

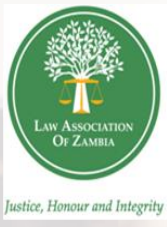
**GLOBALISING YOUR PRACTICE
OPPORTUNITIES AND CHALLENGES**

Eliminating the Barriers to Cross Border Legal Practice in Africa

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Livingstone, Zambia



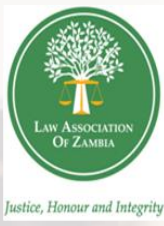
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Outline

- Cross Border Legal Practice in Africa: Status Quo
- Barriers to Cross Border Legal Practice
- Bringing Down the Barriers
- Recommendations
- Conclusions

CROSS BORDER LEGAL PRACTICE IN AFRICA: STATUS QUO

- The Concept of Cross Border Legal Practice is not novel. It involves the provision of legal services by lawyers to clients outside of their national jurisdictions.
- L. Terry in his article “GATS’ Applicability to Transnational Lawyering and its Potential Impact on U. S. State regulation of Lawyers”, referred to Cross Border Legal Practice as:
“the general situation in which a lawyer, originally licensed in one jurisdiction, the Home State, provides legal services in another jurisdiction, the Host State. This can occur when the lawyer physically travels to the Host State, or when the lawyer provides services through other means...”
- Its emergence in Africa is simply a function of globalisation and the influx of foreign investment into the African Continent.
- However, Cross Border Legal Practice is more inter-continental than intra-continental. A lot of foreign law firms have opened offices in Africa or formed legal alliances with local law firms:
 - DLA Piper, Hogan Lovells, Allen & Overy, Baker & Mckenzie, Herbert Smith Freehills have offices in South Africa.
 - Morocco is also home to law firms like Clifford Chance, Allen & Overy, Norton Rose Fullbright
 - In Nigeria DLA Piper has a formal legal alliance with Olajide Oyewole LLP, Dentons has a loose relationship with Udo Udoma & Belo-Osagie



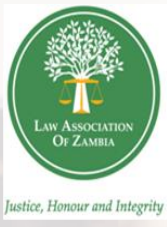
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The table below shows some of the most active local African law firms

Firm	Country	Offices
Aelex	Nigeria	Abuja, Accra, Lagos, Port Harcourt
Ajumogobia & Okeke	Nigeria	Abuja, Lagos, Port-Harcourt
Aluko & Oyeboade	Nigeria	Abuja, Lagos, Port Harcourt
Armstrongs	Botswana	Gaborone
ATZ Law Chambers	Tanzania	Dar es Salaam
Banwo & Ighodalo	Nigeria	Abuja
Bentsi-Enchill Letsa & Ankomah	Ghana	Accra
Bowman Gilfillan Africa Group	Pan-African	Antananarivo, Cape Town, Dar es Salaam, Durban, Gaborone, Johannesburg, Kampala, Nairobi
Collins Newman & Co	Botswana	Gaborone
Couto Graça e Associados Limitada	Mozambique	Maputo
Engling Stritter & Partners	Namibia	Windhoek
ENSafrica	South Africa	Accra, Alexandra, Cape Town, Dar es Salaam, Durban, Johannesburg, Kampala, Kigali, Mitchells Plain, Port Louis, Stellenbosch, Swakopmund, Walvis Bay, Windhoek
Hamilton Harrison & Matthews	Kenya	Nairobi, Mombasa
Helmy Hamza & Partners	Egypt	Cairo
Kaplan & Stratton	Kenya	Nairobi
Koep & Partners	Namibia	Windhoek
MMAKS	Uganda	Kampala
Perchstone & Graeys	Nigeria	Abuja, Benin, Lagos
Templars	Nigeria	Abuja, Lagos; Oghogho; Akpata
TRLP Law	Nigeria	Abuja, Lagos, London, California
Udo Udoma & Belo-Osagie	Nigeria	Abuja, Lagos, Port Harcourt, Uyo
Walker Kontos	Kenya	Nairobi
Webber Wentzel	South Africa	Cape Town, Johannesburg
Werksmans	South Africa	Cape Town, Johannesburg, Stellenbosch, Tyger Valley

Source: The Lawyer Africa Elite 2016 report supplemented with additional recent data

The table above shows the level of integration amongst Law firms in Africa. Compared to their foreign counterparts, African law firms largely remain within their territories.

