

Editorial

Users of academic research outputs will easily agree with me that compared to our Western counterparts, very little has been published on African law and the law in Africa North of River Limpopo. Researchers enquiring into any subject of law in Africa soon realise that literature in the area is marginal. This makes Africa a huge grey intellectual area. There are also complaints that there is a systemic marginalisation of native African scholarship in leading academic forums to the extent that a consumer of the numerous works published in Western intellectual capitals may be excused for assuming that very little knowledge is generated on our continent. There may thus exist a paradoxical dual vacuum in African scholarship; the dearth of African literature, and a curious disregard for existing African contributions in foreign platforms.

This is the lacuna which *Strathmore Law Journal* (SLJ), an annual, peer-reviewed and open source publication, is envisioned to seal. Through SLJ, we hope to avail a vibrant forum for scholarship on any subject of African law and the law in Africa. The often neglected African voices finally have a place to call home.

To encourage the generation and testing of new knowledge on law in Africa, the SLJ has partnered with another strategic forum, the *Annual Strathmore Law Conference*, with the view to carrying some of its insightful deliberations. There is however, still room for other contributions not presented during its convenings.

In our inaugural issue, we carry a beautiful motley of articles some of which were originally presented at the *First Annual Strathmore Law Conference on Access to Justice* held in July/August 2014. Opening the forum for us is an article co-authored by Kariuki Muigua and Francis Kariuki, entitled, *Alternative dispute resolution, access to justice and development in Kenya*, which pursues the possibilities of access to justice and development through alternative dispute resolution (ADR) mechanisms. The writers convincingly argue that Kenya's 2010 Constitution offers an opportunity to innovatively install ADR mechanisms for economic development through enhanced access to justice and the rule of law. The paper is therefore a sound trigger meant to inspire creative deployment of the progressive constitutional provisions on ADR for equitable administration of justice.

Also hot from the Conference is Emily Kinama's, *Traditional justice systems as alternative dispute resolution under Article 159(2)(c) of the Constitution of Kenya*, 2010,

which, makes a strong case for ADR in addition to the usual formal justice mechanisms. The author's support for ADR is not limited to civil law but controversially extends to criminal proceedings. These ideas find anchorage in Kenya's new constitutional framework, as well as some emerging progressive jurisprudence.

There is also something on the challenges and prospects of African customary law in Kenya. In *The wretched African traditionalists in Kenya: Challenges and prospects of customary law in the new constitutional era*, Osogo Ambani and Ochieng Ahaya analyse the past, present and future of African customary law. The verdict of this contribution appears to be that ever since the colonial epoch, African customary law has suffered systematic setbacks that continue to frustrate the practitioners of the indigenous way of life. But there is hope. As the two writers suggest, through innovative implementation of the 2010 Constitution, progressive development of the common law and parliamentary legislation, the people of Kenya have the power to salvage their most authentic customary law in their hands.

Matthias Nyenti's, *Developing an efficient and effective social security adjudication framework in South Africa: The role and impact of international guidelines and standards*, appraises South Africa's overarching policy on the resolution of social security disputes through the lens of the relevant international standards. The contribution certifies that, largely, South Africa has incorporated these standards in her internal social security policy to the benefit of the dispensation of the socio economic rights. The article, which also survived the rigorous scrutiny of Conference participants, is useful for those concerned with the reforms recently undertaken in South Africa's social security system.

This edition also features Santiago Legarre's, *Towards a new justificatory theory of comparative constitutional law*. Using the United States of America (US) and Argentine constitutional systems as the case study, Santiago gives useful hints regarding how to conduct comparative studies in constitutional law. The contribution is relevant to African researchers as it suggests ideas that may prove relevant for those conducting surveys in comparative constitutional law. By offering insights into comparative constitutional law, Legarre simultaneously informs the process of both intellectual and judicial cross-pollination among African academics and judicial officers, respectively.

The next item on the quite elaborate 'intellectual menu' is Ken Obura's paper, *The Security Council and the International Criminal Court: When can the Security Council defer a case?* Drawing from the situation currently obtaining in Africa

whereby Kenya, Sudan, and Uganda have had practical engagements with the International Criminal Court, the author takes us through a critical discussion of the Security Council's deferral power before finding, *inter alia*, that although the Rome Statute circumscribes the parameters within which the Security Council exercises its deferral power, the power is susceptible to the usual politics of this critical UN organ. Against the backdrop of the challenges in public international law to the perceived misuse of Security Council power in the *Lockerbie* and *Pal-estine Wall* ICJ decisions, Obura's contribution joins a crucial discussion on the future of the Council.

Finally, this volume contains a review of an outstanding academic work, *The Constitution of Kenya, 2010: An Introductory Commentary*, by PLO Lumumba & L Franceschi. In this review, Kibet endorses the publication as an exceptional work of constitutional scholarship, and recommends it to all lawyers, students and other persons with interest in how they are governed. Strathmore University Press - Law is proud to have published this book.

We hope to navigate other exciting terrains of African law and the law in Africa in future editions of this journal. Through the publication of high quality research on these topical subjects, we are confident the SLJ will count as a useful addition to African scholarship.

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June 2015
Nairobi