

# STRATHMORE LAW JOURNAL

VOLUME 5, NUMBER 1, JUNE 2021

EDITOR-IN-CHIEF'S EDITORIAL

ISSUE EDITOR'S EDITORIAL

THE ILLUSION OF GREENER PASTURES: VIOLENCE AND JUSTICE FOR FEMALE UGANDAN MIGRANT WORKERS...

*Zahara Nampevo*

ENDING THE OPPRESSION OLYMPICS...

*Lucianna Thuo*

DEVOLUTION AS A PANACEA TO DEEPLY DIVIDED MULTI-ETHNIC (NATIONAL) STATES...

*Harrison Mbori*

CONSTITUTIONAL GUARDIANSHIP IN KENYA'S BICAMERAL LEGISLATURE...

*Walter Khobe Ochieng*

LEGAL EDUCATION AND ITS CONTEMPORARY CHALLENGES IN SUB-SAHARAN AFRICA

*Antoinette Kankindi & Victor Chimbwanda*

AN EXAMINATION OF THE LOMÉ CHARTER

*Marie Valerie Uppiah*

A REPRESENTATIVE OF THE PEOPLE: A REVIEW OF DOMINIC BURBIDGE'S AN EXPERIMENT IN DEVOLUTION...

*Lizzy Muthoni Kibira*

CONSTITUTION-MAKING FROM THE MIDDLE: CIVIL SOCIETY AND TRANSITION POLITICS IN KENYA...BY

WILLY MUTUNGA

*Peter Kimani*

A CRITIQUE OF THE SUPREME COURT OF SIERRA LEONE'S CONVICTION OF AUGUSTINE MARRAH...

*Augustine Sorie-Sengbe Marrah*

INTERNATIONAL SOLIDARITY, HUMAN RIGHTS AND LIFE ON THE AFRICAN CONTINENT...

*Obiora Chinedu Okafor*

COVID-19 PANDEMIC: AWAKENING THE CALL FOR PARADIGM SHIFTING .... IN AFRICA

*Shadrack B.O Gutto*

THE TWO-THIRDS GENDER RULE 'MIRAGE': UNLOCKING THE STALEMATE

*Elisba Zebedee Ongoya*

LAND REFORM IN KENYA: THE HISTORY OF AN IDEA

*Ambreena Manji*

BURYING THE KASUKU SYNDROME: CONSTRUCTING INVENTIVE SITES OF KNOWLEDGE

*Micere Githae Mugo*

# STRATHMORE LAW JOURNAL

VOLUME 5, NUMBER 1, JUNE 2021



**Strathmore University**  
**Press**

Strathmore Law School  
Madaraka Estate, Ole Sangale  
Road P.O. Box 59857 00200  
Nairobi - KENYA  
Tel. + 254-703-034601  
[editor.sup@strathmore.edu](mailto:editor.sup@strathmore.edu)  
[www.press.strathmore.edu](http://www.press.strathmore.edu)  
[www.law.strathmore.edu](http://www.law.strathmore.edu)  
Twitter: @strathmorelaw

Strathmore Law Journal (SLJ) is the principal scholarly publication of Strathmore University Law School, Nairobi. The SLJ is a peer reviewed journal that publishes scholarly contributions on topical aspects of African law and the law in Africa. The online edition is available on open access at [www.press.strathmore.edu](http://www.press.strathmore.edu).

We generally accept submissions until 31 December of every year. As a generalist journal, we consider all sub-disciplines of law, with an emphasis on promoting legal scholarship relevant to Africa.

Please find our Submission Guidelines, Style Guide and back issues at <http://press.strathmore.edu/academic-journals/>

### **Editorial Board**

Melissa Kathleen Wanjiru Mungai – Issue Editor

Prof John Osogo Ambani – Editor-in-Chief

Humphrey Sipalla – Managing Editor

Dr Francis Kariuki

Mukami Wangai

### **International Advisory Board**

Luis Franceschi (Professor), Senior Director of Governance and Peace, Commonwealth.

