

Editorial

Legal scholarship is a worthwhile pursuit, particularly when considered from a broader philosophical perspective. This statement is grounded in two notable justifications, one of which is captured by the theme of this Volume: *‘Shaping the Future of Africa: Harnessing the Power of Legal Scholarship for Social Transformation’*.

First, and perhaps most importantly, legal scholarship holds intrinsic value, anchored in its commitment to the pursuit of truth and the advancement of knowledge. While not an exact science, high-quality legal research employs rigorous, quasi-scientific methods to approximate truth and generate relatively objective insights. Additionally, it thrives on collaboration and a commitment to continuous improvement, both of which are essential for building knowledge. Embracing the ethos of ‘standing on the shoulders of giants’, legal scholarship acknowledges that academic endeavours are never truly final; understanding evolves and deepens over time. This justification holds particular significance in Africa — a region rich with the potential to generate new knowledge but historically burdened by narratives shaped predominantly from external perspectives.

Second, and closely aligned with the theme of this volume, legal scholarship has the potential for impact—understood as the ability to influence outcomes. Carefully researched and well-articulated work has the power to shape decision-making processes and improve societal outcomes. It is crucial to temper this assertion by recognising that there are multiple factors that influence the impact of legal scholarship, and its impact on policy or practice is not always guaranteed. Nevertheless, when executed with rigour and insight, legal scholarship can play a crucial role in advancing meaningful change.

For nearly a decade, the Strathmore Law Review has exemplified its commitment to this dual philosophical importance of legal scholarship, establishing itself as one of the most consistent and high-quality student-edited law reviews in Africa. As we unveil Volume IX, we proudly continue this tradition of excellence. Each contribution seeks to illuminate pressing issues, spark meaningful dialogue, and offer creative approaches to complex legal issues in Africa.

The Volume opens with a timely exploration of the intersection between machine learning (ML) technology and labour rights in Kenya, presented in Kazungu Mrashui's article '*Algorithmic Bias in Hiring Algorithms: A Kenyan Perspective*'. This insightful article highlights how ML, particularly in hiring processes, has the potential to reinforce or introduce new forms of bias, challenging the notion of algorithms as inherently objective tools. Central to the discussion is the complexity of algorithmic discrimination, including how biases in training data, feature selection, and opaque decision-making processes can disadvantage protected groups under Kenya's anti-discrimination laws. The author proposes a shift from individual-centered approaches to an institutional framework for addressing algorithmic bias, advocating for transparency, regular audits, and regulatory sandboxes. The article argues for building a robust foundation that ensures algorithmic fairness while balancing innovation with employee rights—a vital dialogue as Kenya embraces ML technology in the workplace.

Building on the theme of the societal impact of AI, '*BIT by BIT: Regulation of Highly Capable AI Through the Remodelling of Bilateral Investment Treaties*' by Esther Omanga shifts the focus to AI governance. This article examines how Bilateral Investment Treaties (BITs) can be adapted to indirectly regulate highly capable AI systems. The author advocates reimagining BIT provisions to explicitly include data centers as covered investments, given their critical role in AI development, and broadening police powers clauses to address risks specific to AI. Drawing parallels with environmental and human rights reforms in BITs, the article argues for responsive frameworks that balance innovation with state sovereignty and global safety. This thought-provoking piece underscores the urgency of international collaboration to navigate AI's evolving risks.

The final three articles balance the forward-looking discussions of AI and technology in the opening pieces by revisiting enduring societal and legal challenges through fresh and equally critical perspectives. In '*Using a Sledgehammer to Crack a Nut? Kenya's Approach to the Detention of Asylum Seekers and Refugees in Prisons and Police Stations*', Marie Iradukunda explores a deeply rooted yet evolving issue. Grounded in a conceptual framework that views asylum seekers as both non-criminal and inherently vulnerable, the article underscores how Kenya's practice of detaining asylum seekers and refugees in carceral institutions violates the principle of proportionality and resultantly Kenya's obligations under the International Covenant on Civil and Political Rights (ICCPR). The author highlights how Kenya's approach criminalizes vulnerable populations, imposes undue restrictions, and exacerbates their hardships. To address this, the article recommends abolishing such detention, establishing humane immigration

facilities, and instituting clear detention time limits. By advancing this critique, the piece calls for a refugee detention policy that respects the dignity and rights of asylum seekers in line with international human rights obligations.

