NELSON MANDELA UNIVERSITY

RESEARCH OUTPUTS

2024

Faculty of Law

Editor: S Gillespie

TABLE OF CONTENTS

ARTICLES 1

1.1 ADMINISTRATIVE LAW 1

1.1.1 Msimanga, Lwandile; Ngwenyama, Lerato Rudolph and Van Dyk, Frederik Rudolph "Sound Substantive Law Application Yet Dubious Adjectival Process in *R K v Minister of Basic Education* [2019] ZASCA 192" 1

1.2 CLINICAL LEGAL EDUCATION 2

1.2.1 Welgemoed, M; Coetzee, L; Beerman, R and Van Vuuren, E "HiveLaw: Propelling the Nelson Mandela University Law Clinic into the Future: A Consideration of Technology's Integral Role in Modern Legal Service Delivery and the Consequences for Legal Education" 2

1.2.2 Welgemoed, M and Lerm, H "Justifying the Integration of Clinical Legal Education With Procedural-Law Modules to Develop Practical Skills in Law Students" 3

1.3 COMPANY LAW 5

1.3.1 Coetzee, Lindi and Botha, Bernardus Hermanus "De Facto and Shadow Directors: Lessons From New Zealand" 5

1.3.2 Nzimande, MA, Botha, J & Denson, R "Should the Company's Dignity Be Protected Under Section 10 of the Constitution – The Question in *Reddell v Mineral Sands Resources (Pty) Limited* [2022] ZACC 38" 6

1.4 CONSTITUTIONAL LAW 7

1.4.1 Phorego, M & Van As, HJ "The Justiciability of Cabinet Appointments in South Africa" 7

1.4.2 Phorego, M "Promoting Administrative Justice for Presidential Pardons in South Africa" 8

1.4.3 Van Dyk, O and Scott-Ngoepe T "Did the CPA Shut the Bathroom Doors for Transgender and Non-Binary People? A Critical Legal Reflection of Section 9(2) of the CPA" 9

1.5 CONSUMER PROTECTION LAW 10

1.5.1 Tait, AM "Cession and the Application of the Consumer Protection Act, 2008: A Discussion of the *South African Securitisation Programme (RF) Ltd v Jaglal-Govindpershad* (5835/2022) [2023] ZAGPJHC 728 and *South African Securitisation Programme (RF) Ltd v Lucic* (2022/6034) [2023] ZAGPJHC 768 (6 July 2023) Cases" 10

1.5.2 Tait, AM "Supervening Impossibility and the Supplier's Duty to Perform in Terms of Section 19 of the Consumer Protection Act, 2008 *National Consumer Commission v Crystal Tears Investment 206 CC t/a Misty River and Elizabeth Hoogenhout t/a Misty River* NCT/261684/2023/73(2)(b)" 11

1.6 CRIMINAL PROCEDURE LAW 12

1.6.1 Gumboh, Esther "Mitigating Malawi's Corruption Crisis: Lessons from Botswana" 12

1.7 FAMILY LAW 13

1.7.1 Denson, R "A Step in the Right Direction or Additional Burden for Women Married in Terms of Islamic Law? – *Women's Legal Centre Trust v President of the Republic of South Africa* [2022] ZACC 2" 13

1.7.2 Denson, R & Van der Walt, G "*Locus Standi In Iudicio* – The Right of a Parent to Claim Maintenance on Behalf of an Adult Dependent Child – *Z v Z* 2022 (5) SA 451 (SCA)" 14

1.7.3 Van der Walt, Glynis "The Best Interests of a Child in Alternative Care and Intercountry Adoption – A Model for a Uniform Approach" 15

1.8 GENDER AND LAW 16

1.8.1 Spies, Amanda "Judging Gender: The Sentencing of South African Mothers Who Murder Their Children" 16

1.9 HUMAN RIGHTS LAW 17

1.9.1 Gumboh, Esther "The Abolition of the Mandatory Death Penalty in Africa and the Resentencing of the Innocent" 17

1.9.2 Ndimurwimo, LA; Wanjala, EN & Makori, AF "A Critique of the Efficacy of the Right to Shelter for Street Children in Kenya" 18

1.9.3 Ndimurwimo, LA "The Impact of the Flaws of Transitional Justice Mechanisms in Burundi on Aspiration 4 of the African Union's Agenda 2063" 19

