



Protimos: the legal disrupter

With freedoms at stake, the rule of law and legal precedent are used to protect and honour community resources, and calls for the organisation's services grow louder each year

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Protimos is an Ancient Greek word, used by Homer, by Plato and by one of the greatest lawyers and orators of all, Cicero. It means 'honouring value'. When we realised the need for our organisation, we chose its name to reflect the ethical approaches and the legal practice which we planned to offer to impoverished or indigenous African communities, in the legal protection of their resources, thus honouring their value. Since its beginning, 'Protimos' has become increasingly synonymous with precedent-setting legal practice, through which community resources are indeed protected and honoured. Over time, we have built three Protimos organisations – in London, New York and Johannesburg, to support this work. We have built a rich coalition of international partnerships, a growing network of



international experts to inform our legal practice and an international network of lawyers and judges who share our ethos, in implementing our three programmes: Community Legal Empowerment (CLE), our Judicial Action Group (JAG), and our Green Light Programme (GLP) in which we build legal, sustainable relationships between communities and the corporates who seek to make use of their resources.

Freedom of expression

In Kampala, our Protimos lawyer Isaac Ssemakadde, (pictured left with his client) a Ugandan advocate and the chief executive of the Legal Brains Trust, recently achieved an important milestone when he secured the release of academic and prominent women’s and LGBTQ rights activist Dr Stella Nyanzi, who had been unfairly imprisoned for posting a poem on Facebook suggesting that Uganda would have been better off if President Yoweri Museveni had not been born. The politically charged year-long trial was observed by the American Bar Association’s Centre for Human Rights in conjunction with the Clooney Foundation for Justice’s TrialWatch Initiative who rated it poorly for being blatantly unfair. In a landmark appeal judgment of 20 February 2020 which quashed the conviction and 18-month sentence that had previously been imposed on Dr Nyanzi in August 2019, the High Court of Uganda literally concurred with the report of the observers that Dr Nyanzi’s right to a fair trial was violated because the magistrate’s court had denied her the right to identify, prepare and call defence witnesses. The court also clarified the principle of territorial jurisdiction over cyber-crimes for the first time in Uganda’s legal history. It found that the magistrate’s court had erroneously failed to inquire into essential jurisdictional facts such as the identity and location of the relevant device, data, program and/or perpetrator at the material time. Dr Stella Nyanzi is loved and loathed in equal measure for her deployment of ‘radical rudeness’ in challenging patriarchal systems of oppression. Her case was a litmus test for Uganda’s commitment to the norms and standards enshrined in the



 Katse Dam and members of the Khabang Lejone community

International Covenant for Civil and Political Rights, including the right to freedom of expression.

Land rights

Freedom of expression was at stake there. Other freedoms are at stake on the coast of Tanzania, where a small community battles to continue to occupy and use the land which it owns, which runs beside the Saadani National Park. The land is starkly beautiful, with a pristine beach, fresh water supplies and an abundance of wildlife. The community has begun work with its own foreign investor, in creating a small group of sustainable ecolodges. However, the Park authorities continue to refuse to accept that the community does indeed own its land. Protimos lawyer, Jeremia Mtobesya, instructed by the community, took its case to the Tanzanian Commission for Human Rights and Good Governance (CHRAGG). The Commissioner concluded that the community’s ownership is entirely legal, and longstanding, marked by ancient concealed boundaries, and reflected in historic correspondence. The community is entitled to the full protection of the law, in its ownership of the land. But the Park authorities still refuse to accept the CHRAGG ruling, despite the enshrinement of the validity of CHRAGG rulings under the Tanzanian Constitution. The community now has to go to the Tanzanian courts, to apply for a judge to order the Park Authorities to implement the Commissioner’s rulings. At the back of this lies the ambition of Albwardy, a powerful Dubai property investment company which has allegedly and secretly been granted a lease of the community’s land, to use as a site for the construction of an elite beach lodge by the company. The stakes are high. The community is continually harassed. Its leaders were recently deprived of the right to stand for election, locally, and its members were also



Judge Lenaola, JAG Chair, Supreme Court Kenya



Judge Kisaakye, JAG Vice Chair, Supreme Court, Uganda



Judge Ntaba, JAG Secretary, High Court, Malawi



Judge El Ghannam, JAG Vice Chair, Court of Appeal, Egypt

deprived of the right to vote. People in this fragile community continue to suffer the consequences of viciously implemented ‘planning blight’, as they attempt to live quietly sustainable lives, in a politically challenging climate.