Patricia Scotland, Baroness of Asthal, QC

Willy Mutunga, Former Chief Justice and President of the Supreme Court of Kenya

JB Ojwang (Professor), Judge, Supreme Court of Kenya

Timothy Endicott (Professor), Oxford University

James T Gathii (Professor), Loyola University Chicago Law School

Frans Viljoen (Professor), Centre for Human Rights, University of Pretoria

Paolo G Carozza (Professor), University of Notre Dame

Typesetting and artwork by John Agutu,

Email: [agutujo@gmail.com](mailto:agutujo@gmail.com)

Printed by Colourprint Ltd, P.O. Box 44466 – 00100 GPO Nairobi

# Contents

Editor-in-Chief's Editorial.....	5
Issue Editor's Editorial.....	7

## General Articles

The illusion of greener pastures: Violence and justice for female Ugandan migrant workers in the Middle East <i>Zabara Nampewo</i> .....	11
Ending the oppression olympics: Promoting the concomitant political participation of marginalised groups in Kenya <i>Lucianna Thuo</i> .....	49
Devolution as a panacea to deeply divided multi-ethnic (national) states: The continuing Kenyan experiment <i>Harrison Mbori</i> .....	85
Constitutional guardianship in Kenya's bicameral legislature: An assessment of judicial intervention in inter-cameral disputes over the enactment of the Division of Revenue Bill <i>Walter Khobe Ochieng</i> .....	115
Legal education and its contemporary challenges in Sub-Saharan Africa <i>Antoinette Kankindi &amp; Victor Chimbwanda</i> .....	145

## Treaty Review

An examination of the Lomé Charter <i>Marie Valerie Uppiah</i> .....	181
---	-----

## Book Reviews

A representative of the people: A review of Dominic Burbidge's An experiment in devolution: National unity and the deconstruction of the Kenyan state <i>Lizzy Muthoni Kibira</i> .....	189
--	-----

Constitution-making from the middle: Civil society and transition politics in Kenya, 1992-1997, second edition, by Willy Mutunga <i>Peter Kimani</i> .....	197
---	-----

## Recent Developments

A critique of the Supreme Court of Sierra Leone's conviction of Augustine Marrah for criminal contempt <i>Augustine Sorie-Sengbe Marrah</i> .....	209
International solidarity, human rights and life on the African continent 'after' the pandemic <i>Obiora Chinedu Okafor</i> .....	217
COVID-19 pandemic: Awakening the call for paradigm shifting in the teaching, learning, research and professional development in human and peoples' rights, freedoms and responsibilities in Africa and the rest of the world <i>Shadrack B.O Gutto</i> .....	221

## Speeches

The two-thirds gender rule 'mirage': Unlocking the stalemate <i>Elisha Zebedee Ongoya</i> .....	253
Land reform in Kenya: The history of an idea <i>Ambreena Manji</i> .....	267
Burying the Kasuku Syndrome: Constructing inventive sites of knowledge <i>Micere Githae Mũgo</i> .....	279

# Editor-in-Chief's Editorial

In June 2015, a special baby was born, the *Strathmore Law Journal (SLJ)*. I was privileged to lead the team of birth attendants who birthed it; including Prof Luis Franceschi, Humphrey Sipalla, Dr Francis Kariuki and later Mukami Wangai and Jerusha Asin. Today we celebrate SLJ 5 but also my last issue as Editor in Chief. 5 issues, 33 articles, 8 book reviews, 7 recent developments, 1 treaty review, 1 legislative review, 3 speeches and 1 case review later, I leave a happy person.

My joy derives from our many milestones. In just 5 volumes, the intellectual baby has traversed major jurisdictions in Africa and beyond. We have covered Cameroon, Kenya, South Africa, Sierra Leone and Uganda. We have canvassed issues affecting Africa and the Middle East and analysed Africa-China relations. We have also reviewed developments at the African Union, the International Criminal Court, the United Nations and the World Trade Organisation. The issues we have explored range from human rights related subjects like food security, social security, the right to health, the rights of persons with intellectual disabilities, to intellectual property related aspects such as copyright. Governance issues like security and devolution and religious pluralism have been articulated yet we still had space for matters legal system such as sentencing guidelines, alternative justice systems and African customary law. We also had occasion to go transnational, and in this regard discussed illicit financial flows, counter-terrorism measures and migrant labour questions, among others. SLJ also carried articles in the field of international law including international criminal law and international trade law.