1.9.4 Spies, Amanda and Pieterse, Marius "Corporations and Cities Under Distress: Organised Business and 'Emergency' Governance in Nelson Mandela Bay, South Africa" 20

1.9.5 Spies, A; Ndimurwimo, L & Nxumalo, N "The Importance of Litigating the Right to Access Sufficient Food: *Equal Education v Minister of Basic Education*" 21

1.10 INTERNATIONAL LAW 22

1.10.1 Ali, Kamal-Deen; Agyekum, Humphrey A; Bueger, Christian and Larsen, Stephanie L "Maritime security and the inter-agency challenge: The case of Ghana" 22

1.10.2 Franckx, Erik "Arctic Straight Baselines: Time for a Revisit?— An Essay in Honor of Ted L. McDorman" 23

1.11 LABOUR LAW 24

1.11.1 Hlwatika, Siphile "Salary Deductions: Can Employers Resort to 'Self-Help'?" 24

1.11.2 Mukheibir, André "Revisiting Uber Drivers as Employees — Comparing South African and UK Law" 26

1.11.3 Myburgh, Anton "Reasonableness Review – The Quest for Consistency" 27

1.11.4 Myburgh, Anton and Bosch, Craig "Systemic Delays and Penalty Reviews: *Govender & others v CCMA & others* (2024) 45 *ILJ* 1197 (LAC)" 28

1.12 LAW OF DELICT 29

1.12.1 Mukheibir, André "*Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality* [2022] ZACC 41" 29

1.13 MINERAL LAW 30

1.13.1 Badenhorst, PJ "A Theory of (Subjective) Rights to Minerals in South Africa" 30

1.13.2 Badenhorst, PJ and Hepburn, S "Bridging the divide between rights *in personam* and rights *in rem* in Land Transactions: A Comparative perspective of Australian and South African law" 31

1.14 TECHNOLOGY LAW / CYBERLAW / INFORMATION TECHNOLOGY LAW 32

1.14.1 Snail Ka Mtuze, Sizwe and Morige, Masego "Towards Drafting Artificial Intelligence (AI) Legislation in South Africa" ... 32

1.15 TRUST LAW 33

1.15.1 Nel, Eben (EC) "Fiduciary Law in South Africa: A Good Time to Come of Age" 33

1.15.2 Nel, Eben (EC) The South African Trust as a Potential Estate Planning Tool for Foreigners 34

CONFERENCES 35

2.1 NATIONAL CONFERENCES 35

2.1.1 De Lange, MC "Illegal Fishing as Transnational Organised Crime and the FishFORCE Approach" Nelson Mandela University Research Week: Inclusive and Sustainable use of Coastal and Marine Resources: Fisheries from Nursery to Governance in Gqeberha, South Africa. 10 September 2024 ... 35

2.1.2 Denson, R & Van der Walt, G delivered a paper titled: “The Hague Convention on the Civil Aspects of Child Abduction: *The Ad Hoc Central Authority for the Republic of SA and Another v Koch N.O. and Another* [2023] ZACC 37” at the Private Law and Social Justice Conference, titled *Back to the Future or Back to Basics? The Paradigm of Private Law and Social Justice – A Journey or a Destination?* hosted by the Private Law Department, Nelson Mandela University on 5-6 August 2024 36

2.1.3 Denson, R delivered a paper titled: “An analysis of the amendments to the Divorce Act 70 of 1979 in respect of the recognition of Muslim marriages” at the Family Law Colloquium hosted by UCT on 5-6 September 2024 37

2.1.4 Erasmus, D “Corruption in Resource Allocation: Defeating the Objectives of Social Justice”. A paper presented at the SA Law Teachers Conference in Sun City from 15–19 January 2024. 38

2.1.5 Knoetze, E “‘Waiving’ customary marriages goodbye: handing over a bride and agreement on the payment of *lobolo* in terms of *Lijane v Kekana* (21/43942) [2023] ZAGPJHC 5 (5 January 2023)” at the Private Law and Social Justice Conference, titled *Back to the Future or Back to Basics? The Paradigm of Private Law and Social Justice – A Journey or a Destination?* hosted by the Private Law Department, Nelson Mandela University on 5-6 August 2024 39

