HASTINGS INTERNATIONAL AND COMPARATIVE LAW *Review*

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Allegations by political leaders and others that offshore financial centers enable multinational enterprise to avoid paying a "fair" amount of tax—and that they enable wealthy individuals to evade paying any tax, much of it on ill gotten gains—are once again garnering headlines and inspiring government action. One of the most prominent commentators on these topics, The Tax Justice Network, has recently claimed that thanks to the services of tax havens, $21 trillion to $32 trillion of wealth of questionable origin remains hidden and untaxed, and that such abuse must be stopped through greater regulation. In this paper we argue that such claims rest on poor data and analysis, and on mistakes about how financial transactions, international taxation, and anti-money laundering rules actually work. We further argue that demands for more regulation without considering cost and effectiveness rely on a belief that international financial transactions are assumed illegitimate unless tightly controlled, rather than primarily reflecting the normal, legitimate workings of an efficient market.

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A few years after the fall of apartheid, South Africa adopted one of the most progressive constitutions in African history in 1997. This adoption affirmed the emerging trend of constitutional reform embraced by many African nations, since the 1960s when most gained their independence. Most constitutional reform in Africa, focused on increasing human rights protections for Citizens. One such right is the right to strike.

This note will examine the Kenyans' choice to include a "Right to Strike" provision in the newly adopted Constitution of 2010, in the face of a similar provision in the Labour Relations Act of 2007. The Kenyan teachers' and doctors' strikes that occurred in 2012, will be compared to a similar South African national public workers' strike that occurred in 2007. This comparison will be particularly instructive because the New Constitution of Kenya was closely modeled after the South African Constitution. These case studies will reveal the conflict of law problem encountered by the Kenyan public sector workers during their strikes in 2012. This tension in the law was not addressed during the constitutional reformation process or in any subsequent law. These case studies demonstrate the need to put in place practical and appropriate implementation mechanisms in certain areas of the New Kenyan Constitution.

This note will propose a framework that includes

increased utilization of the Commission for the Implementation of the Constitution, a nonjudiciary entity. Additionally, it would be prudent for the executive and judicial branches to join arms, in order to allow Kenyan Citizens to exercise their right to strike without having to violate the law through civil disobedience. Changes in implementation will affirm the spirit of the New Constitution, and the desire that it be a reflection of the people's "will and aspirations."

THREE'S (NOT) A CROWD IN INTERNATIONAL TAX ARBITRATION: INTERNATIONAL TAX ARBITRATION AS A DEVELOPMENT OF INTERNATIONAL COMMERCIAL ARBITRATION RATHER THAN A MAP FIX
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One of the goals of bilateral tax conventions is mitigating instances of double taxation for each state's taxpayers. Tax conventions include a Mutual Agreement Procedure (MAP) to handle disputes brought by a taxpayer of one state claiming double taxation by his home country and the other state party to the convention. Once a claim is initiated, each state designates competent authorities to resolve the issue through MAP. MAP's three main weaknesses include the length of time it takes competent authorities to agree, the possibility that competent authorities will not reach an agreement, and that the taxpayer who brought the dispute is not involved in the process.

To address these problems, countries began including arbitration provisions in MAP clauses. Mandatory binding arbitration helps "fix" the first two weaknesses of competent authority time management and agreement, but does little to include the taxpayer in the process. This paper suggests that mandatory binding arbitration of international tax disputes be included in tax conventions independently of MAP. Countries including arbitration clauses should look to established international commercial arbitration norms as a model of a successful, widely used system. As a separate dispute resolution mechanism, international tax arbitration encourages competent authority agreement in a timely manner, and can be drafted to include taxpayer participation. Arbitration as a state-state-taxpayer process will be most effective at resolving

international tax disputes, thereby limiting double taxation and encouraging world wide economic activity.