The Volume continues with an insightful examination of inclusivity in the democratic process, presented in *'Double Invisibility: Realising the Right to Vote for Persons with Intellectual Disabilities in Kenya'* by Valentine Kaburu. Through the lens of relational personhood, the author critiques the misapplication of the term 'unsound mind' in electoral law, which arbitrarily excludes many persons with intellectual disabilities (PWIDs) from voting. The article highlights the neglect of PWIDs' unique needs in the electoral system, which focuses predominantly on visible disabilities. It advocates for the adoption of reasonable accommodations, such as functional assessments and tailored support systems, to enable PWIDs to exercise their right to vote. In doing so, the author presents a compelling argument for reforming Kenya's electoral framework to uphold constitutional and international human rights obligations while fostering inclusivity in democratic participation.

Closing this Volume is Vicky Miriti's *'Compulsory Licensing for Pharmaceutical Access in East Africa: The Challenge of Kenya's Failure to Adopt Article 31bis of the TRIPS Agreement'*. This article delves into Kenya's pivotal role in addressing the region's public health challenges through the underutilized mechanism of compulsory licensing provided in Article 31bis of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The author critiques Kenya's failure to implement this provision into domestic law, thereby hindering the East African Community (EAC) from collectively leveraging pooled demand and local manufacturing to increase access to essential medicines. With Kenya poised to act as an 'anchor country' due to its manufacturing capacity and market size, the paper highlights the missed opportunities for fostering economies of scale and regional cooperation. The author advocates for legislative reform to integrate Article 31bis, enabling Kenya to fulfill its dual potential as an importer and exporter under this system.

With the high-quality contributions now introduced, it is essential to pause and reflect on the collective efforts that brought Volume IX to fruition. First, I extend my heartfelt gratitude to the authors whose work is featured in this Volume. As emerging legal scholars, your courage to contribute to scholarship in a field often dominated by older voices is truly commendable. The quality of your work stands as a testament to the founding vision of the *Strathmore Law Review*—to provide a platform for young, talented authors to engage with complex legal issues in Africa and produce high quality work. To the editors, your resilience

and creativity have truly been remarkable. This volume faced its fair share of challenges, yet your dedication not only brought it to life but also ensured it upholds the highest standards of quality. Special thanks are also extended to our expert reviewers — Michelle Malonza, Khalil Badbess, Lilian Obiye, Andrew Kos Ngune, Claude Kamau and Cecil Abungu —whose generous contributions of time, knowledge, and expertise have been indispensable to the success of this Volume.

We also extend our deepest appreciation to Dr. Lynette Osiemo, Research Director at Strathmore Law School, and Macharia Kaguru, Editor-in-Chief of the Strathmore University Legal Press, for their unwavering support and encouragement throughout this process. We are profoundly grateful to Cecil Abungu, the founding Editor-in-Chief, whose steadfast guidance provided us with clarity and enabled us to navigate this journey with focus and purpose. Lastly, we wish to acknowledge Dr. Jane Wathuta, Dean of the Law School, and Wesley Ooro, School Manager, for the invaluable support extended to us from the Strathmore Law School.

To the editors of Volume X and future volumes of this journal, I would like to echo the sentiments expressed at the beginning of this editorial. Remember, your work extends far beyond the confines of the *Strathmore Law Review*. Engaging in legal scholarship is not just about producing a publication; it is about advancing knowledge and potentially influencing societal outcomes. Embrace this broader role with purpose, resolve, and unwavering commitment to the values of the SLR.

Finally, we honour the memory of Annette Kanyugo, a dear friend and former editor at the SLR. This was to be her final Volume, and while she is no longer with us, her spirit resonates throughout the pages of this publication. Annette, you are remembered, always.

Amelia Midwa,
Editor-in-Chief, Volume IX.