

ABSTRACTS

KHADIAGALA, LYNN, Negotiating law and custom: judicial doctrine and women's property rights in Uganda, *Journal of African Law* 46 (2002): 1–13

This article, based on fieldwork carried out in southern Uganda, examines the sources and evolution of judicial doctrine towards women's property rights. While as late as the 1960s the courts were willing to protect women's access to land, by the late 1970s they had come to uphold male authority over property and persons. As Uganda descended into political and economic chaos, the courts adopted a more authoritarian and patriarchal approach to customary disputes, perceiving the recognition of women's property rights as a threat to social order.

MURIU, DANIEL WANJAU, Paying lip-service to the principles of regulation: a comparative critique of Kenya's telecommunications law, *Journal of African Law* 46 (2002): 14–30

In the last decade or so, rapid changes have taken place in the telecommunications industry all over the world. In addition to technological advances that have led to the convergence of telecommunications, media and information technology, the telecommunications industry has undergone a liberalization process that has seen the passing of full and/or partial ownership and control of the industry from governments to the private sector. Part of this process has been the enactment of laws incorporating regulatory principles that have come to be seen as critical to the industry. This article examines the evolution of the telecommunications industry in Kenya and includes a comparative analysis of Kenya's telecommunications law with that of South Africa, Sri Lanka, Cameroon, Uganda and Ghana. The analysis demonstrates that, in the drafting and enactment of the Kenya Communications Act, little heed was paid to the aforesaid regulatory principles. The article therefore suggests that reform of the said Act is necessary and points out some of the areas where changes are required.

HANSEN, THOMAS TRIER, Implementation of international human rights standards through the national courts in Malawi, *Journal of African Law* 46 (2002): 31–42

The Constitution of Malawi specifically permits courts to make use of international human rights law. However, as a survey of local cases highlights, to date judges in Malawi have shown a marked reluctance to do so. The reasons for this unsatisfactory position are investigated, drawing upon research conducted with both judges and legal practitioners in the country. The research demonstrates that lack of training and access to relevant materials and literature are the fundamental reasons, and the article calls for the taking of steps to remedy the situation.

OJWANG, J. B., and FRANCESCHI, LUIS G., Constitutional regulation of the foreign affairs power in Kenya: a comparative assessment, *Journal of African Law* **46** (2002): 43–58

The foreign affairs power is not treated as a special area of governmental activity deserving of regulation in Kenya's constitutional law. The Constitution makes no express mention of treaties, recognition of states and governments, or war and peace. The article considers the question of whether the Constitution should regulate the foreign affairs power in more detail, and if so, the mode of exercising such regulation. A discussion is undertaken on the merits and modes of a balanced position between the demands of public participation and of governmental checks-and-balances, on the one hand, and of efficient government on the other hand.

Several of the constitutions of states are considered to shed more light on the Kenyan experience. From the comparative lesson, it is argued that current universal trends in constitutionalism, which demand checks-and-balances in the exercise of public power, public participation, and in transparency as well as efficiency, do make a case for constitutional reforms in Kenya so as to define the domain of foreign affairs more clearly, and to institute appropriate restraints on the span of governmental powers.

KULUNDU-BITONYE, WANYAMA, Riot victims and the doctrine of *proxima causa* in insurance law: the Lesotho experience, *Journal of African Law* **46** (2002): 59–91

The question as to who bears the losses which resulted from the riots in Lesotho in September 1998 raises complex and intriguing questions on insurance law in general and of causation in particular. This espouses the important doctrine of *proxima causa*. This article criticizes the various doctrines developed by the courts, arguing that they have confused, rather than helped, matters and that the courts in Lesotho must adopt a fresh approach to the issue.

MBODLA, NTUSI, Should prisoners have a right to vote?, *Journal of African Law* **46** (2002): 92–102

This article considers whether prisoners in South Africa should have a right to vote in general elections in the light of the recent decision of the Constitutional Court in *August and Another v. Election Commission and Others*. It points out the importance of distinguishing different categories of prisoner and it analyses the reasons advanced for depriving prisoners of the right to vote. It examines the position in South Africa in the context of policies adopted in a number of other jurisdictions.