

Editorial

In *Re-Imagining Pan-Africanism*, Issa Shivji envisions a university as ‘a terrain of the clash of ideas to generate ideas. It is not a mere profit-making machine to package products in fancy certificates to make them marketable. But ideas must have their roots in society in which the university is situated. And the fruits of the growth and nurturing of ideas must find their way back to society’.

The Strathmore Law Review (SLR) has remained grand in this vision within Strathmore University Law School. It avails young scholars from all over Africa with a liberated zone, which provides unusual and challenging critique on ideas, refines papers and helps engineer social change. As a matter of philosophy, and in Micere Mugo’s parlance, the SLR is indeed a liberated zone. Mugo defines a liberated zone as a space in which freedom fighters proclaim their independence, rid themselves of enslaving or colonising ideas and put in place liberated practices. The space for young African legal minds (undergraduate or master’s students) to write on African problems in journals of repute is severely restricted. This restriction stems from the practice that quality journal papers can only come from those who have at least reached their post-doctoral years.

Yet, and as the founding Editor-in-Chief of the SLR, Cecil Yongo, has noted, ‘there are a number of young, budding scholars who— towards the end of their undergraduate years, or as they do their postgraduate degrees—can write interesting, inspiring work that views matters in a new way and with lots of academic rigour.’ Opening the gates to scholarship for these upcoming African voices is the philosophy behind the SLR.

With this, we are happy to introduce our 5th Volume. With it, the SLR turns 5 years old, remaining one of the only consistent high-level student law reviews in Kenya presently. This level of consistency is worth celebrating. Our anniversary theme is *‘Providing legal solutions to Africa’s problems: Unlocking the potential of African legal scholarship’* and the following papers have made it through a rigorous editorial process. The authors have strived to be ambitious in their analysis, rich in their thought and transformational through and through. Our readers are therefore in for a treat.

In *Through the Economic Cost of Discrimination: The Way Forward for Women in the Somali customary Justice System*, Abdullahi Ali applies Gary Becker’s theory on the

economics of discrimination to the exclusion of women in the Somali customary justice system. Using the Wajir Peace Group as a case study, Ali demonstrates the economic cost that the Somali in the northern region of Kenya are incurring by disregarding the competence of Somali women in settling disputes in the region. Although Ali suggests that this is in contravention with the constitutionally guaranteed right to equality, he proposes an educational approach as a means to promote this right without undermining the culture upon which the Somali customary justice system is founded.

Kelly Nyaga's *Examining the Reporting Mechanism for Sexual Harassment at the Workplace: Section 6 of the Kenyan Employment Act* challenges the existing reporting mechanism for sexual harassment cases in the workplace in Kenya. Using case studies and case law, Nyaga examines the factors that lead to a reluctance in the reporting of sexual harassment. Learning from the US experience, he recommends that an independent commission be put in place to encourage reporting without fear of retaliation and to curtail gender biases that may stem from the gender composition of the High Court and the Employment and Labour Relations Court's benches.

Olosula Adegbite in *In Defence of the Homeland: Unclogging the Legal Regime Governing Counterterrorism in Nigeria through Paradigms from the United States* examines Nigeria's counter-terrorism legal framework. While acknowledging the improvement of this framework over time, the author points out the inadequacies that exist in it, specifically the lack of a robust institutional framework. By comparing the US approach on the matter with the Nigerian one, the author proposes a way forward for a more robust and effective counterterrorism strategy in Nigeria.

Kelvin Mbatia tackles the issue of statehood as understood under both the declaratory and constitutive theory. In presenting the possible effects of a rising sea level in *The Threat of a Rising Sea Level: Saving Statehood through the Adoption of Uti Possidetis Juris*, Mbatia proposes the use of the *uti possidetis juris* as a means to protect maritime boundaries of islands under threat due to the rising sea level.

Vicky Aridi in *Finding a legal Balance between the Right to Strike and Right to Education in Kenya* discusses the conflict that tends to arise between the two rights and critically analyses the approach taken by the Kenyan courts to balance these competing rights. While analysing the approach taken by the courts, Aridi brings to light how the use of injunctions to curtail teachers from exercising their right to strike leaves them with hardly any means to agitate for their pertinent needs. She proposes and suggests a way forward for the courts in striking a legal balance between these two competing human rights.

In *Implementation of East African Community Law by Partner States: A review of relevant laws*, Augustus Mbila reviews the place of community law within the legal regimes of the individual East African Community (EAC) partner states. Mbila presents the principles of community law, as developed within the European Union, and discusses how individual EAC partner states have implemented the EAC Treaty. He emphasises the need to streamline the implementation of community law in the partner states in order to achieve the political federation that the EAC was meant to become.

Andrea Munyao in *An Inquiry into the Limits of Judicial Intervention in the Impeachment Process of Governors in Kenya* discusses the use of judicial review to check and balance the impeachment process of governors. However, and relying on the *Martin Wambora* case, Munyao demonstrates that there is a lack of clarity in Kenyan law as to when courts can intervene in the impeachment process through judicial review. This lack of clarity, she argues, may frustrate the orderly functioning of the county, the Senate and courts. She proposes a synchronised approach whereby the county assembly, the Senate and the courts work in an orderly manner in the impeachment of governors.

We wish to thank Anne Kotonya, Cecil Yongo, Claire Adionyi, Emma Senge, Patricia Ouma, Joe Kilonzo, Melissa Mungai and Prof Borja Lopez for their meaningful contribution as the expert reviewers of this Volume.

It is also our great pleasure to share that we have published two speeches that helped commemorate the 10th Anniversary of the Constitution of Kenya and the launch of Former Chief Justice Dr Willy Mutunga's book - *Constitution-making from the Middle* - on 27th August 2020. These speeches are by Professor Issa Shivji and the Right Honourable Patricia Scotland QC, Secretary-General of the Commonwealth.

As Editor-In-Chief and Managing Editor, serving as the leaders of this liberated zone—that is the SLR—has been a unique privilege. It has also been a very daunting challenge. The pressure to keep the SLR a going-concern without compromising on the values entrenched in our Constitution— excellence, integrity and transparency — was always present. The historicity of our term is not and will never be lost upon us.

All the very best to the 6th Board.

Arnold Nciko and Michelle Malonza,
Editor-In-Chief and Managing Editor.
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