interests of Justice in the face and in defiance of strict rules and limiting principles of law. 'Justice should be manifestly and undoubtedly seen to be done' . Transformative Constitutionalism involves using the golden rule of interpretation and the 'noscitur a sociis' rule to consolidate, accumulate and accommodate useful and relevant sections of the Constitution in resolving issues of violation of rights, especially environmental rights.

It is not a mistake nor error that Section 6(6)(c) of the Constitution starts with 'except as otherwise provided by this Constitution'. Section 13 of the 1999 Constitution provides that 'it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter [II] of this Constitution.' Flowing from this, the section clearly obliges, compels and enjoins the government to give effect to the provisions of Chapter II of the Constitution. In the same vein, the Second Schedule, Part 1, Item 60(a) of the Constitution empowers the Legislature to promote and enforce the observance of the Fundamental



Objectives and Directive Principles of State Policy contained in the Constitution. This provision recognises that the formulation of laws by the Legislature on a 'non-justiciable' matter makes such a matter justiciable and fit to be heard by the court. This was applied and used in the landmark case of Attorney-General of Ondo State v. Attorney-General of the Federation . Therefore, if the National Assembly makes a law involving issues of environmental rights, such law (Act) makes the environmental issues justiciable. As a matter of fact, the noble National Assembly of Nigeria has done this numerous times. There are several laws on environmental issues, the most notable being the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 (No. 25 of 2007) . Also, there is the Oil in Navigable Waters Act which prohibits oil pollution of navigable waters . As such, any violation of these Acts will be triable in the court . In fact, the Acts provide sanctions for their violations by both individuals and corporate entitities . The problem, however, is that Nigeria is notorious for making beautiful laws that exist only on papers and nothing more. Despite these legislations, most of these laws are not properly and appropriately enforced. Also, most of these laws are outdated and consequently fail to grant appropriate remedies for victims of environmental rights infringement . In fact, it can be argued that some of the lawsappear to be made in favour of the infringers rather than the victims of pollution .

Another means of transformative Constitutionalism is to interpret the provisions of Fundamental Rights listed in Chapter IV to include those provided for in Chapter II. The two Chapters are undeniably inextricably linked and tied to each other—like a midfielder to a striker in football. Figuratively thinking, how will the striker score if he does not have a midfielder to pass to and create chances for him? . Chapter IV and Chapter II of the Constitution are closely linked, such that a breach of the provisions of one chapter may give rise to a breach of the provisions of the other. For instance, the environment is the essence of life. There can be no life without a favourable environment, the current state of other plants e.g Mercury can attest to this fact. Hence, a violation of environmental rights will consequentially violate the right to life entrenched in Section 33 of the Constitution. This linkage is not without support and authority. In fact, jurisdictions like India and South Africa have done this in many cases. For instance, in the case of Subhash Kumar v State of Bihar , the Indian Supreme Court held that environmental pollution is a violation of the plaintiff's right to life. In the European case of López Ostra v Spain , it involved a complaint about environmental pollution from a waste treatment plant near the applicant's home, and its impact on her right to respect for private and family life under Article 8 of the European Convention on Human Rights. The European Court of Human Rights (ECtHR) ruled in favour of López Ostra, finding that Spain had violated Article 8 due to the state's failure to adequately address the pollution and its impact on her living conditions. Therefore, Transformative Constitutionalism seeks to link environmental rights subtly provided for in Chapter II with Fundamental Rights boldly provided for in Chapter IV. In fact, the Federal High Court, Benin State Division in Nigeria has recognised this brilliant proposition. In the case of Gbemre Jonah v Shell BP , the court held that Shell's incessant gas flaring activities amounted to a violation of the plaintiff's right to life. This same decision was impliedly affirmed in the subsequent landmark case of Centre for Oil Pollution Watch v NNPC . The Supreme court stated that the pollution caused by NNPC was a violation of the right to a healthy life of the people of Acha community, Abia State, found that the plaintiff had locus standi, and remitted the case back to the trial court for retrial.

