Through Her Lens: Phenomenal Views on Intellectual Property Rights

By:

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The International Women's Day is an opportune time to recognise and celebrate female scholars. This post spotlights five female scholars of African descent, Professor Ruth Okediji, Professor Olufunmilayo Arewa, Professor Caroline Ncube, Dr Amaka Vanni and Dr Chijioke Okorie, for their outstanding contributions to the multifaceted and often esoteric intellectual property rights (IPRs) debates.

To start with, what are IPRs? IPRs, broadly speaking, are state-granted exclusive rights assigned to creators and inventors, for a specific duration. Chimamanda Ngozi Adichie's We Should All Be Feminists, Omowunmi Sadik's Ultrasensitive Portable Capillary Sensor, Kemi Juba's K.Aspen and Moroccan Berber Women's Argan Oil are examples of works and products protected by IPRs. The literary words in We Should All Be Feminists are copyrighted, the Ultrasensitive Portable Capillary Sensor is patented, K.Aspen is a registered

trademark while Argan Oil is a geographical indication. The varied subjects and sub-categories reflect the breadth of IPRs. These sub-categories crystallised and delivered IPRs as a distinct area of law in the middle of the nineteenth century. However, IPRs are neither constructs of nature nor derivations from science; IPRs are products of complex dynamic debates and compromises negotiated between State and Non-State actors.

The debates are steeped in the contests and tensions between private rights or monopoly power and public access to information. Until the end of the nineteenth century, these debates strictly battled at national sites, shaped the contours of national IPRs systems. The expansion of international trade drove the demand for transnational cooperation on IPRs, which prompted bilateral and multilateral IPRs agreements. For example, in 1873, the Austro-Hungarian empire adopted a law that protected foreign inventors' patents in international exhibitions. States responded to the demand for transnational cooperation by signing the Paris Convention for the Protection of Industrial Property, 1883 (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works, 1886 (Berne Convention). The Paris Convention and Berne Convention, administered by the United International Bureaux for the Protection of Intellectual Property (the predecessor to the World Intellectual Property Organisation, WIPO), mirrored existing national laws, embraced variation in their scope of protection and reflected a consensus among member states. With technological advancements, other international agreements, such as the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations and the WIPO Performances and Phonograms Treaty, were introduced. Significantly, the twentieth century witnessed a seismic shift in the international IPRs landscape with the construction of a secure bridge between IPRs and trade through the establishment of minimum standards in the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

TRIPS not only reconstructed the international IPRs architecture; it also engendered novel debates across the globe. Scholarly narratives and counternarratives markedly influence our understanding of and engagement with these debates at the national, international and global levels. These scholarly narratives and counternarratives inform the questions that we ask

and the answers we seek or imagine. As exemplars, Professor Ruth Okediji, Professor Olufunmilayo Arewa, Professor Caroline Ncube, Dr Amaka Vanni and Dr Chijioke Okorie, have imaginatively captured IPRs through the lens of Global South stakeholders and produced phenomenal views grounded on contextual insights.

Professor Ruth Okediji's "The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System" presents an authoritative historical examination of the relationship between IPRs, international law and the Global South, employing sub-Saharan Africa and Asia as primary points of reference. Professor Okediji identifies the main narratives on the participation of Global South countries in the international IPRs system, namely human rights narratives, cultural narratives and welfare enhancing or doctrinal narratives, and argues that a measured approach should be adopted in the application of these narratives. In particular, she urges caution in the uncritical deployment of the narratives because they could constitute avenues through which expansionist IPRs are justified in the Global South. The restriction to one example from each scholar forecloses discussions on her other brilliant articles and books such as "The Limits of International Copyright Exceptions for Developing Countries", " Traditional Knowledge and the Public Domain," and "Copyright Law in an Age of Limitations and Exceptions."

Professor Funmilayo Arewa's "The Rise of Nollywood: Creators, Entrepreneurs, and Pirates" offers an excellent case study on the growth of creativity in the 'relative absence' of IPRs. Professor Arewa carefully delineates the distribution and development trajectory of the Nigerian video film industry or Nollywood, through the interconnected activities of creators, entrepreneurs, and pirates. Nollywood has grown to become the world's leading producer of digital video films despite the weak IPRs enforcement measures in Nigeria. She argues that the Nollywood case study suggests the need for a nuanced understanding of the interaction between IPRs and cultural production as well as the various ways IPRs may mould cultural production. Furthermore, the rise of Nollywood can contribute to existing international IPRs debates and highlight relevant business issues on cultural production. Professor Arewa recommends that in addition to IPRs enforcement measures to curb piracy, Nollywood stakeholders

should espouse business strategies that monetise piracy by liaising with Nollywood distribution networks. This original case study creates anticipation for her forthcoming monographs: “Disrupting Africa: Technology, Law, and Legal Reform” and “Creating Global Markets for Black Culture: Curation, Music, and Law.”

