REFLECTIONS ON RECENT DEVELOPMENTS IN AFRICAN PRIVATE INTERNATIONAL LAW

I. INTRODUCTION

This is the second symposium relating to private international law in Africa to be hosted on this blog, following a series that has run consistently since 2 February 2026. The first symposium, which focused on private international law in Nigeria, took place on 14 December 2020 and was jointly hosted on *Afronomics* and this blog. It was organised by Professor Richard Frimpong Oppong and me.

Professor Beligh Elbalti and I are deeply grateful to the scholars who agreed to participate in this symposium at short notice, including Dr ***Solomon Okorley***, Dr ***Theophilus Edwin Coleman***, Dr ***Elisa Rinaldi***, Miss ***Anam Abdul-Majid,*** Mr ***Kitonga Mulandi***, Dr ***Boris Awa***, and Dr *Abubakri Yekini*.

The idea for this second symposium originated with my dear colleague, Professor Beligh Elbalti, and I am thankful to him for involving me in the leadership and organisation of this project. The symposium finds its true genesis in a larger edited volume we are currently preparing on the recognition and enforcement of foreign judgments in Africa, which examines developments across no fewer than twenty-six African jurisdictions.

In the course of organising the project, we were struck by the depth and richness of engagement with private international law in African courts. This reality stands in sharp contrast to the popular but mistaken assumption that private international law in Africa is stagnant. On the contrary, the field is very much alive and kicking.

African courts are increasingly being called upon to engage with issues of private international law, and this is an empirical reality that our symposium seeks to demonstrate. At the same time, courts face significant and well-documented challenges, including inadequate legal frameworks, insufficient engagement with comparative law, and research approaches that prioritise the transplantation of foreign perspectives rather than the development of solutions grounded in local

realities.

We therefore hope that courts, legislators, and researchers will actively engage with, develop, and refine the principles of private international law from an African perspective, in a manner that is context-sensitive, doctrinally sound, and responsive to the continent's lived legal experience.

In this post, I briefly reflect on five overarching themes: situating African private international law within its broader context; the use of comparative law to promote independent and critical thinking; strengthening cooperation among African scholars; the importance of sustainable funding; and the need for stronger local institutional infrastructure.

II. RE-SITUATING AFRICAN PRIVATE INTERNATIONAL LAW WITHIN ITS PROPER CONTEXT

One of the central challenges confronting African private international law is its continuing reliance on inherited colonial traditions, particularly those of European powers such as England, France, the Netherlands, Spain and Portugal. Across the continent, many legal systems still mirror the frameworks they received during the colonial period. Thus, common law African jurisdictions tend to follow the English approach; Francophone systems largely adopt French doctrine; Roman–Dutch jurisdictions reflect a mixture of Dutch and English influences; Lusophone countries retain Portuguese models; and there are also Spanish law influences on few African countries.

This inherited structure has not always served African private international law well. While many European states have modernised their rules to facilitate economic integration, cross-border commerce, and development, numerous African jurisdictions have yet to undertake comparable reform. The result is often a body of law that is historically derivative rather than functionally responsive to contemporary African realities.

These concerns have long been recognised in the scholarship. More than three decades ago, Professor Uche Uche, delivering lectures at the Hague Academy of International Law, called for "a genuinely African-based and African-influenced work on the conflict of laws." Professor Christopher Forsyth similarly cautioned

against the "unthinking" acceptance of foreign solutions, warning that African private international law should not behave like "the weathervane flipping one way or the other as the winds blow from abroad." In the same spirit, Professor Richard Frimpong Oppong has argued that, while extra-African sources remain relevant, African scholarship should draw primarily on African case law, legislation, and academic commentary, and should situate its analysis within the continent's present challenges, including regional economic integration, the promotion of trade and investment, migration, globalisation, and legal pluralism.

