

# ABSTRACTS

## **The Land Question and Land Reform in Namibia**

By *Harald Sippel*, Bayreuth

Since independence from South African rule in 1990 the ‘land question’, i.e. the access to land by the landless, is discussed in Namibia. Here, in contrast to neighbouring Zimbabwe, a former settler colony with a similar colonial history, the land question and the issue of land reform is not a matter of violence. But there is a certain kind of radical rhetoric by politicians which may frighten both the people in the country and observers abroad that the Zimbabwean method of land redistribution will be adopted by Namibia.

The paper examines the evolution of main aspects of land law and the changes of land ownership in pre-colonial and colonial Namibia. During the colonial period under German rule Africans were alienated from their land in favour of European settlers. Under the rule of the South African mandate power the areas of settlement were separated in ‘homelands’ with communal land for the various African peoples and commercial farming areas with private land ownership for the European population of the country. Independent Namibia inherited these complex legal conditions by the colonial predecessor. The article discusses, *inter alia*, whether there is a need for a land reform in Namibia, whether the suggested instruments of a land reform are in accordance with the Constitution of Namibia, and such an ambitious project might be financed.

## **The Formation of a Constitutional Court in Bolivia**

By *Francisco Fernández Segado*, Madrid

Bolivia is one of the Latin American States which tries to divert from the US-American controlling-mechanisms of constitutionalism to the European tradition of having Constitutional Courts.

Bolivia’s Constitution of 1967 states in its articles 228 and 229 that the constitutional control lies in the hands of the Ordinary Courts, judges and the administrative organs. This system got to its limits because of the lack of personnel, specialized in constitutional matters. In order to overcome this unsatisfactory situation, the Bolivian Parliament decided

in 1994 to change the above mentioned Constitution. By doing so, the Parliament passed a law in 1998, No. 1836, which implemented the formation of a Constitutional court. This Law 1836 is subdivided into four parts and contains 119 articles. It regulates mainly the composition of the Court and the different types of procedures. The new "Tribunal Constitucional" will consist of five judges, which will be elected by a 2/3 majority of the National Congress. The main competences of the Court are deciding on disputes between State Organs and dealing with complaints of constitutionality.

### **Repression as a remedy against corruption in the Public Service of Cameroon?**

By *Joseph Fomestu, Ngaoundéré*

Corruption in Cameroon reached such a level that the country has been classified, by Transparency International, an International Non-Governmental Organization, as the most corrupt country in the world for two successive years (1998 and 1999). The high degree of corruption in Cameroon may partly be explained by the impunity of those involved in corrupt practices and the low salaries in the public sector. The former cause can be justified by the fact that Cameroonian law punishes both the corrupt and the corrupter, which does not facilitate the condemnation of illicit acts of higher authorities. It was necessary to enable the victim of corruption, i.e. the corrupter, to condemn the other without exposing himself to sanctions before the law. This measure, coupled with a proportional link between prison sanctions and the value of funds or of goods that have been circulating, may be seen as an effective complementary sanction such as confiscation and publication of judgments constituting a very important step in the fight against corruption.

As concerns the second cause, measures have to be taken to avoid corruption in important sectors of the public administration, such as in the areas of justice and law whose members are relatively well paid. In this case it may be reasonable to combine repressive measures such as criminal punishment with disciplinary measures.

### **The Evolution of the South African Citizenship Act of 1995 with Special Reference to the Legal Situation in the Former Homelands**

By *Wolf B. van Lengerich, Frankfurt/Main*

The South African Citizenship Act of 1949 has influenced the country's history like hardly any other piece of legislation. For decades it was the foundation upon which Apartheid was based, as it provided a legal basis for the deportation of the black population of South

Africa to 'Homelands'. After the abolition of Apartheid in the early 1990s, the new South African Citizenship Act of 1993 was the basis upon which the inhabitants of the Homelands were reintegrated into South Africa.

Together with the first free and open election on April 27, 1994 a new constitution was passed, protecting human rights and the right to equality. The new constitution also covers the protection of citizenship and secures the political rights belonging to citizens of South Africa.

The South African Citizenship Act of 1995 then removed the last remnants of the Apartheid system from the citizenship law. A unified citizenship of the population of South Africa is the basis for the country's new citizenship act. Application for citizenship is still a matter primarily decided on the basis of *ius soli*. Citizenship can now only be lost on the basis of a contravention of the rules and conditions clearly outlined in legislation, and is no longer a decision that can be made on the opinion of the Minister of Home Affairs. The possibility of dual nationality remains. However, the right to this is lost if the South African citizen uses the passport or right to vote of another country.