The African Charter on Human and People's Rights, Article 24 goes further to provide that ***"all peoples shall have the right to a general satisfactory environment favourable to their development"***. Notably, the Charter has been ratified by the National Assembly , pursuant to Section 12 of the Constitution. In practice, the courts have treated the Charter as subordinate to the Constitution, as demonstrated in Abacha v. Fawehinmi . This approach makes it unlikely that a plaintiff could rely exclusively on the Charter's provisions to obtain redress for environmental pollution

In essence, the purpose of environmental Transformative Constitutionalism is to transform, reform and conform the provisions of the Constitution in line with environmental protection, environmental justice and sustainable development . Mother Earth is dying, the Constitution must not be used as a knife to mutilate and shatter our beloved earth. People must use the environment reasonably and not pollute it. The intent of this Article is to awaken the conscience and accountability of those powerful oil magnates and industrial "typhoons" whose actions have long scarred our land. The environment is sacred and must not be polluted. Its resources must be reasonably explored, not exploited; respected and not depleted; protected and not pillaged. Where shall we go if we do not have a home? Transformative Constitutionalism seeks to prevent this catastrophe. In conclusion, this Article makes it clear that Transformative Constitutionalism is the key to opening the door of environmental justice in Nigeria, just as has been done in other examined jurisdictions.

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- (Latin: "it is known by its associates"), the meaning of an ambiguous or general word must be determined by considering the company (context) of the other words with which it is associated in the statute. A word's meaning is influenced by the words surrounding it. This rule is used when a word is capable of multiple meanings or is vague, and its interpretation is clarified by the accompanying words. See Maxwell on The Interpretation of Statutes (12th edn), pp. 289–293

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AUTHOR

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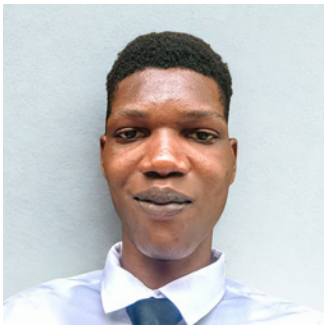
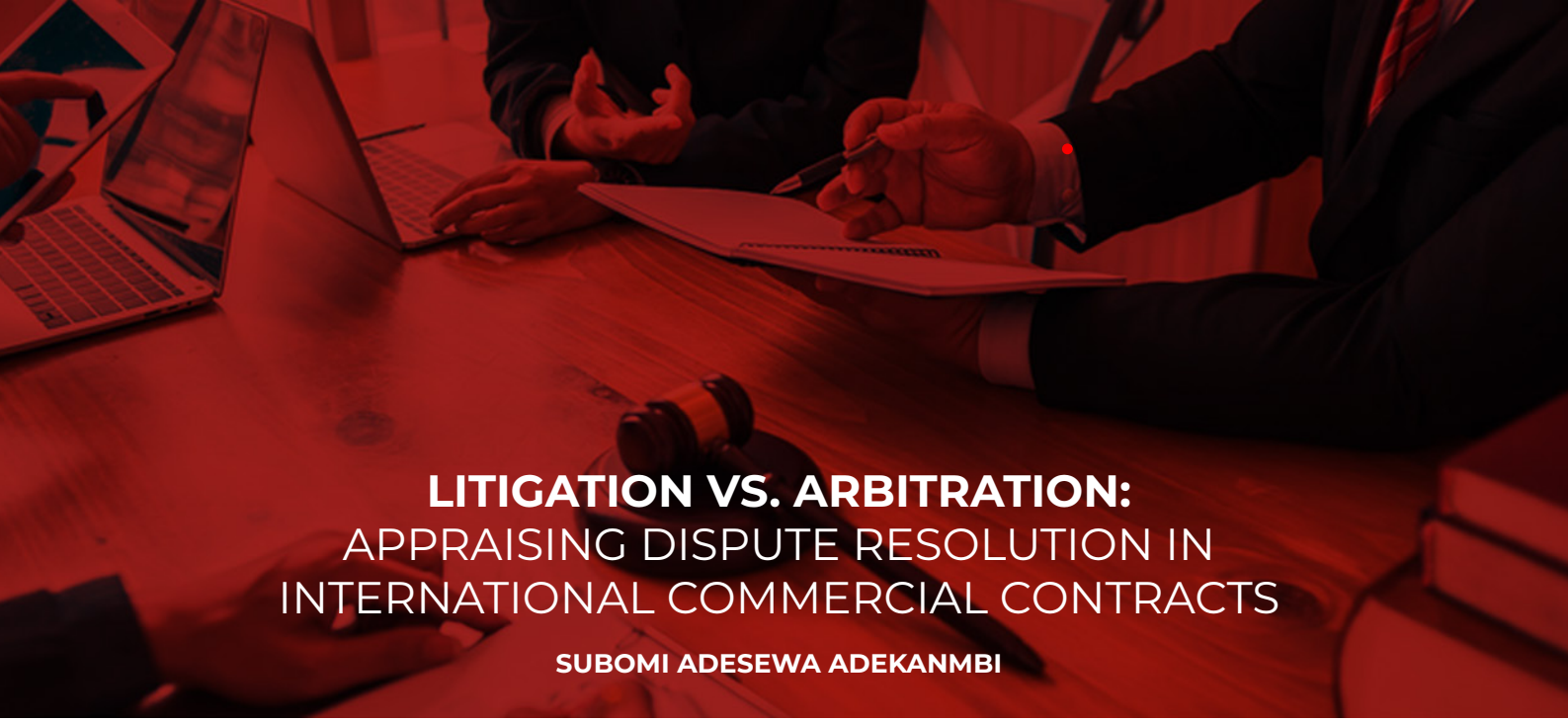




