

Editorial

It has been six years since the Strathmore Law Review (SLR) was founded and each of those years has seen the consistent release of at least one journal issue. With the release of this sixth volume, it is perhaps useful, if not slightly sentimental, to revisit the institution's core objectives. A reading of the SLR's constitution shows two broad goals. The first is to reduce the dearth of legal academic scholarship in Africa by publishing high quality research. The second is to publish scholarship that leads to a better society. In many ways, each volume of the SLR has been a small but meaningful contribution by its editors and authors towards fulfilling these objectives.

At a deeper level, these objectives reveal a deliberate academic enterprise to orient the writing, teaching and practice of law in Africa to its context. Most notable is the fact that this enterprise is fuelled entirely, on both the editors' and authors' sides, by individuals at a pre-doctorate level (undergraduate and master's degree-holders and students). The journal is thus testament to the passion and creativity of these young African minds to craft legal solutions responding to Africa's multi-faceted problems. In this regard, the SLR is more than a mere publication; it is a critical epistemic space.

Against this backdrop, we humbly present the sixth volume as our contribution to the SLR's dual objectives and epistemic longevity. The sixth volume which has the theme, *'Law towards a better Africa'*, coincided with the SLR's inaugural *'Yash and Jill Cottrell Ghai Writing Prize'*—an award that we hope will become an annual feature at the SLR. The prize was aimed at pre-PhD legal researchers and carried a cash award of 700 USD. All authors who took a socio-legal or multi-disciplinary approach to topics falling under the volume theme were eligible for the prize. We congratulate Mitchelle Kang'ethe who emerged as the prize-winner! Generally, the prize attracted numerous excellent submissions and each author in this volume presents persuasive arguments, deep analyses and bold recommendations. The novel and useful perspectives contained herein are sure to invite critical thought and academic debates.

Starting off the volume is the prize-winning article by Mitchell Wanjiku Kang'ethe, *'The Insanity of Kenya's 'Guilty but Insane' Verdict'*. Kang'ethe argues that isolation and treatment of the defendant form the two primary aims of the 'guilty but insane' criminal verdict in Kenya. However, Kang'ethe consults rich empirical and historical information to conclude that these aims have barely been achieved in Kenya due to institutional limitations. Drawing lessons from Ghana, she makes important recommendations on the way forward.

Nciko wa Nciko Arnold, in *'The Hut at Strathmore—TWAAIL for a Culturally Appropriate Teaching of Public International Law in African Law Schools'*, presses the case that the teaching of public international law in Africa remains largely Eurocentric and culturally inappropriate. Nciko views the problem through a cultural lens and constructs a compelling conceptual framework to show what he means by the term 'culturally appropriate'. To confront the Eurocentric teaching of PIL in Africa, he recommends 'The Hut', an intellectual movement in Strathmore University Law School, as a possible anathema.

In *'Asking for Young Offenders: What is the Fate of Restorative Justice within Nigeria's Discretionary Diversion Policy?'*, Collins Okoh examines Nigeria's juvenile justice system and observes that the diversion of children to the formal justice system in Nigeria goes against the 'best interest of the child' principle. He attributes this to the overbroad discretionary powers that the Nigerian Child's Rights Act 2003 grants to officials in its diversion policy framework. His central hypothesis, which he attends to in admirable detail, is that taking away these powers can help improve the treatment of young offenders in Nigeria.

Sidney Tambasi Netya and Cynthia Gathoni Miano examine the barriers to the direct access jurisdiction of the African Court on Human and Peoples' Rights in *'Reflections on Direct Access to the African Court on Human and Peoples' Rights: A Cul De Sac?'*. The authors observe that the African Court has direct access jurisdiction only where an African state has recognised this jurisdiction through an optional declaration or where the African Commission refers a matter to the Court. However, they argue that both means are being increasingly limited by states' rapid withdrawals of their declarations and a failure by the Commission to consistently refer cases to the Court. To prevent the African human rights system from treading into a 'cul de sac', they present timely solutions borrowed from the European and Inter-American Human Rights system.

Vianney Sebayiga's article, *'The Right of Appeal under Section 35 of the Arbitration Act of Kenya: A Critique of the Supreme Court Decision in Nyutu Agrovet v Airtel Networks Limited (2019) eKLR'*, discusses the Kenyan Supreme Court's decision in *Nyutu Agrovet* and its implications on arbitral finality and practice

in Kenya. Sebayiga provides a much-needed critique of this recent case and argues that it abrogates internationally recognised principles of arbitration. To safeguard the sanctity of arbitral awards in Kenya, he recommends alternative interpretations of Kenya's Arbitration Act.

With the African Continental Free Trade Area becoming operational this year, there is an ongoing evaluation of the impact it is likely to have on intra-African trade. Catherine N. Penda makes a valuable contribution to this body of knowledge in *'Eliminating 'Thick' Borders: Analysing the Legal Framework on Non-Tariff Barriers in the Africa Continental Free Trade Area Agreement'*. Her thesis is that while the Free Trade Area has made some important strides in reducing non-tariff barriers, there are still some significant regulatory gaps that need to be addressed. Penda analyses these gaps and makes specialised recommendations to address them.

Closing off the volume is Adi Guyo's *'Violent Extremism in the Northern Frontier Counties of Kenya: Exploring Human Security as a Sustainable Countering Strategy'*. Guyo argues that the state-centric approach to countering violent extremism in Kenya's Northern Frontier Counties is unsustainable. She instead recommends a human security centred approach which emphasizes freedom from fear and freedom from want. Guyo posits that this alternative approach is likely to reverse the societal marginalisation that the region has thus far experienced.

The SLR expresses its heartfelt gratitude and congratulations to all the authors who worked endless nights to make this volume possible. As Editor-in-Chief of the Strathmore Law Review, I am especially proud of the effort and thought that has gone into this volume. It is a privilege to end my four years at the Strathmore Law Review with the launch of this volume and while leading a team of some of the most talented individuals I have had the pleasure of knowing. I wish to particularly thank Michael Butera, Publishing Editor of this volume, for his unending help and support. In him, I found a fellow leader, an invaluable advisor, an excellent editor and a life-long brother. My thanks also goes to Cecil Abungu, a friend and mentor, to whom the institution and I owe a great deal. The SLR also owes much to Professors Yash and Jill Cottrell Ghai who graciously lent their names to the institution's inaugural writing prize. Last but not least, I would like to thank this volume's expert reviewers whose insights were essential to the rigour and quality of this volume: Allan Mukuki, Brian Kimari, Caroline Lichuma, Cecil Abungu, Claire Adionyi, Dr. Francis Kariuki, Dr. Kariuki Muigua, Dr. Makumi Mwagiru, Dr. Ohio Omiunu, Dr. Titilayo Adebola, Humphrey Sipalla, Jeffah Ombati, Luciana Wambui Thuo, Melissa Mungai, Mukami Wangai, Raphael Ng'etich and Sharon Muoki.

To the seventh volume board, I wish you the best of luck. If I were to condense the most important advice I have, I would simply be restating the dual objectives that I isolated earlier. And so, in the concise and efficient parlance of editors, I say to you: ‘When in doubt, kindly refer to the first two paragraphs of this editorial’.

Khalil Badbess,
Editor-in-Chief
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