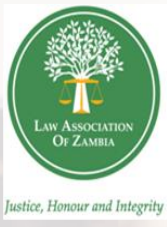


BARRIERS TO CROSS BORDER LEGAL PRACTICE

- Barriers to cross border legal practice may be grouped under two major headings:
 - i. Border/Immigration Requirement; and
 - ii. Jurisdictional Requirement

- i. Border/Immigration Requirement:** Despite the wave of globalisation and integration sweeping across the planet, it is still the case that most countries in Africa still have stringent entry requirements for other African countries, making travel within the continent difficult.

According to the “Africa Visa Openness Index”, a report published by the African Development Bank, Africans require visas to travel to 55% of other African Countries compared to North Americans who require visas to travel to 45% of African Countries. The report also states that Africans can get visa on arrival in 25% of African Countries compared to 35% for North Americans .

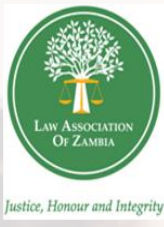


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BARRIERS TO CROSS BORDER LEGAL PRACTICE – CONT'D 1

ii. Jurisdictional Requirement: Most African countries enact laws and practice requirements that bar or make it impossible for foreign legal practitioners to practice fully in their countries.

- For instance Countries like Kenya, Uganda & Tanzania in East Africa apply nationality requirements to practice their domestic laws or to be admitted to their respective bars.
- South Africa also has a similar requirement. Only citizens and permanent residents are eligible for admission to their respective bars.
- In Nigeria, Non-Nigerians can be admitted into the legal profession to practice. However, they are required to satisfy very stringent and rigid requirements. Currently, the legal position is that no foreign lawyer shall engage directly in any form of legal practice in Nigeria.

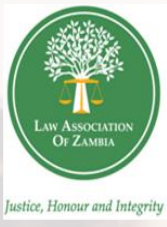


BARRIERS TO CROSS BORDER LEGAL PRACTICE -CONT'D - 2

Other barriers to cross border legal practice:

- a. Divergence of Laws & Legal Systems:** Many African Countries are split between the civil law and common law systems of law as a result of their colonial history. Thus, liberalisation of the practice of law within the continent is more difficult due to variance of laws, legal systems and languages.

- b. Anti- Competition:** A lot of legal practitioners within the African continent are threatened by the ongoing liberalisation of the legal services market in Africa. They feel that their better equipped foreign counterparts will flood the market and push them out of business.



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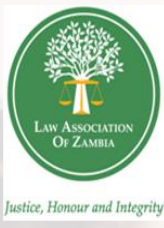
BRINGING DOWN THE BARRIERS

i. Regional or Continental Integration.

- There are currently eight (8) regional economic communities that are established in Africa and they form the building blocks of the African Union. These eight are namely: AMU, CEN-SAD, COMESA, EAC, ECCAS, ECOWAS, IGAD and SADC and most African countries fall under one or more of these regional blocs. Treaties signed by member states stipulate provisions on free movement of goods, services & labour as well as provisions that mandate integration and harmonisation across various sectors.
- Many of these countries have failed to implement such provisions despite being signatories to several of such treaties. Therefore, governments of these countries must muster the political will to implement and enforce the provisions of those treaties that call for integration and harmonisation of their countries.

BRINGING DOWN THE BARRIERS - CONT'D - 1

- A common example is the European Union (EU) which was established in 1993 and has achieved political and socio-economic integration and harmonisation across the member states. Member states have been able to harmonise their qualification requirements for EU Lawyers, immigration policies, energy policies etc.
- In the African continent, there are a number of economic integration policies that have been established but are yet to be ratified or implemented by member states. Policies such as the African Continental Free Trade Area (AfCFTA), the African Passport, the Single African Air Transport Market (SAATM) among others. The prompt and successful implementation of these integration policies will ultimately aid the liberalisation of legal services.



