

STRATHMORE LAW REVIEW

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This Volume is dedicated to the Late Annette Kanyugo

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Editorial

The need to nurture a library of outstanding academic literature in Africa is ever exigent. This is well captured by Prof. Karuti Kanyinga during the 9th CB Madan Prize Ceremony. He noted therein, that ‘there is no other better time to speak about the role of law – and the rule of law – in our society than today’. Interestingly, the phenomenon ‘today’ is not stagnant. Hence, the expedition of the Strathmore Law Review (SLR) which began in 2012 took several years of deliberate planning and deep conceptualisation before the first volume was launched in 2016. It was with this launch that the SLR established a covenant with scholars and the general public to tackle Africa’s legal issues consistently and constructively—a crucial step towards satisfying the exigency.

In this Seventh Volume, the SLR buttresses this covenant via the theme *Law Towards a Better African Society*. This theme is carefully curated to accommodate diverse legal topics tailored toward strengthening the marrow of the African continent and accentuating its ever-evolving and rich culture through the nutrients of critical legal scholarships. Likewise, this volume comes at a memorable time when the host institution, the Strathmore University Law School (SLS), is celebrating its tenth anniversary. As the hallmark of quality research, the SLR is an important framework for this celebration. Although statistics do not outrightly prove quality, they can offer guidance on the same. Over the last seven years, the SLR has cumulatively published seven volumes, eight issues, sixty articles, two book reviews, and two keynote lectures – this list will only continue to grow. Consequently, I present the Seventh Volume and congratulate the following luminary authors for their contributions:

Introducing the volume is Natalie Kiilu who, in *Indirect Discrimination: Huduma Namba (Digital Identification) and the Plight of the Nubian Community in Kenya*, passionately advocates for inclusive policies and development. Kiilu observes that the mandatory operationalisation of unique digital identification systems like the Huduma Namba will further marginalise and indirectly discriminate against the members of the Nubian Community. The author, therefore, calls for human rights impact assessments, alongside the data impact assessment proposed by

the courts, to guarantee universal access to the benefits that such systems offer before they can be deemed inclusive and operationalised.

Peace Kioko in *Right Behind Bars: Examining the Appropriateness of Kenya's Prison Labour Wages and Earnings Scheme* observes the exploitation of prisoners in Kenya through underpaid labour. Therein, Kioko relies on the concept of the prison industrial complex and human rights theories to argue for a more dignified and augmented pay for prisoners in Kenya. The author practically revises the current payment scheme and proposes a more dignified one by borrowing lessons from India.

In *Pacifying the Crises of (Un)Constitutional Amendments: The Case of Zimbabwe's Amendment (No.1) and (No.2) Acts*, Tonderai Matanda bemoans the dilution of some progressive pillars of the 2013 Constitution of Zimbabwe through amendments. Specifically, Matanda highlights the vast crises that such alterations potentiate against the judiciary in a fragile democratic state. The author seeks to address these crises through the exploration of the doctrine of unconstitutional constitutional amendments and judicial review – and he attains this goal meticulously.

Furthermore, the African Continental Free Trade Area (AfCFTA) gains its meritorious attention through Lawson Ondieki. Ondieki reviews the legitimacy of the Investor-State Dispute Settlement (ISDS) and examines its suitability to be included as the dispute settlement mechanism for investments in the AfCFTA. In *Evaluating the Legitimacy of the Investor-State Dispute Settlement Mechanism for the AfCFTA*, Ondieki provides a historical account of the ISDS and finds that the mechanism is inappropriate to serve as the dispute resolution mechanism for investments under the AfCFTA. The author reaches this conclusion given the ISDS' legitimate crisis over the years and its discord with some of the principles of the AfCFTA.

Wanditi Gathumbi discusses the secondary use of personal data and the exclusion of data subjects in Kenya. Accordingly, the author makes a case against section 28(2)(c) of Kenya's Data Protection Act 2019. In *Safeguarding Personal Data: Meta Consent as a Remedy to Section 28(2)(c) of Kenya's Data Protection Act*, Gathumbi faults the Act for trivialising data subjects' consent and relies on Daniel Solove's Taxonomy of Privacy to discuss the cost of such lax legal provisions. The author suggests meta consent as the appropriate solution to neutralise the threat posed to privacy by such legal laxity.

