

## Recent Publications

### **Fareda Banda *Women, law and human rights: An African perspective***

Hart Publishing (2005) 407 pages

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Fareda Banda's book, *Women, law and human rights: An African perspective*, deals with a contemporary human rights issue — the rights of women in Africa. It consists of eight chapters. Chapter one is introductory and looks at the impact of culture on human rights and feminist debates on the subject. Chapter two gives a general overview of how customary laws developed in Africa since the colonial era. This chapter also looks at the conflict of laws that exists between customary laws and other laws. It considers constitutional protection of women in Africa. The author uses domestic court decisions to illustrate these tensions. Banda highlights the conflicts of laws that exist and how these can be a cause for failure to realise the rights of women.

Chapter three explores the feminist view of human rights and how, until recently, Africa has been excluded from making a contribution to the development of human rights norms. Furthermore, the chapter looks at both the African human rights system and the regional initiatives that have been developed to deal with gender discrimination. The chapter analyses some of the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and also discusses the issue of reservations and how this relates to CEDAW. The history and drafting process of the recently adopted Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women' Protocol) is traced. The author then gives an overview of the Women's Protocol. This chapter addresses a number of issues. The level of detail to which the author has gone in examining the history and drafting process of the Women's Protocol is commendable, especially as not much has been documented on this process.

In chapter four, family law, gender equality and human rights are the focus areas. Feminist perspectives of the family are discussed, with marriage as the main focus. The conflict created by legal pluralism is analysed. Other issues that receive attention in this chapter include bride wealth, children of the marriage, and divorce and its consequences. Even though there are many issues that have been dealt with in this chapter, the author explains them in some depth.

Chapter five combines the issues of violence against women and reproductive rights. It analyses international and national developments in relation to violence against women. It also explains the different forms that violence against women can take. Reproductive health rights for women receive attention and health as a human right is also analysed. A criticism of this chapter could be that it combines two very important issues and it is therefore too loaded and could have been more analytical if it dealt with them separately.

In chapter six, female genital cutting (FGC) is the focus and the author starts by explaining what the practice involves and the difficulties of terminology. The chapter also analyses how the practice affects children's rights and then looks at national legislation dealing with this matter and civil society's contribution in addressing the problem. The subject of FGC has been researched quite extensively, but it would have been a major omission to discuss women's rights in Africa without discussing this subject.

Chapter seven covers culture, development and participation of women in governance. This chapter deals with culture and its impact on human rights. The chapter proceeds to look at women's involvement in development. It goes on to deal with the subject of women and political participation and the work of non-governmental organisations. Perhaps parts of this chapter could have been discussed earlier, especially the subject of culture. This is because the two areas on which Banda has focused throughout the book are culture and feminists' views. It would have been ideal to try and discuss the issue of culture more extensively at an earlier stage of the book, because culture affects all women's rights.

In its conclusion, the book looks at an overview of the development of human rights, weaknesses of African states, culture, the need to democratise the family and expanding the feminist project in Africa.

The publication is timely, especially in view of the recent entry into force of the Women's Protocol. Banda in some instances uses her personal experiences as a woman to illustrate some of the issues affecting women's rights in Africa. The book is well researched and written in plain language. Experts and lay persons in the field of human rights would be able to easily grasp the issues she raises. The book has a very practical approach to issues of women's rights in Africa. Decisions of

domestic courts are used to show how courts have addressed the issue of women's rights.

Researching about a continent which is not monolithic is not an easy task, but Banda has been able to draw examples from across the continent and uses them to illustrate her points. In a number of instances, Banda appears to put the emphasis on examples from Zimbabwe at the exclusion of other African countries. Her use of authority is elaborate and hence the book is a good resource for further research. Another positive aspect of the book is that it manages to integrate the Women's Protocol, which entered into force recently.

The book further helps in the clarification of some common terms used when dealing with women's rights. In many instances it brings to the fore the different points of view that exist on terminology.

Banda has been able to address the debates that are raised by feminists from the developed and developing countries. She has also been able to bring to the fore the issue of how culture can affect the realisation of women's rights in virtually every sphere of their lives.

The book can be criticised for dealing with too many issues, in some instances leading to a general overview of the matter rather than thorough analysis. This means that in some aspects it lacks depth.

