ABSTRACTS

The 'Agreement Establishing the Caribbean Court of Justice' within the CARICOM framework

By *Julia Lehmann*

In 1999 the "Agreement establishing the Caribbean Court of Justice" was drafted following decades of debate on the establishment of a regional Supreme Court for the Caribbean. The result is remarkable: the court-to-be will not only be a Supreme Court replacing the British institution of the Judicial Committee of the Privy Council in London as the final court of appeal, but it will also have the task of adjudicating disputes arising from the interpretation and application of the treaty of the Caribbean Community (CARICOM). The latter aspect of its competences is comparable to the function of the European Court of Justice, the Andean Court of Justice and other recently set up bodies throughout Africa.
The article starts out with some background information on the history and structure of the Caribbean Community, followed by a brief analysis of the current CARICOM dispute settlement mechanism and the appellate jurisdiction of the Privy Council. Then, the structure and the competences of the Caribbean Court of Justice as drafted in the agreement are outlined. The heated discussions surrounding and accompanying the treaty provisions are portrayed, including issues such as the resurrection of the death penalty and fears of undue political influence on the judiciary.
The article concludes by critically examining the potential problems of the court – especially financing and acceptance –, also by way of a brief comparison with comparable institutions in other regions of the world. However, discussed are also benefits of the region which could help the court to succeed, the common legal tradition, already existing regional courts and others more. A likely outcome of the setting up of the court will be a boost to regional self-confidence and self-understanding.

The None Judiciary Modes of Conflict Settlement in Ivory Coast

By *Eugène Assi Assepo*

With the inadequacy and the crisis in the state justice, the overall Ivorian society has favored the introduction of a negotiated mode of conflict settlement sustained by the persistence of traditional modes of conflict settlement and the creation of new modes.

The aim of this paper is to analyze the persistence of traditional modes of conflict settlement and to highlight the new modes and show the impact of these on the state justice. The persistence of traditional modes of conflict settlement entails a twofold mechanism. First, the transaction, a conventional mode of conflict settlement was designed by the legislator in civil as well as criminal law. The Ivorian authorities have been using it to regulate justice by maintaining in the internal legal order that none-judiciary solution of conflict settlement inherited from the colonial law. Second, the use of conciliation, an informal and age-old mode of settling conflicts in Africa that authorities have tolerated and encouraged. This is reflected in the subsistence of the judiciary power of village chiefs, who are deprived legally of any competence. It is also reflected in what can be called Justice of Proximity that allows the settlement of some conflicts in poor urban districts of Abidjan by some authorities (Presidents of residential committees and districts chiefs).
The new modes of conflict settlement have brought about the arbitrator and the mediator. Because of the fear expressed by the Ivorian population of the state lawyer for many reasons, two none-judiciary modes of settling conflicts have recently been considered as legal: arbitration et mediation. First, the issue of the existence of commercial arbitration in Ivory Coast has rendered necessary the legalization of the concept and has therefore solved the problem of the *executor* of the arbitral sentence. The competition of the arbitration organized by the Treaty of the Organization for the Harmonization of Business Law in Africa (OHADA) confirms that idea. In addition, the institutionalization of mediation through the creation of the Presidential Mediation Agency (OPREM) and the Grand Mediator has brought about in practice what is called the "Ivorian Dialogue" through which Ivorians prefer to have an administrative authority – namely the President of the Republic- settle their conflicts instead of the Judge. The great power conferred to the mediator seems to jeopardize the access to the state judge. It seems appropriate to conclude that, since the resort to a third person is the foundation of justice in all legal systems, a new law is, perhaps, coming to life in Africa and particularly in Ivory Coast.

The Constitution of Laos under pressure of change?

By *Michael Mors*

This article intends to provide an overview over the constitution of Laos, a constitution of a country which is not only poor and socialist, but largely forgotten. The scope of the article is limited to specific aspects of the present constitutional debate among national and international observers and actors which might result in constitutional change in the future.
After an historic introduction the article addresses the infiltration of all state organs by the Lao People's Revolutionary Party and shows that the constitutional concept of unified

powers combined with that of democratic centralism has been fully implemented within Laos.
Most countries have evolved progressively from a centralised system towards a more or less decentralised model. In Laos, instead, there has been a shift from a conglomeration of highly autonomous provincial administrations towards a unified State with national policies.
In addition, the article considers the gap between the constitutional text and the failure to implement certain fundamental human rights. The future development of human rights protection in Laos may, *inter alia*, depend on the influence of economic and political developments deriving from a closer cooperation with neighbouring countries and with international organisations and from technological innovation and change (*e.g.* in the internet) which is to a large extent beyond the state's control. However, the direction of future developments is not clear, as Laos is a country of a different pace: slow and deliberate.

From Veto Institution to Deliberative Chamber? Thailand's First Elections to the Senate

By *Aurel Croissant*

Thailand's latest electoral reform, adopted in October 1997 and part of the 16th constitution of the Kingdom since 1933, was the introduction of direct elections to the Senate. On 4 March 2000, and two and a half years after the promulgation of the sixteenth constitution of the Kingdom of Thailand in October 1997, the Thai voters went to the polls for the first Senatorial elections ever held since the installation of a bicameral parliament in 1946. Numerous people and groups from the civil society, who have been part in the process of writing the new constitution, as well as the national media and observers from abroad had the hope that the elections would lead to an independent and competent second chamber, that would not be attached to the political influence of the bureaucracy and the military anymore, but that could act as a powerful institution that would check and deliberate the House of Representatives as well as the government. In the following analysis the question will be examined, whether the elections had this effect, and which consequences it will have for the future political role of the Senate. To answer this question, this paper is organized into four parts: Firstly, it analyses the role of the Senate before and after 1997. Secondly, the organizational context of the elections is described. Thirdly, the election itself, their course and the results will be analyzed. Finally, some tentative conclusions concerning the relevance of the election for the future development of democracy in Thailand are given.