2.1.6 Ndimurwimo, LA “The International Human Rights Law and the Right of Self-Determination of the People of Palestine and Western Sahara”. A paper presented to the National Conference on 30 Years of Human Rights in South Africa: Three Decades of Respect for and Promotion of Human Rights, 18–20 March 2024, Birchwood Hotel & OR Tambo Conference Centre, Johannesburg. 41

2.1.7 Nel, Eben (EC) “Some Thoughts on the Trust Theory in Fiduciary Law”, *Trust and Succession Law Conference*, Academia, Centurion Campus, October 2024 42

2.1.8 Olivier, M “EU TEI on Social Protection: Consultation on Regional Programme AAP 2025” (Presentation: Social Protection Consultation, EU Delegations in Africa, 23 May 2024) 43

2.1.9 Olivier, M “Labour and Social Protection for Temporary Migrant Workers: The Need for Further Reform” (ALLA Twelfth National Conference on “Assessing the Impact of Change and Reform in Australian Labour Law”, Geelong, Victoria, 8–9 November 2024) 43

2.1.10 Phorego, M delivered a paper (co-authored with Van As, H) titled: “Ministerial Accountability for Granting Fishing Licenses

to Rural Coastal Communities: The Case of Port St Johns" at Human Rights and Constitutional Accountability Conference to mark 30 years of Constitutional Democracy in Stellenbosch, South Africa, 28–29 November 2024 43

2.1.11 Welgemoed, M delivered a paper "HiveLaw: Propelling the Nelson Mandela University Law Clinic in the Future – A Consideration of Technology's Integral Role in Modern Legal Service Delivery and the Consequences for Legal Education" at the SLTSA Conference in Sun City from 15–19 January 2024. 43

2.2 INTERNATIONAL CONFERENCES 44

2.2.1 Denson, R & Van der Walt, G delivered a paper titled: "The Right to Die when the Right to Live has Been Taken Away: South African Law and the Islamic Perspective" at the Athens Institute for Education & Research (ATINER) 21st Annual International Conference on Law, on 15-18 July 2024, Athens, Greece..... 44

2.2.2 Ndimurwimo, LA & Wanjala, EN "A Critical Analysis of the State Obligation to Protect Children's Rights During Armed Conflicts: The Street Children in Kenya" paper presented at the International Conference on Children's Rights: Taking Stock, Plugging Gaps and Leveraging Emerging Opportunities, organized by Stellenbosch University Faculty of Law, 10–11 September 2024 45

2.2.3 Ndimurwimo, LA; Stuurman, L & Nzuza, S "Climate Change: Indigenous Knowledge Systems and the Integration of Migrant Knowledge". A paper presented at the International Interdisciplinary Conference with the Celebration of African Traditional Medicine Day: African Thought and Indigenous Knowledge: A Portal for Health and Wellbeing, which took place at Nelson Mandela University, 29 August–01 September 2024..... 47

2.2.4 Olivier, M "Social Dialogue Within the Framework of the ILO Committee on Freedom of Association, and the Need to Better Accommodate Workers in the Informal Economy" (21st Conference in Commemoration of Prof Marco Biagi, Modena, Italy, 18–19 March 2024) 48

2.2.5 Olivier, M "Addressing Gender-Based Shortcomings in Social Protection: The Need for Critical Interventions" (Presentation: 30th Foundation for International Studies of Social Security (FISS) & The 20th East Asian Social Policy Network (EASP) Joint International Conference on Best Practices on Social Policy in Turbulent Times, Kyoto, Japan, 13–14 June 2024) 48

2.2.6 Olivier, M "Social Security – A Perspective from the 'Global South': Southern Africa as Example" (Presentation: 39th

German Comparative Law Conference, Berlin, 12–14 September 2024) 48

2.2.7 Olivier, M “Community-Based Social Protection: Legal Considerations” (Keynote panel presentation) (2024 International SASPEN Conference on “Community-Based Social Protection: Inclusion, Challenges, and Prospects”, Polokwane, South Africa, 21–22 November 2024)..... 48

2.2.8 Tait, AM “Determining Reasonable Deposit and Cancellation Charges in Terms of the Consumer Protection Act, 2008 in the Hospitality Sector in South Africa” Paper presented at the 11th Advances in Hospitality and Tourism Marketing and Management (AHTMM) International Conference at the Ravenala Attitude Hotel, Mauritius (15–19 July 2024)..... 49