LITIGATION VS. ARBITRATION: APPRAISING DISPUTE RESOLUTION IN INTERNATIONAL COMMERCIAL CONTRACTS

SUBOMI ADESEWA ADEKANMBI

Dispute resolution is an integral part of the legal landscape of International Commerce, offering multiple pathways such as Arbitration, Litigation, Mediation and Negotiation, with the historical preference being litigation and the latest preference being arbitration.

Conflicts arise from International commercial contracts when there is disagreement over commercial contract between businesses and individuals from different countries. It is usually occasioned by a breach of commercial contract, non-performance of the terms in a commercial contract, inadequate product quality, and conflicts over regulations or contractual terms. These commercial disputes are characterised by cross-border elements like parties from different jurisdictions enter into transactions involving goods, services, or investments across national boundaries.

The prevalence of cross-border commerce necessitates a resolution mechanism that will cater to the needs of the parties and amicably resolve the conflict, while ensuring continued business relationship. There is a need for "transnational glue" that holds together the legal fabric of global commerce. An instance is a dispute between a Nigerian energy firm and a European supplier or a cross-border e-commerce platform like Amazon or Temu and a Ghanian Citizen. What should be the neutral enforceable and efficient resolution?

Litigation and Arbitration are a class of dispute resolution mechanism available in International commercial contracts that place obligation on parties to be bound by enforcing the decisions procured. Each method presents distinct processes, advantages, and disadvantages that parties must consider when resolving conflicts arising from International commercial contracts.

LITIGATION: THE TRADITIONAL COURTROOM BATTLE

Litigation is the conventional method of dispute resolution, taking place within the formal confines of a courtroom. It is characterised by its adherence to procedural rules, the involvement of a judge, and possibly juries who are impartial third parties with no vested interest in the case and a final decision that is binding on parties and supported by enforceability procedures. The litigation process is also notoriously known to be disadvantageous in some respects. For example, it is considered: expensive. The process is public, with court records accessible to all, ensuring transparency but sacrificing privacy. It has a jurisdictional constraint. That is, the decision of a court that lacks jurisdiction is nullity. Also, litigation is time-consuming, often taking 23 - 30 months or years due to court schedules, frequent adjournments.

The extensive involvement of legal procedures promotes priority on how evidence is gotten and brought before the court instead of the evidence itself. Additionally, the adversarial nature of litigation in some jurisdictions fosters antagonism, potentially damaging relationships between parties. Finally, litigation poses a risk of bias.

WHY LITIGATION?

Despite these drawbacks, litigation offers several advantages in certain contexts. In recent time, courts worldwide are taking judicial notice of applicable frameworks in managing dispute arising in International commerce through-cross-border cooperation such as the Economic Community of West African States (ECOWAS) and the European Union's Cross Border Cooperation programs, which establish frameworks for businesses to operate across borders; digital hearings; and harmonisation of laws and Jurisdictional doctrines such as Hague Convention, Lex Contacts rule, Lex Loci principle.