BRINGING DOWN THE BARRIERS - CONT'D -2

- ii. **Relaxing qualification criteria for foreign lawyers:** African countries must relax their rules regulating the admission of foreign legal practitioners to practice in their respective jurisdictions. Until such measures are put in place and properly implemented the legal services sector in Africa will continue to develop at a less than optimum pace.
- For example, Ghana has a very liberal admission requirements in respect of foreign legal practitioners. Foreign lawyers are permitted to practice in Ghana provided they have the required qualifications from their home jurisdiction. A letter of good standing is required from their local bar which must be certified by the General Legal Council. The foreign lawyer must also pass the required examination in Ghanaian Constitutional law and the Customary law of Ghana. Non-Ghanaian citizens are also required to demonstrate seven years post qualified experience (PQE) in a country with compatible legal system.
 - Other African Countries should adopt more liberal requirements to open up the legal markets in their territory. This would lead to increased job opportunities for African lawyers, improved efficiency and standard of services and skills transfer amongst lawyers.

BRINGING DOWN THE BARRIERS - CONT'D -3

- iii. **Harmonisation of laws, legal systems and regulatory frameworks:** African countries should also establish or adopt uniform laws and a unified regulatory framework that would govern various sectors of the economy of member states. This would aid the supply of legal services across member states. The existence and applicability of uniform rules governing cross-border transactions will enhance the capacity of legal practitioners located in different national jurisdictions to offer informed legal opinion on the viability or otherwise of proposed commercial transactions.
- For instance, the OHADA (OHBLA) which is the Organisation for the Harmonisation of Business Laws in Africa is a treaty signed by seventeen (17) West and Central African nations. Its main aim is to unify business law throughout the member states and to promote arbitration as a means of settling contractual disputes. The treaty is currently applicable to more French Speaking countries than English Speaking Countries.
 - The various regional economic blocs/communities can enact similar laws within their jurisdiction for their respective member states.

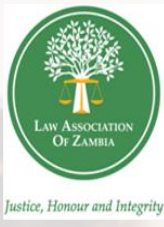
BRINGING DOWN THE BARRIERS - CONT'D -4

- **iv. Creating or increasing capacity of the young lawyers through better education:** African countries should invest in their legal education infrastructure to improve the capability and expertise of local legal practitioners. This will instill confidence in the legal sector and also equip them with the requisite expertise to compete in the liberalised legal services market which is already happening, albeit unregulated.

RECOMMENDATION

Focus on Africa:

- Increase Collaboration within Africa – not by discarding national regulations but by loosening rules and barriers on entry, etc.
- Look to the EU Directives as a guide - set out model Uniform Rules pertaining to lawyers wishing to practice outside their home jurisdictions on a scale that covers the entire continent. These Rules must encompass qualification and practice requirements, such as, the global standardization of qualifying certificates and disciplinary measures to be meted out to erring practitioners, operating outside their own jurisdiction.
- Build Capacity through strengthening educational infrastructure and standards of practice.
- Adjust laws for ease of trade in legal services.
- Harmonize business laws on a wider scale. Begin by implementing a unified curriculum on business law at the university level as a foundation to encourage cross border legal practice in Africa.
- National Bars should be more proactive to incorporate an intra-national element in practical training.
- Unification of African Lawyer's Union i.e. Pan African Lawyer's Union and (PALU) and African Bar Association to provide a more unified voice on liberalization of legal services



CONCLUSION

- The Continent seems to be moving in the right direction with regard to its regional integration policies across various sectors in Africa. The African Union in 2013, launched Agenda 2063 which is a strategic framework for the socio-economic transformation of Africa over the next 50 years driven by its own work force to achieve an integrated and peaceful Africa. Many of the integration policies that will aid in the liberalisation of legal practice in Africa have already been established but are yet to be implemented. The governments of these African countries must ensure the implementation of existing policies which will aid liberalisation in Africa.
- African countries must realise that with globalisation, cross border legal practice is here to stay and liberalisation of markets is ultimately inevitable. What we should seek to do is harmonise legal practice across borders in order to eliminate all existing barriers. This will ultimately improve the standard of the legal profession in Africa and the quality of services which is supplied to other important sectors of the economy.

ANY QUESTIONS?



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**THEME:
BRINGING DOWN THE BARRIERS:
THE LAW AS A VEHICLE FOR
INTRA AFRICA TRADE**



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THANK YOU

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