RULE OF

2010 Volume 2 Issue 1

Human dignity and the rule of law

Rule of law in Kenya and South Sudan

Informal justice and economic outcomes

New model for research on rule of law

Legal reform in former communist states

HJRL 2010/1

HAGUE JOURNAL ON THE RULE OF LAW

www.asserpress.nl/cata/haguejournal/fra.htm journals.cambridge.org/ROL Recommended citation: HJRL

The *Hague Journal on the Rule of Law* is a multidisciplinary journal that aims to deepen and broaden our knowledge and understanding about the rule of law. Its two main areas of interest are: 1) theoretical issues related to the conceptualization and implementation of the rule of law in domestic and international contexts; 2) the relation between the rule of law and economic development, democratization and human rights protection. The *HJRL* welcomes contributions from academics and practitioners with expertise in any relevant field, including law, anthropology, economics, philosophy, political science and sociology.

The *Hague Journal on the Rule of Law* is supported by the Hague Institute for the International-isation of Law (HiiL). It is indexed by the Legal Journals Index (LJI).

Editorial Office

Hague Journal on the Rule of Law, Ronald Janse, Utrecht University Law School, Achter Sint Pieter 200, 3512 HT Utrecht, The Netherlands, Tel +31(0)302537274/7085, Fax +31(0)302537067, e-mail: hjrl@uu.nl.

Distribution

The *Hague Journal on the Rule of Law* is distributed for T.M.C.ASSER PRESS by Cambridge University Press, Cambridge, UK. The journal is also available online through the Cambridge Journals Online service. This service can be found at http://journals.cambridge.org.

Subscription rates and specimen copies

Subscription to the *Hague Journal on the Rule of Law*, Volume 2 (2010): Print + online: GBP 96.00 / USD 190.00 / EUR 120.00. Print only: GBP 90.00 / USD 179.00 / EUR 113.00; Online only: GBP 86.00 / USD 170.00 / EUR 106.00. Subscription orders and requests for specimen copies should be sent to Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 2RU, UK.

Advertising

To advertise in the journal please contact the relevant Advertising Promoter for your area: in the USA, Canada or Mexico: journals_advertising@cup.org or telephone +1 (212) 337 5053; in the UK, Europe or rest of the world: ad_sales@cambridge.org or telephone +44 (1223) 325757.

Photocopying

This journal is registered with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, USA. Organizations in the USA who are also registered with the C.C.C. may, therefore copy material (beyond the limits permitted by sections 107 and 108 of US Copyright law) subject to payment to the C.C.C. of the per copy fee of \$15.00. This consent does not extend to multiple copying for promotional or commercial purposes. Code 1876-4045/10. ISI Tear Sheet Service, 3501 Market Street, Philadelphia, PA 19104, USA, is authorized to supply single copies of separate articles for private use only. Organizations authorized by the Copyright Licensing Agency may also copy material subject to the usual conditions. For all other use, permission should be sought from the copyright owner. Please apply to the Editorial Office of the *Hague Journal on the Rule of Law* (see above).

ISSN (Print) 1876-4045 ISSN (Online) 1876-4053

© 2010 T-M-C-Asser Press, The Hague, and contributors.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owners.

BOARD OF EDITORS

EDITORS-IN-CHIEF

Julio Faundez, Professor of Law and Dean of the Law School, Warwick University, UK

Randy Peerenboom, Professor of Law, La Trobe University, Melbourne, Australia & Associate Fellow Oxford University Centre for Socio-Legal Studies

Articles & Book Reviews Editors

Ronald Janse, Associate Professor of Law, Utrecht University, The Netherlands

Sam Muller, Director, Hague Institute for the Internationalisation of Law (HiiL), The Hague, The Netherlands

EDITORS

Pim Albers, Ministry of Justice of The Netherlands

Per Bergling, Professor of Law, Umeå University, Sweden

Christina Biebesheimer, Chief Counsel, Justice Reform Practice Group, World Bank, Washington, DC, USA

Simon Chesterman, Global Professor and Director of the New York University School of Law Singapore Program and Associate Professor of Law, National University Singapore, Singapore

Mark Ellis, Executive Director, International Bar Association, London, UK

James A. Goldston, Executive Director, Open Society Justice Initiative, New York, NY, USA

Stephen Golub, Lecturer in International Development and Law, Boalt Hall Law School, University of California at Berkeley and Adjunct Professor in Strengthening Legal Systems and Legal Empowerment, Central European University, Budapest.