It provides a platform for cases where arbitration is not an extendable option, either due to a party's unwillingness, the absence of an arbitration clause in the contract or parties are dissatisfied with the arbitration decision; Judgements are appealable until the Supreme Court, offering a safety net through appellate review; The process is guided by binding legal precedents, offering predictability based on historical rulings on similar situations. Unlike Arbitration where every case is heard afresh, there are likewise solutions to conflicts through a decided case with similar facts and conflict. Moreover, litigation adheres to strict evidence guidelines, which can be advantageous to parties with substantial, admissible evidence. Courts can issue injunctions, enforce rights, and compel third-party participation (e.g logistics, payment platform), in dispute resolution what arbitration lacks. Litigation is essential when parties seek judicial review of the terms of contract. Judgement of a foreign court is enforceable subject to the provisions of the foreign judgement Reciprocal Enforcement Law/Act of the various States.

ARBITRATION: THE PRIVATE AND EXPEDITED ALTERNATIVE

In contrast, arbitration is a private, informal adjudicative process that eschews the formalities of a courtroom for a more streamlined approach. An arbitrator, who is a neutral party chosen by the parties, presides over the case which is resolved in a private setting. The UNCITRAL Rules defines arbitration as "a procedure for the settlement of disputes by one or more impartial arbitrators, selected by the parties, whose decision is binding."

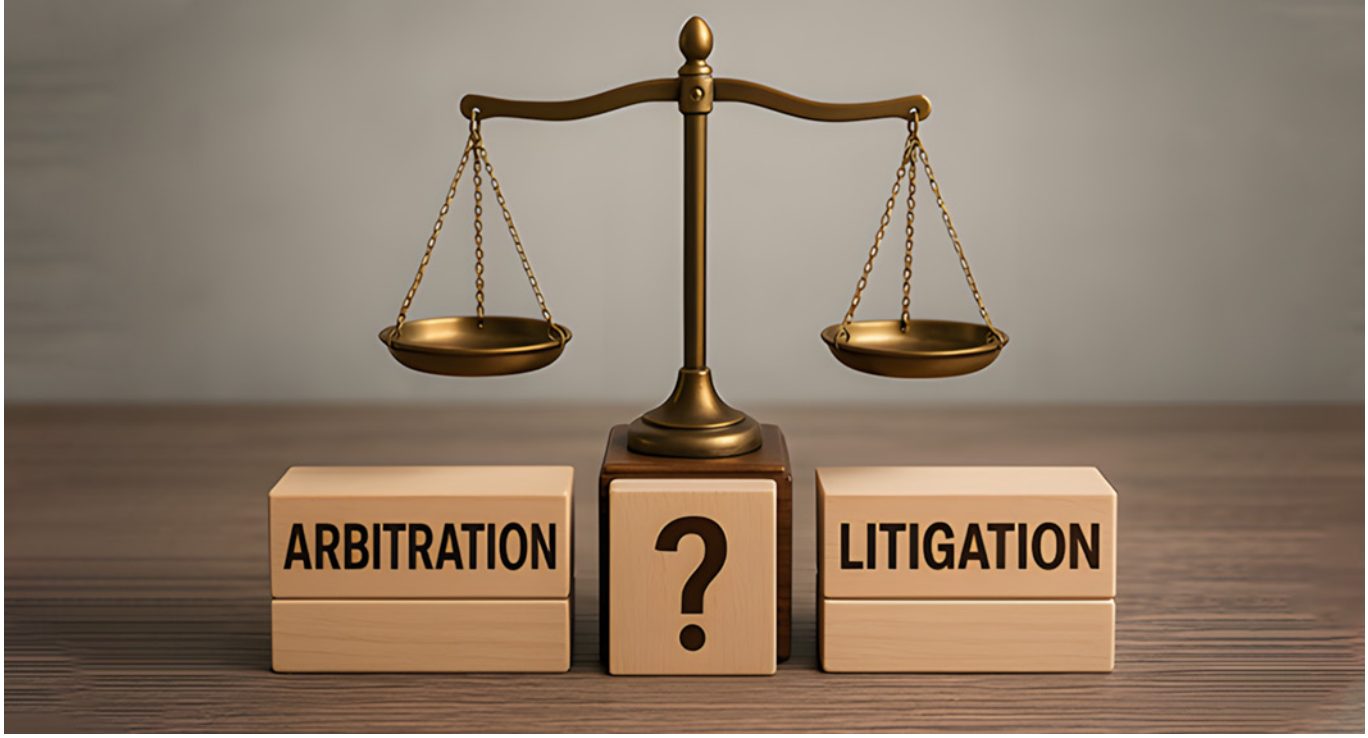
Some disadvantages of arbitration include:

- Limited rights to appeal. Lack of an appellate process means that decisions are final and binding, which can be problematic if an arbitrator's objectivity is questionable;
- Not always but potentially high costs from arbitrator fees;
- Limited recovery because amicable resolution is prioritised, hence, it hinders a party's ability to gather information;
- The risk of an arbitrator's bias and impartiality where there is no disclosure that he is not a neutral party;
- Mandatory arbitration clauses can also force a party into the process.