Professor Caroline Ncube’s “Three Centuries and Counting: The Emergence and Development of Intellectual Property Policy in Africa” advances a detailed historical account of the development of IPRs in Africa along with the relationship between IPRs and the existing knowledge government on the continent. Professor Ncube neatly maps the development from the pre-colonial, colonial, post-colonial and post-TRIPS periods. She describes the growing fragmentation and proliferation of IPRs systems on the continent as a symptom of countries’ attempts to fulfil obligations under TRIPS. Africa has two IPRs organisations, the Organisation Africaine de la Propriété Intellectuelle and the African Regional Intellectual Property Organisation, as well as various Regional Economic Communities and a proposed continental IPRs organisation, the Pan African Intellectual Property Organisation. These non-hierarchical organisations with overlapping functions, often have different objectives and external pressures. Professor Ncube further discusses examples of IPRs issues that African actors have grappled with, such as the protection of plant varieties and traditional knowledge. She proposes consolidation of efforts to craft IPRs systems that respond to the unique African realities. Notably, her path-breaking “Intellectual Property Policy, Law and Administration in Africa: Exploring Continental and Sub-Regional Cooperation” is a must-read for anyone interested in learning about IPRs regimes in Africa.

Dr Amaka Vanni’s “Patent Games in the Global South: Pharmaceutical Law-Making in Brazil, India and Nigeria” adeptly considers the complex connections between pharmaceutical patents and access to medicines in TRIPS, employing examples from Brazil, India and Nigeria. Dr Vanni points out that a full appreciation of the complex connections would require knowledge of the history and origins of patent law, role of local politics in framing pharmaceutical law-making, as well as the power of international politics and actors in shaping patent laws and policies. Applying a laudable medley of Critical Legal Theory, Third World Approaches to International law (TWAIL), Nodal Governance and

multi-sited ethnography, she rigorously argues that the presence and participation of vibrant national pharmaceutical manufacturing sectors and active civil society actors are critical to crafting human-focused patent regimes in the Global South. Furthermore, she asserts that these Non-State actors forge the 'mobilisation of knowledge, cognitive-shaping of public discourse, creation of expertise, and participation in the politics and games' essential to building regulatory frameworks for pharmaceutical patents.

This book draws from Dr Vanni's award-winning PhD thesis, which won the inaugural Society of International Economic Law, SIEL - Hart Prize for International Economic Law. According to Professor James Gathii, "this is a powerful, refreshing and welcome book. Written from a critical Global South/TWAIL perspective, it uncovers and insightfully traces bottom up resistance against hegemonic and inequitable global north intellectual property regimes. Using evidence of significant deviations in patent law, policy and doctrine from India and Brazil, it shows how the global south is charting alternative approaches to those prescribed in global intellectual property norms."

Dr Chijioke Okorie's "Multi-Sided Music Platforms and the Law: Copyright, Law and Policy in Africa" breaks new ground by introducing the first African-centred approach to the regulation of multi-sided platforms, with a specific reference to the music industry. Dr Okorie's impressive intervention, dedicated to the core features of digital commercial activities on multi-sided platforms, teases out the crucial challenges and opportunities vis-à-vis copyright, competition and privacy laws. Intentionally infusing accessible examples such as YouTube, Facebook and SoundCloud as well as cases from different jurisdictions to clarify unfamiliar concepts, she demystifies this niche area of the law. Employing South Africa and Nigeria as primary sites of interrogation, she illuminates the practical legal issues on this subject as they unfold at the national levels. While South Africa and Nigeria are the central case studies, examples from the European Union, United Kingdom and United States are consulted because of their prominence in the music industries, historic competition laws and connections with the copyright laws of South Africa and Nigeria.

This book draws from Dr Okorie's PhD thesis, which has sparked thought-

provoking conversations (see also, "Panel Discussion The Digital and Creative Economy: Copyright, Law & Policy in Africa"). In addition to correctly describing the author as "phenomenal", Professor Caroline Ncube attests that "this is an important and timely contribution to the discussion of music platforms. It takes the reader on an in-depth exploration of multisided platforms from the vantage point of South African and Nigerian legal systems. Specifically, it considers copyright, competition and privacy regulation. Okorie's consideration of these legal aspects within the context of prevailing business models is one of the major strengths of this work. To my knowledge, this is the first work that considers multi-sided platforms from the above perspectives under South African and Nigerian law. As such, Okorie has broken new ground and opened an important discussion." Afronomicslaw recently announced that Dr Okorie's book would be the subject of an expectedly fascinating forthcoming book symposium.

While the International Women's Day inspires the recognition of these compelling contributions to the IPRs discourse, the selected scholars (and pieces) profiled are illustrative but not exhaustive representations of female scholars of African descent working on IPRs. As IPRs lawmakers and policymakers battle with perennial debates such as the protection of traditional knowledge, traditional cultural expressions and genetic resources or current debates such as the protection of artificial intelligence, information technology and other new technologies, it is imperative for female and male scholars to formulate fresh narratives and counternarratives.

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