Philip Jeyaretnam, Senior Counsel, Partner and Commercial Litigator, Rodyk and Davidson LLP, Singapore

Sumaiya Khair, Professor of Law, University of Dhaka, Bangladesh

Martin Krygier, Professor of Law, Co-Director — Centre for Interdisciplinary Studies of Law, University of New South Wales, Sydney, Australia

Marlon J. Manuel, Coordinator Alternative Law Groups, Ateneo de Manila University, Quezon City, Philippines

Hiroshi Matsuo, Professor of Law, Keio University, Tokyo, Japan

André Nollkaemper, Professor of International Law and Director of the Amsterdam Center for International Law, University of Amsterdam, The Netherlands

Jan Michiel Otto, Professor of Law and Governance in Developing Countries and Director of the Van Vollenhoven Institute for Law, Governance and Development, Leiden University, The Netherlands

Dory Reiling, Judge District Court Amsterdam & Researcher (Senior Judicial Reform Specialist), Council for the Judiciary, The Hague, The Netherlands

Katalaina Sapolu, Legal Advisor & Head Justice Section, Legal and Constitutional Affairs Division, Commonwealth Secretariat, London, UK

Michiel Scheltema, Former Chairman Dutch Scientific Council of Government Policy, Professor of Law, Utrecht University and Chair Programmatic Steering Board Hague Institute for the Internationalisation of Law (HiiL), The Netherlands

Gunnar Folke Schuppert, Research Professor of New Forms of Governance, Social Science Research Centre, Berlin, Germany

Brian Z. Tamanaha, Professor of Law, St John's University, New York, NY, USA

Alexander J. Thier, Co-director International Network to Promote the Rule of Law, United States Institute for Peace, Washington, DC, USA

Erik Wennerström, Senior Legal Advisor, Ministry for Foreign Affairs, Stcokholm, Sweden

Michael Zürn, Professor of International Relations, Dean of the Hertie School of Governance, Berlin, Germany

HAGUE JOURNAL ON THE RULE OF LAW

2010 VOLUME 2 ISSUE I

CONTENTS

Articles

David Pimentel, Rule of Law Reform Without Cultural Imperialism? Reinforcing Customary Justice Through Collateral Review in Southern Sudan 1

David Luban, The Rule of Law and Human Dignity: Re-examining Fuller's Canons 29

Adriaan Bedner, An Elementary Approach to the Rule of Law 48

Varun Gauri, Customary Law and Economic Outcomes in Indonesia 75

Notes

Tanja Снорга, Dispensing Elusive Justice: The Kenyan Judiciary Amongst Pastoralist Societies 95

Rolf Knieper, Pulls and Pushes of Legal Reform in Post-Communist States 111

Editorial Policy & Guidelines for Contributors

The Hague Journal on the Rule of Law publishes two categories of articles: papers (approx. 6000–10.000 words) and notes (approx. 500–3000 words). Papers are accepted on the basis of double blind peer-review. Notes are accepted on the basis of review by two or more editors of the journal. Authors should feel free to make inquiries at the Editorial Office in case they consider writing a paper or a note. Authors are kindly requested to send their manuscript to the Editorial Office at any time of the year. All submitted materials should be in English. For detailed guidelines for manuscripts, contact the editorial office or see www.asserpress.nl/cata/hjrl/fra.htm or http://journals.cambridge.org.

Submission and publication elsewhere

Manuscripts submitted to the *HJRL* must not be under consideration for publication elsewhere. Acceptance of the Editorial Board's offer to publish, implies that the author agrees to an embargo on publication elsewhere for a period of two years following the date of publication in the *HJRL*. After this two-year period, the author may republish the article elsewhere, provided only that the author notifies the Publisher and ensures that the Publisher is properly credited and that the relevant copyright notice is repeated verbatim.

Revision, language-editing and copy-editing

Authors are responsible for the language-editing of their texts and copy-editing in conformity with the guidelines for authors. After acceptance of a text for publication, the fully edited and correct text must be sent to the Editorial Office within four weeks. Any (minor) changes to the text must also be made within this four-week period. Authors will *not* receive formatted proofs for correction.

Books for Review

Books for review and proposals to review books should be addressed to the Editorial Office.

Fees

Authors will not receive a fee, but will be presented a complimentary issue of the *HJRL* in which their contribution appears.