



## The Future of the African Legal Services Market post COVID-19

April 15, 2020

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### Overview

Previous talks in this series have covered issues on how law firms are responding to new COVID-19 measures and directives that are affecting their businesses - such as working from home; how best to utilise technology to support business continuity; continue to serve clients optimally; clarification of *force majeure* clauses in insurance claims, etc.

This brief talk will not cover those topics, but instead take a wider view of the African legal services market and refer, where appropriate and relevant, to other parts of the world. I will highlight some of the short-medium term issues arising for law firms and lawyers both from the external environment and looking at their internal workings, their likely impact and conclude with some recommendations for the future.

### Reflecting on the 2008/2009 Financial Crisis and Recession

There are lessons to be learnt, trends to be observed and signposts to follow from that era that are likely be repeated in the post-COVID era. Having said that, there is no doubt that the economic, social and, inevitable, political fallout of this period will be much broader, deeper and longer-lasting than that of the last decade. What we are seeing today is likely to be radically different in a month, six months or a year's time.

So, let's have a quick look at the legal landscape through a post-financial crash lens – what has happened over the last decade and is likely to be happening already? There are two key developments that I will highlight:

**First** – a shift to greater technological integration into law firm operations, processes and service delivery mechanisms in European and US firms. This has not been by any means widespread and despite the seeming ubiquitous-ness of the terms 'legal tech' or 'law tech', the majority of law firms remain firmly rooted in traditional, manual practice. Tech innovation also reached the courts and we can now see the benefits of recent tentative experimentation with online courts. In many jurisdictions around the world, the administration of justice is making solid attempts to continue. COVID-related legislation has made provision for greater use of video/audio hearings in some cases. In Africa, some Kenyan courts, for example, are sitting via Skype. Similarly, in Tanzania, Swaziland, Lesotho, South Africa, Angola and Namibia, courts are still sitting with certain restrictions. However, in most other African jurisdictions, the clamour from lawyers and civil society organisations for shifting to online hearings and using existing technology is growing daily.

**Second** – the post-financial crash period saw a power shift from legal services providers to consumers or clients. Post-recession, under significant budgetary pressures, in-house law departments balked at the

soaring cost of legal services and pushed for greater value from their legal services providers. In the UK and US, this push led to the commoditisation of legal processes with new legal process outsourcing entities springing up in low-cost centres such as India, the Philippines and South Africa. New alternative legal services providers arose in the market and the big 4 started to make incursions into traditional legal work, offering a one-stop professional services shop. In England and Wales, these shifts were accelerated by a new Legal Services Act which liberalised the legal sector significantly by facilitating innovation in the design of legal practice vehicles, the ability to take capital and to create multi-disciplinary partnerships.

These two areas - tech innovation & the push for better value from legal providers – are likely to also characterise the post-COVID era but at a much faster and more permanent rate. More locally, in the UK, we saw a consolidation in the market with a number of mergers of smaller firms and a growth in national law firms with offices across the country.

For the African legal sector, in addition to the above, there are now new issues arising in the sector and wider society that create fresh challenges but also potential opportunities for growth. I'll categorise those into two broad areas - the external or wider environment in which the sector operates and, secondly, the internal operations and practice of law.

### **The external environment**

To paraphrase a well-versed trope, 'when the West sneezes, the rest of the rest of the world catches a cold'. The collapse of businesses and livelihoods across Europe in the wake of the pandemic signals far greater consequences for Africa due in part on Africa's reliance on Western finance and investment and its role in global supply chains and as commodities producers.

An initial analysis of COVID-19's economic impact on Africa by McKinsey & co, finds that Africa's GDP growth in 2020 could be cut by 3 to 8 percentage points. Coupled with the collapse in the oil-price, McKinsey predicts that Africa will be tipped into an economic contraction in 2020 with energy dependent economies particularly adversely affected.

We hear over and over again that SMEs are the life-blood of the continent and the key to unlocking prosperity. They account for 90% of African businesses and provide close to 80% of the continent's employment, much of which is in the informal sector.

If we look at Kenya as an example, 83.6 % of its total workforce is made up of informal workers according to the Kenya National Bureau of Statistics. Many of these people have suddenly lost their livelihoods and do not have legal protections to support them or their families.

