



CONTEMPORARY
LEGAL COOPERATION:
CHINA
AND
AFRICA

A COMPARATIVE SURVEY OF LEGAL SYSTEMS



JOHN C. AZU

©John C. Azu
+2348064768413
johnazu88@yahoo.com

©2023

ISBN: 9789789942367

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the author/publisher.

Printed in the Federal Republic of Nigeria
By Feni 'O' Venture Ltd. Lagos.
0803 471 3416, 0808 094 2757

Cover Designer: Alot Designs Abuja



DEDICATION



To God and my late father, John Azu Okoronkwo. Also, my wife, Uduak and children: Chizaram, Chibuifem and Chidindu for their patience and understanding during the writing of this book.



ACKNOWLEDGEMENTS

The contributions of different individuals in various capacities helped make this book a reality. First, I also appreciate my wife, Uduak for her patience and encouragement during the writing of this book. Her suggestions for more sub-headings and breaks in chapters for greater visual appeal and ease of navigation proved useful in producing the final copy of this book.

Among these numerous individuals, it is necessary to acknowledge the invaluable encouragement by the correspondent of the People's Daily of China in Nigeria Jiang Loni, with whom I shared the initial vision to write the book; the Chinese Embassy in Abuja, especially Ambassador Cui Jianchun for his kind words and support; and the Director of the Centre for China Studies, Charles Onunaiju for his deep insight and materials which I engaged in the writing of this book.

I appreciate China law research expert Chenyang Zhang for our incisive chats on Chinese law. I am also grateful to Associate

Professor and Director Abuja School of Social and Political Thought, Sam Amadi, for accepting to review this book and write the blurb. Also, legal scholar, Barrister Hameed Ajibola Jimoh who took out time to review the book and share some insights.

I also appreciate the Counsel of the Island of St. Vincent and the Grenadines, Dr Levi Odoe, a SOAS expert in comparative law, for his materials which proved invaluable in the writing of this book. I cannot express the debt of gratitude to senior lawyers such as Awa Kalu, SAN, Prof. S.A. Zuru SAN, and Paul Erokoro, SAN, for their inspiration and encouragement from the time I began to cover the judiciary beat in 2010. Let me not forget Prof. Paul Ananaba, SAN, and Dr Onyechi Ikpeazu, SAN, for their suggestions on the appropriate title for the book.



LIST OF FIGURES



Figure 1	Map of China	20
Figure 2	Map of Africa	20
Figure 3	Administrative Division of China	116
Figure 4	Organogram of the Structure of Chinese Judiciary	130
Figure 5	Personnel Hierarchy of Chinese Court	149

TABLE OF CONTENTS

Copyright page	i
Dedication	ii
Acknowledgment	iii
List of figures	v
Introduction	x
Chapter One: Introduction to Law, Democracy, and Legal Systems	1
- Definition of Law	2
- Theories of law and court	7
- Universal concept of rule of law	12
- Classification of legalism	13
Chapter Two: The Prospects of China-Africa Legal Cooperation	19
- Background to China-Africa legal cooperation	20
- Areas of China-Africa cooperation and legal mechanism	23
- FOCAC and China-Africa legal cooperation	24
- BRI and China-Africa legal cooperation	29
- Free trade zones and China-Africa legal cooperation	35
- AfCFTA and China-Africa legal cooperation	41

- Common legal risks, issues in China-Africa cooperation	46
- Land	47
- Finance	50
- Expatriate quota and resident permit	51
- Local content	52
- Indigenous raw materials	53
- Copyright infringement	53
- ADR and China-Africa legal cooperation	55
- Technology and China-Africa legal cooperation	75
Chapter Three: A Review of Chinese Legal System	85
- Confucianism, Legalism, Buddhism and Taoism	86
- Marxism-Leninism ideology	90
- European continental, civil, and common law	93
- Sources of Chinese law	96
- Notion of law-based governance	101
Chapter Four: The Structure and Procedure of the Chinese Judiciary	110
- The administrative divisions of China	116
- The structure and hierarchy of Chinese courts	117
- The procedure of the Chinese law	130
- Filing procedure	132
- Interim measures	134
- Judgements and enforcement	135
- Appeals	137
- The collegial system	139
- People's assessor	140
- Judicial committees	141

- The protectorates	142
- Foreign proceedings and judgments	144
- ADR in China	146
- Continuing construction of the Chinese legal system	150
Chapter Five: Notes on African Legal Systems	155
- Background to African law	156
- English Common Law System	158
- Ghana	160
- Nigeria	163
- Kenya	165
- French African Civil Law System	167
- Benin	168
- Senegal	171
- Tunisia	175
- The African Mixed/Hybrid Law	179
- South Africa	180
- Botswana	184
- Cameroon	186
- Ascertainment of Africa Law: Customary and Islamic Laws	188
Chapter Six: Comparison of China-Africa Laws and Procedure	193
- Relativity of the Concept of rule of law	194
- Nuances of fundamental human rights	201
- Adversarial versus inquisitorial trial mode	207

- Double trial finality versus right of appeal	208
- Ideas of guiding cases versus judicial precedent	211
- Prosecutorial powers of the procuratorate and the public prosecutor	214
- Supervisory roles of judicial committees	216
- Ratio decidendi (decided judgments) versus Obiter dicta (judgments with opinions) versus judgment with opinions	219
- Court-led and independent ADR	221
- Case management differences	226
- Conclusion	229
Index	
Bibliography	232



INTRODUCTION

Much studies have not been done in the legal component of the growing China – Africa cooperation in the same level as the economic and social aspects. Conflicts in the cooperation arise due to the gap in knowledge, especially in the context of differences in the laws and absence of harmonized rules. Thus, as globalization shrinks the spaces of international relations through knowledge and technology, an exposition on the legal systems and cooperation of China - Africa could be considered pioneering.