WHY ARBITRATION?

Of the numerous advantages of Arbitration, it offers a swift resolution, with parties having the flexibility to tailor the process to their needs. Arbitration clauses in commercial contracts can specify bespoke rules, including the scope of damages and appellate rights. The process is convenient, not bound by jurisdictional constraints and encourages amicable agreements. Other reasons to embrace arbitration are:

- Parties autonomy. Parties decide on the processes and rules, including the venue, applicable law, and timelines of the Arbitration tribunal or Arbitrator;



- There is confidentiality and privacy. This protects sensitive documents and trade secrets from public disclosure, especially valuable in sectors like finance, tech, and energy, where proprietary data is often at stake;
- Arbitration is lauded for its time efficiency, often resolving disputes within months. is also more streamlined than litigation, which is crucial in fast-paced commercial environments;
- Arbitration is also less costly than litigation, involving moderate fees for the arbitrator, the location, as well as attorneys' fees.
- Another feature that distinguishes arbitration from litigation is the voluntary nature of arbitration which requires mutual consent as against compelling other parties to court.
- Parties can tailor procedures to suit the nature of their dispute, including selecting arbitrators with industry-specific expertise, like ICIArb.
- It fosters a collaborative atmosphere that can preserve business relationships.
- Decisions made by arbitrators are generally enforceable in court and considered final, barring exceptional circumstances.
- It is Internationally Enforceable. Instruments like UNCITRAL rules, and the New York Convention (1958) ensure that arbitral awards are enforceable in over 160 countries, making arbitration a truly global solution;
- Arbitration is not bound by jurisdictional constraints.
- Cross-border compatibility, and international trade involves parties from different legal systems. Arbitration offers a neutral forum where parties can avoid the bias of binding legal precedent or unpredictability of foreign courts;
- Arbitration can be merged with other alternative dispute resolutions. Emergence of Hybrid Models and Rise of Arb-Med, Med-Arb, and other hybrid mechanisms has made this possible.
- Increasing use of institutional arbitration (e.g., ICC, LCIA, SIAC), which provides robust frameworks and administrative support, enhancing credibility and procedural integrity.
- Arbitration can be done virtually with the existence of Digital arbitration platforms, remote hearings, e-discovery and online case management.
- Legal harmonisation. Frameworks like UNCITRAL Model Law promote consistency across jurisdictions, reducing legal friction and uncertainty.

CONCLUSION

Concluding the appraisal of the traditional courtroom battle against the private and expedited alternative, litigation and arbitration are viable dispute resolution methods, however they come with inherent disadvantages. It is for the parties to examine the advantageous and disadvantageous factors of the resolution mechanism and choose the option that is appropriate to their circumstances.

Litigation can be prohibitively expensive, overly technical, and unpredictable. It may also exacerbate tensions between parties and lack the guarantee of an impartial decision. Arbitration, however, is generally beneficial but has its limitations.

The choice between litigation and arbitration depends on the specific needs and circumstances of the disputing parties. Litigation offers a structured, transparent process with the possibility of appeal but at the cost of time, money, and potential relationship damage. Arbitration provides a private, efficient, and cost-effective alternative that emphasises collaboration but sacrifices the safety net of appellate review. Parties must carefully consider these factors when deciding on the most appropriate method for resolving their disputes. The choice between the two is determined by the nature of the dispute, the parties' priorities, the circumstances of the breach, and the contractual framework.

GLOSSARY

1. ICC – International Chamber of Commerce
2. LCIA – London Court of International Arbitration
3. SIAC – Singapore International Arbitration Centre
4. UNCITRAL – United Nations Commission on International Trade Law
5. ICIArb - Institute of Construction Industry Arbitrators

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