

ABSTRACTS

ÜLGEN, ÖZLEM, Developing the doctrine of aboriginal title in South Africa: source and content, *Journal of African Law* 46 (2002): 131–154

Recently, the South African Land Claims Court rejected a claim to restitution of land rights based on the doctrine of aboriginal title, demonstrating problems associated with the legitimization of such claims in South Africa. This article analyses the source and content of aboriginal title arguing that retrospective application of legal concepts from Dutch and British colonial practice is indeterminate and fails to consider pre-existing indigenous customs and laws. The prior occupation of lands by indigenous groups before European colonization is identified as the source. Indigenous customs, practices and traditions determine the content of aboriginal title, which may include mineral rights.

LOMNICKA, EVA, Capital markets regulation in Nigeria and the UK: the role of the courts, *Journal of African Law* 46 (2002): 155–166

Both Nigeria and the UK have recently overhauled their securities regulation regimes, Nigeria by its Investment and Securities Act (ISA 1999) and the UK by its Financial Services and Markets Act (FSMA 2000). Although both statutes have some common features, there are significant differences between them. One area of difference lies in the enforcement of the regimes. In contrast to the FSMA 2000, the extensive reliance on criminal sanctions by the ISA 1999 is striking. Considering the shortcomings of criminal sanctions in securities regulation, this article draws attention to the alternatives to criminal liability open to the Nigerian courts. It also examines the potential for bringing regulators to court and considers the degree of immunity that might be appropriate.

NG'ONG'OLA, CLEMENT, Recent labour law reforms in Malawi: a review, *Journal of African Law* 46 (2002): 167–196

This article describes and assesses reforms to employment and labour relations legislation after the political and constitutional transformation that took place in Malawi between 1992 and 1995. The frame of reference for the assessment is the Constitution for the Second Republic, finalized in 1995, which incorporates labour issues within its human rights clauses. One theme of the article, however, is that some of the constitutional provisions were either poorly conceived or not elegantly rendered. This has compounded and complicated the reforms. The second theme is that legal reforms have been attempted in an economic environment not conducive to the attainment of the desired objectives. The Labour Relations Act 1996 attempts to give effect to the Constitution and to international labour standards on issues such as formation of workers' and employers' organizations, collective bargaining, the taking of industrial action and dispute resolution. The Employment Act 2000 attempts to give effect to the Constitution and international standards on issues such as basic terms and conditions of employment, employment of women and young persons, and dismissal and other forms of termination of employment. The article observes that these laws generally attempt to improve and strengthen the position of

employees or workers, but that this is done under a constitutional arrangement that does not properly secure the right to work, and in an economic environment in which jobs are scarce and employment is at a premium. With so many employees clamouring for not so many jobs, employers are in a position to ignore some of the requirements of the revised laws.

ENONCHONG, NELSON, The African Charter on Human and Peoples' Rights: effective remedies in domestic law? *Journal of African Law* **46** (2002): 197–215

The African Commission on Human and Peoples' Rights was established to protect the rights enshrined in the African Charter on Human Rights. But, it is now generally accepted, the Commission has failed to meet that objective. Since the Commission has not been able to provide effective remedy, victims of human rights violations in Africa have been obliged to look no further than domestic courts for protection. This article examines the scope of the right to the presumption of innocence under the Charter, in the light of a recent Cameroonian decision, and explains the remedies available under the domestic law of Cameroon for breach of a Charter right.

WEHNER, JOACHIM, Parliament and the power of the purse: the Nigerian Constitution of 1999 in comparative perspective, *Journal of African Law* **46** (2002): 216–231

Since democratization, Nigeria's budgetary process has been characterized by a degree of legislative–executive conflict. This article surveys some important constitutional features that inform legislative–executive relations with regard to the budget in a comparative context, and with particular reference to other African constitutions. An attempt is made to assess the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999, in this comparative context. The conclusion is that, on balance, the latest Nigerian Constitution gives strong powers to parliament with regard to budgetary matters, particularly in terms of amendment powers, and the wide-ranging investigative powers vested in parliament and its committees. Several issues worth considering during the constitutional review process are highlighted. However, it is argued, there are limits to the extent that a written document can shape political processes and behaviour. Political actors remain responsible for fostering legislative–executive relations that match their preferences, and for safeguarding the broader public interest.

MADHUKU, LOVEMORE, Constitutional protection of the independence of the judiciary: a survey of the position in southern Africa, *Journal of African Law* **46** (2002): 232–245

The independence of the judiciary is a logical corollary of the principle of the separation of powers. All the constitutions of southern African states formally establish judicial independence but, in practice, the extent of its protection varies considerably. This article examines the effectiveness of constitutional provisions covering, in particular, the method and appointment and removal of judges, their terms and conditions of service and whether or not the judiciary has exclusive jurisdiction over “judicial” matters.