2.2.9 Van As, H “The Potential of Ocean Accounts Frameworks to Influence Local Government Budget Allocations to Reduce Fisheries Crimes” Bali, Indonesia, 3–5 July 2024..... 50

2.2.10 Van As, H “Addressing Crime in the Fisheries Sector” Third International Conference on Maritime Security in the Gulf of Guinea. Stellenbosch, South Africa, 5–6 September 2024 50

2.2.11 Van As, H “Addressing Crime in the Fisheries Sector” Third International Conference on Maritime Security in the Gulf of Guinea. Stellenbosch, South Africa, 5–6 September 2024 50

2.2.12 Van der Walt, G and Van der Walt “Substantive Equality and Transformative Constitutionalism” presented at the International Conference on Legal Systems and International Human Rights in Melbourne, Australia. 50

2.2.11 Welgemoed, M “The Impact of Cultural and Religious Perspectives on Law Reform Relating to Euthanasia and Palliative Care”, presented a workshop at the Athens Institute for Education and Research (ATINER), 21st Annual International Conference on Law, Athens, Greece, 15–18 July 2024 51

COLLOQUIUMS AND SEMINARS..... 52

3.1 Ndimurwimo, LA; Smith, M and Hencil, X “Are LLB Graduates Prepared for the World of Work?” A paper presented to the Dynamics of Humanisation Learning and Teaching Series, organised by the office of the Deputy Vice-Chancellor: Learning and Teaching, NMU 6–8 November 2024 52

3.2 Ndimurwimo, LA “Unpacking the Human Rights Crisis with the Genocide in DRC, the Need to Advocate for the Protection of Women, Children and Refugees in Times of Armed Conflict”. A paper presented to the panel discussion *Unpacking the Human Rights Crisis with the Genocide in DRC, the Need to*

Advocate for the Protection of Women, Children and Refugees in Times of Armed Conflict organised by the Transformation Office's Equality Promotion and Social Inclusion (EPSI) Project and the International Office in celebration of the International Day for People of African Descent, NMU 19 September 2024 53

3.3 Ndimurwimo, LA "The Genocide Convention and the Recent ICJ Decision of *South Africa v Israel*: The Security and Political Outlook of the World and how to De-Escalate and Manage the Current and International Conflicts". A paper presented to the Seminar organised by the Centre for Security, Peace, and Conflict Resolution in collaboration with the Department of History and Political Studies, NMU, 4 March 2024 55

3.4 Olivier, M "Social Security: Overview of Developments" (Colloquium on "One Hundred Years of Labour Legislation", University of Stellenbosch, 3–4 October 2024)..... 57

3.5 Van As, HJ "Movement of Products of Illegal Wildlife Trafficking in Africa". Illegal Wildlife Trafficking (including Marine Living Resources) Colloquium for Mozambique and South Africa Judiciary Pretoria, South Africa, 25–27 October 2023 58

3.6 Van As, H "Link Between Harvesting Illegal Marine Living Resources and International Organised Crime". Judicial Dialogue / Colloquium on Illegal Harvesting of Marine Living Resources, Gqeberha, South Africa, 26 March 2024 59

GROUP DISCUSSIONS/WORKSHOPS 60

4.1 CENTRE FOR LAW IN ACTION AND FISHFORCE ACADEMY Workshop to support the effectiveness of fisheries prosecutions, members of the judiciary are sensitised on the nature and extent of fisheries organised crime in South Africa on 26 March 2024. 60

4.2 CENTRE FOR LAW IN ACTION AND FISHFORCE ACADEMY Community Engagement Workshops in Namibia ... 61

4.3 Olivier, M "ECOWAS Regional Resilience (Draft) Strategy: Situational analysis – Social Protection" (Presentation: ECOWAS/UNDP-organised workshop, Abuja, Nigeria 13–15 February 2024)..... 62

4.4 Olivier, M "ECOWAS Regional Resilience (Draft) Strategy: Social Protection – Seven Prioritised Recommendations" (Presentation: ECOWAS/UNDP-organised workshop, Abuja, Nigeria 13–15 February 2024) 62

4.5 Olivier, M "ECOWAS Regional Resilience (Draft) Strategy: Inter-theme relationship informing pathway connections" (Presentation: ECOWAS/UNDP-organised retreat, Abuja, Nigeria 27–29 May 2024) 62