Interestingly, with the exception of the very first volume, we never had to do a call for papers. Yet quality articles kept trickling in. It felt like Africa had been waiting for us. Indeed it was. Contrary to popular belief, there is a thirst for scholarship in Africa. The Africans want to write about their issues themselves, and they want fora that understand and appreciate them. We are proud to have provided such a forum.

Baby journal has not grown alone. Its best friends have been the student editors, and it has been great to see them grow as well. The very first student editors like Edward Paranta and Cecil Abungu have been to Harvard and back. Raphael Kipngetich is already distinguishing himself in the academy. The Issue Editor for this volume, Melissa Mungai, currently an LLM Candidate at the Centre for

Human Rights, University of Pretoria, has demonstrated her intellectual prowess by taking the journal to new heights. Other memorable student friends of the SLJ include Lizzy Muthoni, Ann Beatrice Njarara, Jentrix Wanyama, Arnold Nciko and Abdullahi Abdirrahman. Baby journal has enjoyed wise cover under a distinguished board of international advisors. SLJ also stands on the shoulders of fantastic peer reviewers whose input is embedded in the quality contributions we have published thus far. Without you, our readers, we would have been artists without an audience. Thank you very much for your support. Finally, I wish to thank Strathmore Law School for housing us. It has been a great five years ... and now permit me to say... *kwaheri!* And to the new team *nawatakia kila la heri.*

J Osogo Ambani, LL.D

*Editor-in-Chief*

# Issue Editor's Editorial

I present to you 14 intellectual gems, which by no coercive puppeteering by my hand, speak for themselves and to each other, and collectively speak to the journal's aim directly—churning out excellent scholarship with a relevance to Africa. In this volume, the authors depict their scholarly valour in a variety of themes, particularly the women's question is emphatic. I guarantee that this is the stuff that makes decolonised mentalities in academia a lived reality; the authors exude an unapologetic over-reliance on African knowledge sites as the go-to source of knowledge.

I have classified the gems as five treasures to showcase their radiance clearly.

The first treasure, general articles, thematically covers women, inclusion, devolution and legal education. On the women's front *Zahara Nampewo* illustrates through real experiences of Ugandan women, the negative consequences of labour expropriation, which have attracted national visibility because of the obvious human rights and gender-based violations that arise especially in the form of violence against women. *Lucianna Thuo* analyses the limited progress in inclusion of marginalised groups despite the progressive provisions of the Constitution of Kenya, 2010 by drawing parallels from Ange-Marie Hancock's Oppression Olympics hypothesis. She proposes ways in which intersectionality can be used to promote the concomitant participation of all marginalised groups namely, women, youths, persons with disabilities, ethnic minorities and marginalised communities.

*Harrison Mbori* uses three broad approaches to assess Kenya's devolution experiment under Kenya's 2010 Constitution and ethnic unity: Daniel Posner's Institutional Politics approach, Donald Horowitz's Constitutional Ethnic Federalism approach, and Yash Pal Ghai's Constitutional Autonomy approach. He argues that a restricted focus on these three approaches cannot yield a constitutional design that can easily achieve the lofty objective of national multi-ethnic unity in Kenya. *Walter Khobe* follows suit in the related theme of devolution by interrogating the Kenyan Judiciary's contested role of serving as guardians within the recurrent conflict over the Division of Revenue Bill between the National Assembly and the Senate over the past decade. He surmises that while courts have the authority to intervene in inter-cameral conflicts, judicial



intervention should be exercised as an option of last resort, only utilised after exhaustion of the constitutionally ordained intra-parliament mediation process.

*Antoinette Kankindi & Victor Chimbwanda* proffer unity of knowledge, an interdisciplinary approach, to address the traditional theory-and-practice divide in legal education. Drawing illustrations from the development of legal training in some parts of Sub-Saharan Africa especially Kenya, Nigeria and South Africa, the authors argue that unity of knowledge is likely to enable a rational articulation of theory and practice in legal training that can create more space for African views of law as reflected in the current efforts to decolonise legal education in South Africa.

