

ABSTRACTS

ODINKALU, CHIDI ANSELM, Back to the future: the imperative of prioritizing for the protection of human rights in Africa, *Journal of African Law* 47 (2003): 1–37

States bear primary obligation in international law for complying with human rights norms. Advocates for the protection of human rights generally proceed on the premise that states, therefore, uniformly have the capacity to implement the norms of human rights that they subscribe to. It is also assumed that human rights violations are an exception rather than the rule. The author here argues that in Africa, the reverse is the case: that far from being the exception, human rights violations are in fact the rule. And far from having uniform capacities, the capacities of states everywhere, even more so in Africa, are deeply uneven. This, he argues, impels different strategic and practical directions for advocates of human rights in Africa. Foremost among these new directions is the need to define clear priorities. The author demonstrates that this is not inconsistent with the indivisibility of human rights. Relying on the particular contexts of the African continent, he posits and discusses four sets of priority issues for human rights protection in Africa.

AGBAKWA, SHEDRACK C., A path least taken: economic and social rights and the prospects of conflict prevention and peacebuilding in Africa, *Journal of African Law* 47 (2003): 38–64

A critical appraisal of the dominant conflict prevention and peacebuilding strategies usually deployed in Africa and elsewhere reveals its narrow vision. Despite UDHR's enunciation of human rights-conflicts nexus; the adoption of conflict prevention as one of the primary purposes of the UN; and several ringing endorsements of the interdependence and indivisibility of all rights, the value of socio-economic rights in conflict prevention is vastly under-appreciated. The human rights component of conflict prevention strategies remains largely unreceptive or inattentive to, and dismissive of, the potential role of socio-economic rights in conflict prevention and peacebuilding. This article exposes the prevailing trend in conflict prevention literature, policy and practice. It urges a rethink of the narrow focus of extant conflict prevention strategies in order to enlarge the reach and maximize the potential. As a contribution to the rethinking process, it discusses the benefits of socio-economic rights to conflict prevention and peacebuilding efforts and why the non-enforcement of these rights is inimical to these noble efforts.

COHEN, TRACY, Rethinking (reluctant) capture: South African telecommunications and the impact of regulation, *Journal of African Law* 47 (2003): 65–87

SA has commenced the second phase of gradual liberalization and is about to open its fixed-line telephone market to competition. This article assesses the development of the SA telecom sector and examines new policy proposals already in the early phases of implementation, to evaluate whether they will facilitate or impede market growth. A key concern regarding the sector's economic future

lies in the regulatory environment and the role of vested interest groups in shaping its overall development. Legislative provisions having an adverse impact on sound regulatory governance are examined and, drawing on Bernstein's account of the regulatory life-cycle, a tentative theory of reluctant capture is advanced to explain this result. It is suggested that dominant theoretical perspectives on regulation and independence need to be reviewed within the unique context afforded by the SA historical narrative. The article proposes that a number of fundamental legislative design flaws need to be remedied or the SA telecommunication regulator will remain seized by inappropriate battles with policy makers. While the article concludes that SA remains an attractive and lucrative market on the ascent, remedying these flaws must be prioritized if the participation of foreign capital in the domestic market is to be secured.

MEINTJES-VAN DER WALT, LIRIEKA, The proof of the pudding: the presentation and proof of expert evidence in South Africa, *Journal of African Law* 47 (2003): 88–106

As complex technical and scientific evidence continue to increase and evolve, courts and judicial decision-makers will increasingly be challenged to use such potentially powerful evidence in the conviction of the guilty and the exoneration of the innocent. In this challenge lie the paradoxes and dilemmas encountered as science meets law in the courtroom. Expert evidence is usually sought because the expert by definition possesses knowledge, skill or expertise that the trier of fact lacks. The function of the expert is not to decide the matter in issue, but to assist the tribunal in considering issues that are beyond the knowledge of the tribunal. At the same time, precisely because the expert's knowledge is beyond the knowledge of the tribunal, it (the tribunal) is in a weak position to evaluate whether the expert evidence is genuine, valid or helpful. Conventional methods of evaluating evidence may fail to meet the challenges posed by expert evidence. This article investigates how the South African legal system, which is Anglo-American in tradition, deals with the problems of adversarial presentation and the evaluation of expert evidence in criminal justice matters. The article not only discusses the paradoxes and problems of expert evidence, but also gives consideration to guidelines which could assist in decision-making based on expert evidence.

McQUOID-MASON, DAVID, Legal aid in Nigeria: using National Youth Service Corps public defenders to expand the services of the Legal Aid Council, *Journal of African Law* 47 (2003): 107–116

The article proposes the establishment of a structured public defender programme in Nigeria through the use of law graduates in the National Youth Service Corps (NYSC). It is contended that such a scheme would expand dramatically the current level of legal aid in Nigeria. Drawing upon a similar model in South Africa, the article demonstrates how the Nigerian Legal Aid Council could implement such a programme.