4.6 Olivier, M "ECOWAS Regional Resilience (Draft) Strategy: Social Pathway" (with D. Yerokun) (Presentation: ECOWAS/UNDP-organised retreat, Abuja, Nigeria, 27–29 May 2024) 62

BOOKS AND CONTRIBUTIONS TO BOOKS 63

5.1 Badenhorst, PJ; van den Berg, HM and Du Plessis, W "Minerals and Petroleum" comprising vol 30 of the *Law of South Africa* (3rd edition) LexisNexis (2024) 63

5.2 Du Plessis, Max "Apartheid" in Pedro Caeiro, Sabine Gless, Valsamis Mitsilegas, Miguel João Costa, Janneke De Snaijer and Georgia Theodorakakou (eds), *Elgar Encyclopedia of Crime and Criminal Justice*, Volume I, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing Ltd, 95–103 (2024) 64

5.3 Nel, Eben (Editor); King, Ronald; Blignaut, Eileen; Van Vuren, Louis; Van der Westhuizen, Willie and Van Zyl, Rika *Fiduciary Services Handbook 2025* (LexisNexis, November 2024) 65

5.4 Olivier, M; Govindjee, A and Kalula, E "Migration Vulnerability and Access to Social Protection for Select Migrant Categories: An Overview" in *Migration Vulnerability: Access to Social Protection for Select Migrant Categories* (eds: Olivier, M; Kalula, E & Govindjee, A) (African Sun Media 2024) 29–50 66

5.5 Olivier, M "Climate Change, Human Mobility and Displacement: The Quest for an Adjusted Social Protection Paradigm" in *Green Transition and the Quality of Work: Implications, Linkages and Perspectives* (eds: Ales, E; Addabbo, T; Curzi, Y; Fabbri, T & Senatori, I) (Palgrave/Springer 2024) 153–177 67

5.6 Olivier, M and Mbokazi, S "A Critical Appraisal of Labour Mobility Trends and Their Impact on Regional Integration" in *International Organization for Migration (IOM) Africa Migration Report (Second Edition) – Comparing the Threads: Linking Policy, Practice and the Welfare of the African Migrant* (IOM 2024) 77–92 69

5.7 Olivier, M "Social Security for Migrants Post-COVID-19: Revisiting the Legal and Policy Framework" in Motala, S; Hart, T & Ngandu S (eds) *Social Security Review 2024 – Evolution of Social Security in South Africa: An Agenda for Action* (2024) 20–39 70

5.8 Olivier, M "Labour Relations in the Public Service" in *Principles and Practice of Labour Law* (LexisNexis, 2024) (chapter 19: "Public Service Employment: General Framework and Principles" and chapter 20: "Special Categories of Civil Servants: Security Services and Public Education") 71

5.9 Snail Ka Mtuze, Sizwe; Morige, Masego and Nzimande, Mbali "The law on artificial intelligence (AI) in South Africa in the evolving African legal landscape" in *AI from the Global Majority Official Outcome of the UN IGF Data and Artificial Intelligence Governance Coalition* (November 2024) 45–56 72

5.10 Snail Ka Mtuze, Sizwe; Morige, Masego and Nzimande, Mbali "The law on artificial intelligence (AI) in South Africa in the evolving African legal landscape" in *AI from the Global Majority Official Outcome of the UN IGF Data and Artificial Intelligence Governance Coalition* (2024) 73

AWARDS AND ACHIEVEMENTS 74

6.1 Welgemoed, M (and the rest of the HiveLaw team) Engagement Excellence Award 2024 for the HiveLaw project .. 74

6.2 Ndimurwimo LA, received the Visiting Fulbright South African Research Scholarship Award for 2024–2025 Program, hosted by James E Rogers College of Law, University of Arizona, Tucson, Arizona USA 74

NEWSLETTERS 75

7.1 One Ocean Hub. Fisheries Law Enforcement Academy FishFORCE The Herald – 5 June 2024 "NMU expert joins SADC task force to combat illegal fishing" 75

SELECTED REPORTS, STUDIES AND POLICY DOCUMENTS 76

8.1 Olivier, M "Regional Team Europe Initiative (TEI) on social protection in sub-Saharan Africa" (report: European Commission, 2024) 76