Encouragingly, contemporary African scholarship increasingly reflects this intellectual independence. The present symposium offers a clear illustration. Contributors rely principally on local African sources and contexts rather than treating European doctrine as the default template. My joint post with Yekini highlights the growing importance of recognition and enforcement of international court judgments in Anglophone Africa and shows that African jurisdictions are beginning to lead intellectually in an area that remains underdeveloped elsewhere. Awa's blog demonstrates that Member States of the Central African Economic and Monetary Community (CEMAC) have a significant number of situations in which they attempt recognising and enforcing each other's judgments. Elbalti's study of Mozambique illustrates the risks of scholars mechanically interpreting colonial transplanted rules without close attention to local jurisprudence. Abdul-Majid and Mulandi's discussion of Kenya reveals judicial concern that exclusive jurisdiction clauses may export dispute resolution to foreign courts to the detriment of domestic adjudication. Rinaldi shows that South African courts are attentive to cross-border employment disputes involving restraints of trade, and that any critique of their rulings by practitioners or scholars should be carefully anchored in sound legal principle. Coleman further demonstrates Ghana's distinctive approach to proving foreign law in cross-border marriages, including potentially polygamous unions. Finally, Okorley examines a decision of the South African Supreme Court of Appeal affirming that a child's habitual residence under the Hague Child Abduction Convention is not determined by the marital status of the parents.

Externally, in another contribution, Coleman draws on the South African concept of *ubuntu* to interrogate the inequalities that may be embedded in party autonomy. Oppong and I also argue that African government contracts should not be subjected to foreign governing laws on public policy grounds.

None of this suggests that African private international law should become insular or excessively interest based. On the contrary, comparative engagement remains indispensable. The point is not to reject foreign influence, but to adapt it critically and constructively, ensuring that private international law develops in a manner that reflects African realities while participating confidently in global legal discourse.

III. UTILIITY OF COMPARATIVE LAW IN ENHANCING INDEPENDENCE AND CRITICAL THINKING

A further area in which private international law in Africa can be strengthened is through deeper and more systematic engagement with comparative law. In a recent study I co-authored with Yekini, we concluded that private international law in Nigeria—and, by extension, in several other African jurisdictions—remains underdeveloped in part because of limited comparative engagement. Indeed, it has been persuasively argued by Professor Diego Arroyo that private international law is scarcely conceivable without comparative law. As Professor Otto Kahn-Freund, famously remarks "comparative law is the mother of private international law." I share these views as well.

Comparative analysis, however, should not be equated with continued dependence on the approaches of former colonial powers. Far from it. Properly understood, comparative law entails a broad and critical examination of diverse legal systems across the world in order to identify solutions best suited to local needs. Its purpose is intellectual openness, not slavish imitation. Currently, Asian private international law has evolved primarily through imitation before transitioning into a phase of innovation and eventual exportation (see here). This has primarily been done through extensive comparisons with legal systems around the world. I have also remarked that the Asian approach can "significantly benefit the ongoing development and reform of private international law in Africa" (see here).

This underscores the importance of legal education and professional training. Outside South Africa and a small number of other jurisdictions, legal education in many African countries remains heavily shaped by inherited colonial curricula, with limited exposure to comparative or regional perspectives. Moreover,

meaningful dialogue across African legal systems is often lacking. Apart from parts of Southern Africa—and, to a lesser extent East Africa—many jurisdictions rarely engage systematically with developments elsewhere on the continent.

The practical consequences of this insularity are tangible. In a recent blog post, I discussed a Nigerian Court of Appeal decision that enforced a South African choice-of-court agreement in a dispute that was otherwise entirely domestic. Counsel for the claimant had undertaken no research into South African law. Had they done so, they would likely have discovered that South African courts themselves would decline jurisdiction on that case for want of a sufficient connection to South Africa, leaving the claimant without a forum to sue! A modest comparative inquiry might therefore have altered both the litigation strategy and the outcome.

South Africa has, in many respects, emerged as a leader in fostering comparative engagement. In this regard, particular credit is due to Professor Jan Neels for his work at the University of Johannesburg as Director of the Research Centre for Private International Law in Emerging Countries, which has trained and mentored a growing cohort of African scholars with strong comparative expertise. Elbalti and I have benefited greatly from collaboration with many of these scholars.

Importantly, the tools for comparative research are increasingly accessible. Open-access databases such as AfricanLII and SAFLII provide rich repositories of African jurisprudence that can and should be utilised more systematically by lawyers, judges, and scholars. Comparative engagement of this kind promotes intellectual independence rather than dependence. By examining a range of possible approaches before making doctrinal choices, African courts and legislatures can craft solutions that are both contextually appropriate and globally informed.