This is a book that deals with contemporary issues in the field of women's rights and it is recommended reading for anyone who is keen to learn more about or to reflect on women's rights in Africa.

### **Linda C Reif (ed) *The International Ombudsman Yearbook***

Volume 7 2003 Martinus Nijhoff Publishers (2005) 174 pages

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The first parliamentary ombudsman was elected by the Swedish parliament nearly 200 years ago. Over the last few decades, the number of ombudsman institutions around the world has increased to the extent that by the end of 2004, the International Ombudsman Institute (IOI), based in Canada, has 130 ombudsman institutions as members. *The International Ombudsman Yearbook*, published by the IOI since 1981 (before 1995 under the title *The International Ombudsman Journal*), fills an important role for ombudsmen from around the world to exchange experiences.

The volume here under review begins with a foreword with informa-

tion on the IOI, followed by a welcoming speech by the Governor-General of Canada to the IOI conference held in Canada in September 2004 with the theme 'Balancing the obligations of citizenship with the recognition of individual rights and responsibilities — The role of the ombudsman'. Many of the papers in this volume were first presented at this conference, which is held every four years.

In his contribution, Louis LeBel, judge of the Supreme Court of Canada, discusses the relationship between democracy and cultural diversity. There are two different approaches to this issue. In the USA and France, democracy is seen as a tool for assimilation, while for example Canada, Belgium, India, South Africa and Switzerland seek to accommodate cultural diversity, though all groups must share some fundamental values. Judge LeBel favours the latter approach and finishes his contribution by pointing out the important role ombudsmen should play in accommodating cultural diversity.

The 1996 IOI conference set out four criteria to be fulfilled by ombudsman institutions: independence, accessibility, credibility and flexibility. In her chapter, Kerstin André, one of the four parliamentary ombudsmen of Sweden, discusses the importance for the ombudsman institution of flexibility in order to meet the changing needs facing societies over time. She also acknowledges that ombudsman institutions around the world cannot function according to one model, but that 'we, in our eagerness to adapt to the circumstances, must not forget about the significance of the role that we as ombudsmen are playing as supervisors of public governance and as guardians of fundamental human rights' (p 46).

Emily O'Reilly, ombudsman of Ireland, focuses on the need to adapt, in particular in the face of globalisation with its effect on privatisation, measures taken in the fight against terrorism and immigration. She argues that ombudsmen should give more focus to international human rights law in discharging their functions, whether they retain the traditional ombudsman role of dealing with maladministration, or whether they have a more human rights-focused mandate, as many newer ombudsman offices have.

Howard Kushner, ombudsman of British Columbia, Canada, addresses the question: 'How do you know you are doing a good job? Strategic plans, performance measures and surveys.' The issue of credibility is also addressed in an article by André Martin, ombudsman of Ontario, Canada, entitled 'Demonstrating your value'.

Some countries have established issue-specific ombudsmen, for example dealing with the rights of children and minorities. Jenö Kaltenbach, Parliamentary Commissioner for the Rights of National and Ethnic Minorities in Hungary, discusses the mandate and activities of this institution, which during its nine years in existence has received over 4 000

complaints. A contribution by Lisa Statt Foy deals with efforts to create an ombudsman for indigenous peoples ('first nations') in Canada.

The final contribution in the volume by Catarina Sampaio Ventura and Joo Zenha Martins deals with the Charter of Fundamental Rights of the European Union, adopted jointly by the EU Council, Parliament and Commission in 2000. The authors discuss the added value of the Charter in the European legal order and the role the EU ombudsman and the ombudsmen of the individual member countries can play in realising the rights contained in the Charter.

Many of the articles in the *Yearbook* are written by people with practical experience as ombudsmen. None of the contributions in the current volume deals with Africa, where an increasing number of states now have ombudsman institutions. However, an index of articles published in the *Yearbook*, and the *Journal* that preceded it, shows that a number of articles in past volumes have dealt with ombudsman institutions in Africa. Hopefully ombudsmen from around the African continent will reflect on the lessons from other parts of the world that the contributions to the *Yearbook* provide and share their own experiences in future volumes of the *Yearbook*.