

Editorial

The ‘desert’ which has for many years characterised the African scholarship is continually being brought to its end. At Strathmore Law School, the students are playing their role in the concerted effort to create the much-needed springs of knowledge. The Strathmore Law Review is unveiling this first special issue as part of the pursuit of legal excellence in the quest to make the society a better place.

This special issue features selected dissertations from the pioneer class of Strathmore Law School. Christopher Ndegwa starts off the discussion with his article ‘In Duplum Rule in Kenya: *A Critical Analysis of the Unaddressed Aspects of Section 44A of the Banking Act*’. He undertakes an analysis of the *in duplum* rule which limits the recovery amount with respect to the principal and interest of non-performing loans. The analysis looks at the origins of the rule, Kenyan jurisprudence and conducts a brief comparative study in establishing whether it protects debtors.

Irene Otieno brings to our attention the controversies that arise due to the effects of technological developments on the law, especially in the field of intellectual property. Some of the technological advancements appear to violate already existing legal rights and leave the intellectual property rights holders unsettled. In her article ‘*The Efficiency of Copyright Law in the Digital Space in Kenya: A Case for the Making Available Right in Peer-to-Peer File Sharing*’, she examines Kenyan copyright law and suggests ways in which the law can catch up with the technology in order to ensure that rights are protected in the ever changing digital space.

Yvonne Muthembwa’s ‘*An Analysis of the Exclusion of Child Soldiers Seeking Asylum under the 1951 Refugee Convention from the Principle of the Best Interests of the Child Perspective*’, unravels the challenges that children coerced into becoming child soldiers face. Article 1F(a) of the Convention Relating to the Status of the Refugees excludes them from obtaining asylum due to their participation in commission of the prohibited crimes. The varied interpretation approaches together with the lack of a universally accepted minimum age of criminal responsibility, the author opines, are putting the best interests of the child at stake in the application of the exclusion clause.

Patrick Kimani makes his contribution on the International Criminal Court discourse in his article ‘*The Implications of Stripping Immunities of Heads of States on State Cooperation and the Effectiveness of the Trial*’. He posits that a tension exists

between Article 27 which strips accused incumbent heads of states of their immunity, and Article 86 which requires a situation country to cooperate with the Court. The journey from Nuremberg to The Hague has eroded the 'invisibility cloak' of heads of state from prosecution but also appears to have a negative side with respect to state cooperation. Using the Uhuru Kenyatta and Al Bashir cases, Patrick explains how the prosecution of incumbent heads of state remains a challenge in international criminal law.

Walking the Tight Rope: Balancing the Property Rights of Individuals with the Right to Housing of Informal Settlers' is an attempt by Doris Matu to strike a balance between the right to property, on the one hand, and the right to accessible and adequate housing, on the other hand. This is an area that has elicited intense debate given the emotive position of land in the country's development. She uses illegal forced evictions to illustrate how these two rights lock horns and undertakes to find a way out of the clash.

Ikoha Muhindi's *'Occupational Safety and Health of Coal Mine Workers in Kenya: Filling the Lacuna in the Law'* is an expose of the wanting working conditions the coal miners have to put up with despite their huge contributions to the economy. The article examines the ability of the occupational safety and health and related legislations to safeguard the concerns of the coal miners in Kenya as the country embarks on the coal extraction in Mui Basin.

Raphael Ng'etich's *'The Rejected Stone May Be the Cornerstone: A Case for the Retention of Traditional Justice Systems as the Best Fora for Community Land Disputes in Kenya'* ends the discussion in the issue with a search for the most appropriate forum for the resolution of community land disputes. It proposes that traditional justice systems, initially used by communities but phased out with the onset of colonialism on being regarded as inferior, remain the most appropriate. Their inclusive and informal nature together with the pursuit of restorative justice makes them the appropriate forum as they preserve the web of interests that characterise community land ownership.

This step is part of the continued effort in making the Strathmore Law Review one of the finest in legal literature taking the discussion deeper, far and wide in interrogating and resolving the issues affecting our society today. And as has been observed, the law is not everything and cannot resolve all the challenges but we also realize that it is not nothing either; the take home lesson being that the mountain can be moved if we all play our part well. Seize the day!

Raphael Ng'etich
Guest Editor-in-Chief