Journal of African Law, **50**, 2 (2006), i–ii © School of Oriental and African Studies.
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ABSTRACTS

KIRKBY, COEL, Rwanda's *gacaca* courts: a preliminary critique, *Journal of African Law*, **50**, 2 (2006): 94–117.

Just over a decade after the 1994 genocide, over 1,000 accused languish in Rwandan prisons. The International Criminal Tribunal for Rwanda and the nation's domestic courts have struggled to bring them to trial. In response, the Rwandan government has embarked on an experiment in mass justice: the *gacaca* courts. The new courts are inspired by traditional dispute resolution mechanisms. The judges are elected by popular vote in their cells to hear cases such as murder, assault and property offences. The system permits appeals (except for property crimes), though not to the domestic courts. The setting is less formal than criminal courts and promotes confessions from perpetrators and forgiveness from survivors. Coupled with this process are two related schemes for victim compensation and community service for those convicted. This article examines these courts from the perspectives of retributive and restorative justice, within the Rwandan context. In practice, the *gacaca* courts embody both principles, as well as their tension. The judges are lay persons, yet are engaged in complex legal adjudication. The accused have no right to legal representation, nor an appeal to the domestic courts. More importantly, survivors are marginalized by the process as the practical and political pressures on the Rwandan government have made them opt for expediency (more and faster trials) over reconciliation (survivor compensation and manifest regret by the perpetrators). The *gacaca* courts hold out much promise of reconciling a deeply divided society, but redressing the needs of victims must become a priority.

PIETERSE, MARIUS, The potential of socio-economic rights litigation for the achievement of social justice: considering the example of access to medical care in South African prisons, *Journal of African Law*, **50**, 2 (2006): 118–131.

This article considers the remedial and transformative potential of litigation based on legally enforceable socio-economic entitlements, such as the justiciable socio-economic rights contained in the 1996 South African Constitution. It focuses on the interpretation and enforcement of South African prisoners' constitutional rights to dignified conditions of detention (including the provision of adequate medical treatment at state expense) and to consult with medical practitioners of their choice. Although these rights have not yet been the subject of a decision by the South African Constitutional Court, they have been central or incidental to a number of High Court decisions. The article discusses these decisions in an attempt to illustrate, first, that courts are institutionally equipped to effectively vindicate socio-economic rights, secondly, that the enforcement of socio-economic rights may result in tangible and affirmative relief for individual beneficiaries, and thirdly, that victories in socio-economic rights matters may cumulatively have significant transformative potential. The article situates prisoners' rights to medical treatment in the South African social, legal and constitutional contexts, discusses the ambit, scope and remedial potential of the rights, and considers the affirmative and transformative effects of the judgments in which they have been enforced. In particular, the article considers the impact of this distinct body of socio-economic rights jurisprudence on overarching social struggles for improved access to health care services (especially antiretroviral treatment) in South African prisons.

AKUFFO, KWAME, Equity in colonial West Africa: a paradigm of juridical dislocation, *Journal of African Law*, **50**, 2 (2006): 132–144.

In English law, equity is assigned relatively benign and comfortable roles, functioning as a canon of interpretation of the common law; as its versatile and flexible help-mate and mitigator of its formal strictness. More than this, equity claims a moral justice or conscience function that is deeply embedded in legal culture. As a consequence, equity has been extremely successful in lubricating the machinery of English law, providing it with a ready means of change to meet the needs of the dominant actors within society. This justice function is, however, contradicted by equity's history and its practical functioning, particularly, within the British colonial experience. This article examines the effect of the imposition of English equity on the prevailing customary law systems in colonial West Africa. The analysis challenges the fundamental claim of equity to a moral justice function within the colonial regime and argues that equity served the imperial objective as an instrument for fragmenting and dislocating indigenous property systems in order to facilitate the installation of capitalist property forms.

HATCHARD, JOHN, Combating transnational crime in Africa: problems and perspectives, *Journal of African Law*, **50**, 2 (2006): 145–160.

Transnational crime is a major problem for African states with corruption, trafficking of persons, drugs trafficking, environmental crime and the like posing a major threat to development and stability. This article examines three challenges that states must tackle in order to combat transnational crime effectively. The first is how to deal with criminals who operate outside the jurisdiction. The second concerns the investigation of crimes with a transnational element. The third challenge involves tracing and then recovering the proceeds of crime that have been moved out of the country where the crime occurred. Here the need for Western states to cooperate with those in Africa is highlighted. Drawing on examples from Lesotho and Nigeria in particular, it is argued that some progress is being made in meeting these challenges. However, the article notes that developing the political will to tackle transnational crime is fundamental to any lasting improvement.

OGOWEWO, TUNDE I., and UCHE, CHIBUIKE, (Mis)using bank share capital as a regulatory tool to force bank consolidations in Nigeria, *Journal of African Law*, **50**, 2 (2006): 161–186.

This paper is a critique of the policy-making process and the particular policy choice made by the Central Bank of Nigeria with respect to the recent increase in the minimum share capital requirement for Nigerian banks. The article questions the apparent prioritization by the Central Bank of banking supervision – important though it is – over macro-economic stability. It also draws attention to serious public law issues (breach of monetary law and abuse of power) and the private law implications (conflicts of interests, scheme of arrangement defects, and negligent valuations) of this policy-making episode and policy choice.