IV. COOPERATION AMONG AFRICAN SCHOLARS

A further area in which private international law in Africa can and should be strengthened is scholarly cooperation. The South African concept of *Ubuntu* aptly captures the spirit required: “I am because we are.” The development of African private international law cannot be the achievement of a single scholar or even a

single jurisdiction. It must instead be the product of sustained collaboration across the continent. Collective intellectual effort, rather than isolated national initiatives, is essential to building a coherent and contextually responsive body of doctrine.

Encouragingly, some institutional foundations already exist. In addition to the important work facilitated by Neels at the University of Johannesburg, the Nigeria Group on Private International Law (NGPIL) has sought to promote dialogue and capacity building within Nigeria. The NGPIL, co-founded by Dr Onyoja Momoh, Dr Abubakri Yekini, Dr Chukwudi Ojiegbe, Dr Pontian Okoli and myself, brings together primarily UK-based scholars committed to strengthening Nigerian private international law through regular lectures, mentorship of early-career researchers, prize initiatives for students, and policy engagement aimed at encouraging the Nigerian government to recognise the strategic importance of private international law for economic development.

Nevertheless, more remains to be done. Efforts by Elbalti and me to establish a broader, continent-wide African private international law network have thus far proved difficult to sustain, particularly in terms of consistent participation. This highlights both the logistical challenges and the need for stronger institutional support structures.

Comparative experience demonstrates what is possible. Other regions have successfully institutionalised scholarly cooperation through bodies such as the Asian Private International Law Academy and the European Association of Private International Law, which provide regular forums for dialogue, research collaboration, and the exchange of ideas. A similar, genuinely pan-African platform would significantly advance the field. It is my hope that such an initiative will soon emerge and help consolidate the growing momentum behind African private international law.

VI. FUNDING AND LOCAL INFRASTRUCTURE

For private international law in Africa to generate meaningful and lasting value, it requires sustained and significant funding. The blunt reality is that this responsibility must rest primarily with African stakeholders — including governments, businesses, professional bodies, and regional institutions.

By contrast, established dispute-resolution hubs such as England, New York, Singapore, and Switzerland derive substantial economic and reputational benefits from international commercial adjudication. With deliberate investment in modern, efficient, and credible private international law frameworks, African jurisdictions can retain similar revenue within the continent and reduce the persistent dominance of Global North fora in resolving African disputes.

Elbalti in his forthcoming paper on foreign law in Africa, has called for the establishment of a dedicated research centre for comparative law, akin to the Max Planck Institute or the Swiss Institute of Comparative Law. He further suggests that Neel's centre at the University of Johannesburg could play such a role by serving as a hub for sustained comparative research and doctrinal development.

If Africa is to compete effectively for international litigation and arbitration business, however, funding alone will not suffice. Serious institutional reform is indispensable. Infrastructure must be strengthened, judicial quality and consistency enhanced, delays reduced, training regularised, and corruption decisively addressed. Without these structural improvements, even the most sophisticated legal rules will struggle to attract confidence.

VI. CONCLUSION

Taken together, the reflections offered in this symposium challenge the persistent misconception that private international law in Africa is marginal or stagnant. The opposite is true. Across the continent, courts are engaging meaningfully with cross-border disputes, scholars are producing increasingly rich and context sensitive analyses, and new networks of cooperation are beginning to emerge. African private international law is no longer merely derivative of external models; rather, it is slowly but steadily becoming more self-aware, self-confident, and intellectually independent.

The path forward is clear. By grounding doctrine in African realities, embracing comparative learning without slipping into slavish imitation, strengthening scholarly collaboration, and investing seriously in funding and institutional capacity, African jurisdictions can build private international law systems that are both locally responsive and globally competitive. If these foundations continue to

develop, Africa will not simply follow global trends but will increasingly help shape them.

Professor Ralf Michaels made a comment in the Asian context which I will quote and adapt to the African context by inserting “Africa” instead of the original use of “Asia”, “Africa is no longer object or subject but method, no longer one but many parts that are in dialogue with each other, no longer recipient or opponent of Western law and instead co-producer of modernity and of modern law. In this, the West has at least as much to learn from Africa as Africa did from the West. “

The energy, creativity, and commitment demonstrated by the contributors to this symposium — and by the wider community of African scholars and judges — give ample reason for optimism. The future of private international law in Africa is not only promising; it is bright.