Land rights disputes on the East of Africa frequently reflect the irreconcilability of customary and statutory land ownership legal structures. We are partners in the Global Land Tenure Network, which produces increasingly improved and more appropriate ways of recording and reflecting land ownership, in ways which bridge customary and statutory land laws.

Resettlement

What should happen when land is appropriated *lawfully* by the State itself, for development or infrastructure purposes? In 2014, Protimos started up, and continues to partner with the Seinoli Legal Centre, the first public interest litigation centre in Lesotho, supporting local lawyers who use the law to rectify the illegal ways in which thousands of project affected people (PAPs) have been treated, following the construction of Phase One of the Lesotho Highlands Water Project. The Lesotho Highlands Development Authority (LHDA) continues to fail to look after the communities who lost their livelihoods and sustainability when the dam waters flooded their lands and river valleys. The LHDA is lawfully obliged to provide financial compensation for the loss of community brushwood, fodder, traditional medicines, etc. It has barely accepted the obligation to supply the sort of income generating technical assistance which will enable communities to create new lives for themselves. Staff lawyers face huge challenges in working with the communities who live in desperate poverty way up in the mountains. It can take a day of rough road travel to reach client communities. The Khabang Lejone Cooperative is one such community, overlooking the mighty Katse Dam, which stores water from the Maloti mountains which is then pumped and sold to a thirsty neighbouring South Africa. After litigating against the LHDA for years, Seinoli and Protimos lawyers prevailed, and the Khabang Lejone Cooperative has finally received 16 years’ worth of compensation – £100,000 for just under 2,000 people, for the rebuilding of their future. This case has created a precedent which will enable tens of other similarly neglected communities to receive their compensation without having to fight for it in the same long hard way. Thousands of people will benefit from the years of work done by the Seinoli Legal Centre.



About the author

Fiona Darroch is a practising barrister, member of The Inner Temple, and founded Protimos in 2000. If you are interested in the work of Protimos please contact info@protimos.org

The Judicial Action Group (JAG)

As our CLE programme gathered pace, we realised that to be effective, community legal

empowerment needed to be strengthened by strong, and wise judiciaries. A Protimos judicial action group (JAG) began to grow. Its members are senior unimpeachable judges drawn from across the African continent. Its third meeting (JAG3), took place in Cairo, in December 2019, where JAG members shared their papers and thoughts on ‘Miller II’, the challenges of social media, corruption and the courts, corporate social responsibility, online courts, and election disputes. The Chair, Justice Lenaola of the Supreme Court of Kenya, was obliged to return early to Nairobi to receive the ‘Jurist of the Year’ award, presented by the International Commission of Jurists (ICJ Kenya).

JAG 4 will gather virtually late in 2020 and in Sierra Leone in 2021. The JAG is rolling out a five-year plan to support judiciaries across the continent in a range of different ways, supported by ROLE UK and DFID who are valuable supporters. JAG3 benefited greatly from the scholarship of Dr Jack Simson Caird of the Bingham Centre for the Rule of Law, at the British Institute of International and Comparative Law. Readers will know him as a regular contributor to *Counsel* magazine.

The Green Light Programme (GLP)

A decade ago, Protimos lawyers decided that there was a real need for protocols, model contracts and legal support to ensure contracts between companies and communities could be negotiated using a ‘level playing field’. This would reflect emerging international legal requirements such as ‘Free Prior and Informed Consent’: this is now an international lending condition which requires a community’s consent to be obtained before the first spade of earth is lifted in a project. Likewise, where measures to protect biodiversity produce a compromise for a community, then the principle of ‘No Net Loss’ should apply. For example, the Seinoli Legal Centre has negotiated an agreement between a diamond mining company and the surrounding community which has taken some time to negotiate, but which reflects mutual benefits for both company and community, in the future. In the years ahead, we intend to train many more ‘development lawyers’ to ensure that communities and companies reach agreements which are ethically sound, sustainable, and which amount to good law. There is increasing corporate interest in this programme, as it reflects corporate health and sustainability.

Protimos is described as a legal disruptor. Perhaps it is – the call for its services grows louder each year, as the rule of law is increasingly acknowledged as the only means of creating safe and sustainable societies. ●