Macharia Mukono brings marriage and divorce issues to the limelight. Mukono's article, *Divorce Law in Kenya: In Support of a Uniform No-Fault Regime*, envisions a legal regime that makes divorce processes less hostile and less litigious

in order to protect individual rights and preserve post-divorce relationships. Accordingly, the author excavates the ills of the traditional fault-based grounds for divorce and dissents the inclusion of such traditional grounds in the newly introduced irretrievable breakdown ground under Kenya's Marriage Act of 2014. Mukono finds solace in the newly introduced ground and views it as a framework that ostracises the old regime premised on faults, and makes divorce cases less coercive, more dignified, and less adversarial.

Finally, Ivy Aruasa recognises Kenya's murky extradition procedure in *Clash of Titans: Streamlining the Complementary Roles of the DPP and the AG in Kenya's Extradition Procedure*. Noting the complications arising from the current procedure, Aruasa argues that the current extradition law is marred by legal inconsistencies, which in turn has the effect of delaying extradition cases and creating a screen of confusion. Drawing lessons from Canada, the author pragmatically recommends a reconceptualised three-pronged process that clearly establishes complementary roles for the Director of Public Prosecutions, the Courts, and the Attorney General.

From the foregoing snippets of the articles within this volume, it is clear that the SLR has been a platform for legal academic masterpieces. I, therefore, thank all the authors for collaborating with the SLR for publication.

My SLR experience has been one I will always reminisce with fond sentiments. Given that leadership is primarily about building relationships, the SLR offered me a platform to forge and solidify personal and professional lifetime friendships and partnerships. This volume would not have come to fruition without the unwavering support from our corporate and individual partners.

On the corporate level, the SLR is thankful to the following law firms for their financial support: *Coulson Harney Advocates (Bowmans)* – Platinum, *CMS Daly Inamdar Advocates* – Gold, and *Iseme, Kamau, and Maema (IKM) Advocates* – Silver. Through these sponsorships, the SLR can now reach a wider audience via a world-class online platform, among other initiatives.

On the individual level, the SLR appreciates the following expert reviewers for their expert insights: *Mr Humphrey Sipalla, Ms Judy Thongori, Ms Melissa Muindi, Ms Claire Adionyi, Ms Jade Makory, Ms Melissa Mungai, Mr Zwelithini Xaba, Mr Charles Kanjama, Dr Fola Adeleke, Ms Anne Kotonya, Mr Abdulmalik Sugon, Mr Emmanuel Mueke, and Mr John Nyanje*. Similarly, our heartfelt gratitude goes to the SLS faculty members who have proven over the years to be constructive mentors, guides, friends, and advisors. Their resolute dedication to furthering the interest of the SLR is incalculable.

To the peer-reviewers, this volume is proof of your hard work, research skills, and critical analyses. It is a great legacy that we all share, and your names will go down in the history books. Specifically, I extend my deep appreciation to *Miss Peace Mwende Kioko*, the Managing Editor of this volume, for her exemplary leadership and support even during the arduous times of the editorial process. Likewise, I recognise *the Late Miss Annette Wambui Kanyugo*, who began her journey with the SLR through this volume but unfortunately passed on before its publication. We dedicate this Seventh Volume to Annette, as a testimony to her long list of legacies and efforts to ensure a positive lasting impact on the legal academic field, despite her tender age. Her name will forever be remembered and associated with the ethos of the Strathmore Law Review. May her soul rest in perfect peace. Amen.

Finally, to the next editorial board, I conclude by reminding us of the covenant and the need to keep it. You have been entrusted to steer the continent forward and we are ever present to support you in this mission. All the best as you respond to the upward call.

Thank you so much.

Collins Chidera OKOH,
Editor-in-Chief,
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