The book, “Contemporary Legal Cooperation: China and Africa. A Comparative Survey of Legal Systems” is, in the main, an exposition of the existence of law and democracy in China and Africa. Despite my over one decade of reportage of the judiciary in Africa, I was under the impression that China as a socialist country, has not achieved much in the construction of a fair, equitable and efficient legal system as the other democracies. A major eye-opener for me was my findings in an online-based survey I conducted on the Chinese public confidence in their

country's judiciary and human rights published in the digital and online versions of the Daily Trust of September 6, 2020, which showed about 90 percent confidence in the critical questions posed. This was after some media accounts across the world portrayed the Chinese legal framework for the control of the COVID-19 pandemic as draconian. Details of this findings is contained in my feature titled: "Crushing COVID-19 With Laws" <https://dailytrust.com/crushing-covid-19-with-laws/>

Furthermore, my participation in the Belt and Road News Network (BRNN) media workshop in 2019; the Course of China-Africa Law Exchange Programmes of 2021 and 2022 and the coverage of proceedings in Nigeria's judiciary and the African Court of Human and Peoples Right in Arusha, Tanzania over the years helped me appreciate the legal systems of both regions and the possibilities for future cooperation, and the imperative of this book.

The misconception of China's legal system was without cognizance to its over 5000 years of continuous civilization and legal development from the imperial codes to the contemporary law. Indeed, not a few observers have a tinted view of the modernization, dynamism and vibrancy of the Chinese legal system. The profound changes that have occurred could be attributed majorly to the country's reform and opening up programme of Deng Xiaoping in 1978. Researchers on China and its legal system will find this book useful in the understanding of legal and democratic development in China. This work can also be a fairly reasonable peek into the East Asian legal

tradition. For instance, countries such as Vietnam, Myanmar, Thailand and Korea, which shared tributary relationship with ancient China, and Japan, Singapore, and Malaysia, which had been brought together with China by political events of modern times, share some similarities in their legal systems.

The book could be an important resource for engaging the changing face of international dispute resolution mechanisms as transnational companies and businesses are increasingly on the lookout for lawyers who are conversant with more than one legal system and the broader global legal environment. The subject of the legal systems of China and Africa and the cooperation evolving between the two regions has become a significant area of research interest as many countries are opening up their financial and legal services sectors to the rest of the world. China, which has become open to many Western civil and common law doctrines and principles, remains one of the unexplored markets for African legal practitioners.

Furthermore, the establishment of the African Continental Free Trade Area (AfCTA), the Forum for China-Africa Cooperation (FOCAC), the Belt and Road Initiative (BRI), and the numerous channels of cooperation growing between China and Africa make it mandatory to take more than a cursory look at the inter-legal study, particularly the role of law in regulating and resolving disputes.

China's growing global influence and interest in Africa in the past 30 years has resulted in Chinese businesses spreading their

tentacles in all areas of economic activities in Africa, including manufacturing, telecommunication, hospitality, oil and gas, and construction. Within this period, the country has invested billions of dollars and have quadrupled its trade volume with Africa.

According to the China-Africa Research Initiative John Hopkins University School of Advanced International Studies between 2000 and 2019, Chinese financiers signed 1,141 loan commitments worth \$153 billion with African governments and state-owned enterprises. Within the same period, Chinese Foreign Direct Investment to Africa rose to \$44 billion. Indeed, China is Africa's main trading partner overtaken the United States.

In the six chapters of the book, I have attempted to present some salient areas of the historical, ideological and structural context of the legal systems. Also contained in these chapters are some procedural stairways in the Chinese judiciary, which an African reader would find unique, even as I present the points of intersection between the two distinct regions and their legal systems.

However, this book is not a presentation of the technical details of substantive and procedural laws in both China and Africa nor contain elaborate citations of cases. It is only an attempt at introductory review of these legal systems with more information on China's without much details on all African countries. It could be viewed as an overview of the legal cooperation of friendly regions. It is also an attempt to sustain

an emergent discursive framework, not just on the legal systems of both regions, but also on their historical, social and comparative development.

The book stresses that despite the perception of an unequal relation between China and Africa in their socio-economic cooperation, both are undeniably coterminous in certain degrees. Moreso, China is predisposed to a rules-based international order with their expansive domestication of law-based dispute resolution methods, conventions and treaties. This book will deepen understanding about the place of law as the guiding mechanism in the growing strategic cooperation between China and Africa. This is even as the cooperation is built on mutual respect, consensus and commitment to a shared future for mankind.

Therefore, I accept responsibility for the shortcomings and errors in this book. Any such gaps in the work are in part due to the pressures of time, and the unavailability of relevant materials and systematized method of study of the China-Africa law as a subject matter.