

Editorial Team

Ph.D. Juan Carlos Riofrío
Editor-in-Chief
Strathmore University (Kenya)

Editorial Board

Ph.D. Peter Kwenjera, Strathmore University (Nairobi, Kenya)
Cecil Yongo Abungu, *Assistant Editor-in-Chief*, Strathmore University (Nairobi, Kenya)
Dr. Francis Kariuki, Strathmore University (Nairobi, Kenya)
Mukami Wangai, Strathmore University (Nairobi, Kenya)
Joe Kilonzo, Strathmore University (Nairobi, Kenya)

Advisory Board

Patricia Scotland, Baroness of Asthal, QC (United Kingdom)
Willy Mutunga, former Chief Justice and President of the Supreme Court
(Nairobi, Kenya)
Professor JB Ojwang, Judge of the Supreme Court (Nairobi, Kenya)
Professor Tymothy Endicott, Oxford University (United Kingdom)
Professor James T Gathii, Loyola University Chicago Law School (United States)
Professor Frans Viljoen, Centre for Human Rights, University of Pretoria
(Johannesburg, South Africa)
Professor Paolo G. Carozza, University of Notre Dame (United States)
Professor Usang Maria Assim, Dullah Omar Institute, University of the Western Cape
(South Africa)
Professor Adam D. Dubin, Universidad Pontificia de Comillas (Spain)

Student Editorial Assistants

Khalil Badbess (Strathmore University)

For more information, visit: <https://journal.strathmore.edu/index.php/law/>

Editorial

In the last issue of the Strathmore Law Journal, the former Editor-in-Chief, Professor John Osogo Ambani, personified this journal as a 'special intellectual baby' and briefly recounted the tale of her birth. Over the last five issues, the baby has taken a great many steps manifested in the various works of scholarship that have been published in her pages. With this sixth volume and with four publications left to its tenth anniversary, we might say that the baby is steadily maturing and entering a stage of academic adolescence.

Undoubtedly, her nourishment has come from the intellectual nutrients supplied by numerous authors from Africa and beyond. Her upbringing, on the other hand, has been the task of the many editors, reviewers, and friends of the journal who have voluntarily taken custody of her throughout the last decade. As one of her current custodians, it gives me great pleasure to present to you Volume 6 (Issue 1) of the Strathmore Law Journal.

In this volume, you will find high-quality scholarship focusing on different but equally pertinent issues. Starting us off is an article of immense jurisprudential interest by Jackton B. Ojwang and Loise Wangeci. The authors argue that governance institutions, of which the judiciary is a part, evolve within historically-marked 'frontiers'. Proceeding from this view, the authors set out to show a number of propositions. These propositions centre on the relationship between judicialism and constitutionalism, the influence of the common law tradition on the fundamentals of the modern written constitution, and the juristic foundations of the adaptable trends of the common law.

John Winterdyk offers a compelling inquiry into the practice of comparative criminological and criminal justice research in Africa. Noting that crime has become a subject of interest both domestically and internationally, the author presents several methodological approaches that can be used to promote comparative criminal justice inquiries within the African continent. There is certainly a lacuna in the existing literature on how this task might be undertaken in Africa which makes Professor Winterdyk's article an impressive and necessary contribution.

Adopting a feminist lens, Caroline Adoch evaluates the place of consent as an element in the definition of rape as a crime. The author undertakes a

significant review of existing approaches in scholarship, national laws, and international laws. She finds that definitions of rape that require victims to prove lack of consent unduly shift the criminal process on the victim's behaviour and reaction as opposed to that of the perpetrator. Her conclusion is that definitions of rape based on a lack of consent limit access to justice for rape victims and also contradicts prevailing understandings of rape as a sexual violence crime.

Tayewo A. Adewumi and Temilade O. Jolaosho provide an insightful comparative analysis of the regulatory regimes for digital credit providers in Nigeria and Kenya. They find that while the Nigerian government has taken some steps to punish providers conducting unlawful activities, the Kenyan government has gone a step further and enacted specialised regulations governing digital credit providers. The study recommends that Nigeria should emulate Kenya's approach by enacting similar rules applying to digital credit providers.

Buluma Bwire, Migai Akech and Agnes Meroka-Mutua develop a conceptual framework for assessing how courts exercise their powers of judicial review in relation to legislative action. Exploring how a court might balance legal and political constraints, the authors propose four possible types of courts that can emerge in this context. In an era where the exercise of judicial review powers is being increasingly scrutinised, their article is especially timely.

Leticia Asumu dissects the relationship between sustainable development and the framework for the international human rights system. She illustrates that the Millennium Development and the Sustainable Development goals are increasingly becoming tools to reinforce existing human rights instruments. Her holistic analysis deciphers this link and constitutes a notable addition to the existing body of knowledge.

With a particular focus on the public sector in Africa, Peter Kwenjera and Ian Chris Muchangi examine the role played by law in defining and regulating conflict of interest. They consider relevant legal instruments and generally probe how law can be deployed effectively as a tool of establishing governance structures that mitigate and manage conflict of interest. Through their scrutiny of various countries' laws, the authors provide a useful conceptual and practical perspective.

David Tarh-Akong Eyongndi and Faith N. Opara explore how third-party funding can be used to promote the resolution of disputes through arbitration in Nigeria. In doing so, they highlight the effects of the COVID-19 pandemic on

the likelihood of parties falling short of their contractual obligations and on the higher cost of arbitration. Concluding that third-party funding can be a viable alternative to fund the resolution of disputes through arbitration, the authors then infer valuable lessons from other jurisdictions that Nigeria can borrow in its regulation of the practice.

Nadja El Beheiri provides a stimulating analysis of the institution of slavery in Roman legal history. She focuses on two crucial aspects of slavery that interested Roman jurists: the employment of slaves in economic life and the institution of *manumissio*. Adopting an interpretation of historical sources informed by the realistic phenomenology of Adolf Reinach, she uncovers the philosophical sensibilities and technical abilities employed by Roman jurists in their construction of the institution of slavery and the resolution of its related disputes.

In their article, Uche Nnawulezi and Bosede Remilekun Adeuti evaluate the effectiveness of the legal framework aimed at eradicating child trafficking in Nigeria. Relying on statistical evidence, they show that the trafficking of children in and from Nigeria continues to be a grave domestic and global issue. Identifying the gaps that have led to this situation, the authors correspondingly provide recommendations to strengthen Nigeria's laws and safeguard their implementation.

Lydia Achode builds on the works of Deborah Rhode and her own experiences on the bench to provide a reflection on the importance of judicial ethics in the Kenyan judiciary. She highlights independence, impartiality, and integrity as the core ethical principles that should guide the conduct of judicial officers and judges. Her article is quite relevant for its contextualisation of these principles to the Code of Conduct binding judges in Kenya.

I would like to extend my congratulations and appreciation to the authors for their hard work and cooperation. My thanks also go to Khalil Badbess and to everyone who has made this issue a possibility including the peer reviewers, editors at the Strathmore University Press Legal, and the general leadership of the Strathmore University Law School. On my part, it has been a great pleasure and honour leading the process that has produced this issue. With the 'baby' now having turned six, I look forward, as one of its caretakers, to its continued growth as one of Africa's leading journals.

Juan Carlos Riofrio
Editor-in-Chief
November 2022.