Lockdowns now in force across a number of African countries have already resulted in an unprecedented hit on their economies and the lives of millions. Governments with large budget deficits are in no position to extend lifelines to the majority of their citizens or to inject the capital needed to stimulate their economies. We know that approximately 1.5 million African SMEs collapse annually due to lack of capital, capacity, talent and other resources. They will inevitably be joined by many, many more before the end of this year.

In the private sphere reports of horrifying spikes in domestic violence and abuse towards women and children around the world are on the increase. Civil society organisations are reporting that pandemic fears and lockdown measures have led to greater vulnerability for many in society, with people locked down with their tormentors and unable to access emergency services or legal reprieve.

I'll leave you with that not-so-rosy view of the bigger picture and take a closer look 'inside' the legal sector itself and how it is responding.

## **The internal environment**

The General Council of the Bar of England & Wales announced last week that over half of barristers' chambers will not survive the next six months without financial aid if the pandemic persists, and that 81% will collapse within a year under the current pressures.

Recent weeks have seen law firms around the world responding very similarly to what they did in the post-2009 years. Ranging from cutting working hours by 20%; deferring or reducing profit distribution; offering a menu of working arrangements; furloughing staff; diverting resources to new practice areas – from transactional work to company re-structuring, bankruptcy, litigation etc.

Given the economic circumstances, it is likely that a similar scenario will unfold in Africa. Collapse of businesses and the private sector as outlined previously means the client pie will shrink considerably which will inevitably lead to the collapse of many law firms. Similarly, ongoing lack of legal aid will leave many more without access to justice in their personal lives.

Over the last decade, the fragmentation of African legal markets has shown few signs of abating despite the rise of one or two regional law groupings or networks. Domestically, law firms have stayed the same size or splintered off when senior associates 'outgrow' the firm and hope to do better elsewhere. The 'founder/owner' business model has not changed much - everyone wants to be a founder/owner regardless of the dwindling pie. Regulation of the sector across the continent has remained firmly stuck in its colonial origins and has done little, if anything, to foster growth in the profession and remove some of the hurdles to innovation and growing the legal businesses required for 21<sup>st</sup> century Africa.

International law firms, unencumbered by such restraints, have continued to expand their African footprints as too have the Big 4, much to the dismay of most law firms, still wedded to the traditional way of doing law.

It is against this – admittedly simplified – background that we now face an unprecedented social and economic crisis.

**So, what can the African legal sector do to navigate and survive and to support businesses and individuals over the coming years? My recommendations and suggestions are as follows:**

*For regulatory bodies and bar associations:*

1. African legal sector regulators need to urgently review and consider their role to help foster a regulatory climate that supports innovation and increases access to legal services for everyone who needs them, whilst maintaining high standards. Outdated, colonial era regulatory frameworks have long been out of step with African development and the needs of the legal profession including regional integration. This includes responding effectively to technological developments. In effect, old laws and regulations have stifled innovation by preserving barriers that prevent evolution in legal education and practice. This urgently needs to change.

*For lawyers and law firms:*

2. Market consolidation – how long can the market afford to support fragmentation with new firms cropping up all the time yet pie shrinking and set to shrink even further and more rapidly? Firms need to take a long, hard look at themselves and their business models and how to scale up to meet the needs of their countries and the continent.
3. Team up with legal tech companies and civil society organisations to create more A2J innovations to support the most vulnerable

4. Learn from what we are doing now - working from home experiences – what is working and what is not? How can you use your talent optimally? Do you really need that new office or can you keep your team intact and work even smarter and provide more value to your clients?
5. Contribute to building Africa’s digital economy – regulatory reform to support tech innovation in critical sectors such as financial services, education, agriculture. Also support the tech companies themselves. This is clearly the future as we are already learning through this crisis. For example, I was reading earlier this week about Soma na Telkom – partnership between Telkom and Nairobi University for e-learning, agritech entities in different countries working to sustain food security and get food from farmers direct to consumers.
6. Use your skills and time now to support troubled clients especially from the largely under-served SME sector. Give them the support they need right now – take up temporary board positions, help them to re-structure their businesses. Remain involved, not aloof. They will thank you for it later.
7. Create alternative and innovative entities that can truly support and be at the centre of the growth of the African SME sector; public policy development & engagement; design of SME-friendly regulatory regimes; business advice on access to capital, IP etc.

**Remember – necessity is the mother of invention – and innovation.**

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Thank you to our partners, the [Legal Innovation Hub](#) and [KATS - Katende, Ssempebwa & Company Advocates](#) for making this event possible. This discussion is available to [watch through our website](#).