*Marie Valerie Uppiah* gifts us with the second treasure, which is also the first treaty review the Strathmore Law Journal has ever published. She reviews the African Charter on Maritime Security and Safety and Development in Africa (2016), also referred to as the Lomé Charter, the first binding legal instrument on maritime security for the African continent. Despite the low ratification rate of the treaty, Marie opines that the Lomé Charter not only aims at creating a secure maritime environment but is beneficial for the protection of the marine environment and the development of member states.

Two book reviews make for the third treasure. The books under review were published by Strathmore University Press, which I imagine should have offset the reviewers' objectivity. On the contrary, *Lizzy Muthoni Kibira* critiques the conceptual frameworks in Dominic Burbidge's 'An experiment in devolution: National unity and the deconstruction of the Kenyan state' (2019). She especially tasks the reader to adjudge the representation of the Kenyan people as portrayed in the book. Similarly, *Peter Kimani* invites us to cast our eyes on the invisibilised in the second edition of Willy Mutunga's 'Constitution-making from the middle: Civil society and transition politics in Kenya, 1992-1997' (published in 2020), that is, women's narratives in the constitution-making process in Kenya during the 90s.

The section on recent developments gives rise to the fourth treasure. *Augustine Marrab's* piece conveys a personal yet global concern on limiting government power. In this case, he analyses the preposterousness of a court decision that could not be questioned. *Obiora Okafor* and *Shadrack Gutto* situate their think-pieces within the COVID-19 pandemic using futuristic lenses. Obiora asserts that life after the pandemic will prioritise international solidarity as the pandemic has illumined vividly our interconnectedness as human beings and societies, including the sheer depth of our mutual vulnerability. Gutto makes the argument that the pandemic has necessitated paradigm shifting in the

interface and interrelatedness of disciplines, perspectives and approaches of knowledge development and application. Although he concedes that the death of mono-disciplines is not nigh, he recommends that multidisciplinarity and interdisciplinarity are requirements in managing and manoeuvring human life through the pandemic, and beyond.

Lastly, the fifth treasure comprises three speeches by *Elisha Ongoya*, *Ambreena Manji* and *Micere Githae Mũgo*. We are republishing Ambreena's and Micere's speeches and I am grateful that they entitled the Strathmore Law Journal as custodian of their intellectual gems. Ambreena draws attention to the limits of law in resolving Kenya's land question notwithstanding the failed attempts of presenting these land issues within a justice framework. Micere appeals to our creative and inventive potentials amid the catastrophic effects of coloniality that pervade the classrooms, epistemic communities or education systems generally. She pathologises the condition of suppressing our potentials as *kasuku* syndrome, whose cure involves dismantling and burying. Elisha's speech takes us through the political and litigious journey, including his personal contributions in the courtroom, of the two-thirds gender rule conundrum in Kenya that has rendered the constitutional principle on gender inclusivity a mirage.

I would like to acknowledge the peer reviewers, whose expertise sharpened the lustre of the intellectual gems, namely: Dominic Burbidge, Petronella Mukaindo, Joe Oloka-Onyango, Lynette Osiemo, Wanjiru Gikonyo, Cecil Yongo, Morris Odhiambo, Juliana Njiriri, Emmah Wabuke, Robert Mudida, Ken Obura, Arbogast Akidiva, Patricia Ouma and Eurallya Akinyi.

For crowning me 'issue editor' one random August day in 2019, I remain indebted to my mentors Professor Osogo Ambani and Humphrey Sipalla. I believe that Baby Journal liberated some bifurcated zones, allowed us to dream on behalf of the society, allowed us to risk looking foolish (or wise) and now, the African continent and the rest of the world will decide its fate.

To African scholarship, for Africa—from Cape Town to Cairo; Morocco to Madagascar...the decolonisation struggle lives!

This volume is my testimony that women carry the struggle.

Melissa Kathleen Wanjiru Mungai  
*Issue Editor.*





## Strathmore University Press

Strathmore Law School  
Madaraka Estate, Ole Sangale Road  
P.O. Box 59857 00200  
Nairobi – KENYA  
Tel. +254-703-034601  
editor.sup@strathmore.edu  
www.press.strathmore.edu  
www.law.strathmore.edu  
Twitter: @strathmorelaw

ISSN 2411-5975



977-2411-5975

LAW SCHOOL