8.2 Olivier, M "Development of a legal policy paper and a draft model law on labour migration in Africa" (Pan-African Parliament/ILO, 2024) 76

8.3 Olivier, M "Social protection for migrant workers in Pacific Island Countries – Policy and legislation review" (ILO, 2024) ... 76

8.4 Olivier, M ECOWAS Regional Resilience Strategy for West Africa 2024-2050 – Social Protection contribution (submitted to the UNDP, for ECOWAS) (2024) 76

8.5 Olivier, M “Social protection in West Africa” (submitted to the UNDP, for ECOWAS) (2024) 76

8.6 Olivier, M “Situation analysis: Social protection in West Africa (Summary)” (submitted to the UNDP, for ECOWAS) (2024) 76

8.7 Olivier, M “Diagnostic of informality: Namibia – Literature Review Report” (Final editor and contributor to report) (submitted to Synergy Business Advisory and Consultancy CC (“Synergy BAC”) and Genesis Analytics (Pty) Ltd, for the National Working Group on Informality (NWGI)) (2024) 76

8.8 Phorego, M and Van As, HJ “Unravelling the Web of Wildlife Crime: Assessing Impact, Regulating Practices and Strengthening Enforcement Measures” 76

8.9 Van As, HJ “Value chain analysis of the fisheries sector in South Africa, April 2024, UNODC” 77

8.10 Van As, HJ “The Development of Lacey-Type Provisions to combat Transnational Organised Crime in the Trafficking of Illicit Aquatic Living Resources in Southern Africa” 77

8.11 Van As, HJ and Phorego, M “Unravelling the Web of Wildlife Crime: Assessing Impact, Regulating Practices and Strengthening Enforcement Measures” 77

ACHIEVEMENTS AND MILESTONES 78

9.1 CENTRE FOR LAW IN ACTION 78

SUPERVISION OF LLM TREATISES/DISSERTATION/THESES 81

10.1 APRIL 2024 GRADUATION 81

10.1.1 Qotoyi, T supervised ADDAE, Charles Kwadwo “Reasonable Accommodation for Persons with Disabilities in the Workplace” completed for April 2024 graduation. 81

10.1.2 Keith-Bandath, RE with co-supervisor Van der Walt, JA supervised KARUAIHE, Janee Raahua Sigrfried “The Right of Non-Unionised Employees and Minority Unions to be Consulted Prior to Dismissals Based on Operational Requirements” completed for April 2024 graduation. 81

10.1.3 Hamukuaya, H supervised KAYAMA, Ohms Moven “Regulation of Sexual Harassment at the Workplace in Namibia” completed for April 2024 graduation 81

10.1.4 Hamukuaya, H supervised KHESWA, Zimasa Purity “Resignation in Employment Law” completed for April 2024 graduation. 81

10.1.5 Qotoyi, T supervised MALEKA, Reuben Mpono “Collective Bargaining in the Public Service Sector” completed for April 2024 graduation. 81

10.1.6 Gathongo, JK with co-supervisor Van der Walt, JA supervised MASAYA, Ruvimbo Cheryl “Statutory Conciliation as a Labour-Dispute-Resolution Mechanism” completed for April 2024 graduation. 81

10.1.7 Welgemoed, M with co-supervisor Lerm, H supervised MINNAAR, Evolia Geraldine “Minimum Sentencing Disparities in the Criminal Justice System” completed for April 2024 graduation. 81

10.1.8 Keith-Bandath, RE supervised MINNIE, Wouter Jacobus Theron “The Labour Court’s Approach in Awarding Costs” completed for April 2024 graduation. 82

10.1.9 Gathongo, JK supervised NONYUKELA, Thembelihle Yolanda “The Right to Parental Leave for Employees in Same Sex Marriages” completed for April 2024 graduation. 82

10.1.10 Van der Walt, JA supervised SYCE, Donato Burchelle “Discipline and Dismissal of Employees for Testing Positive for Cannabis” completed for April 2024 graduation. 82

10.1.11 Keith-Bandath, RE supervised TINYANE, Nthabeleng “Public Policy Considerations and the Enforcement of Restraint of Trade Agreements” completed for April 2024 graduation. 82

10.1.12 Coetzee, L supervised BOTHA, Bernardus Hermanus “Defining and Regulating the Regulation of De Jure De Facto and Shadow Directors: Lessons from New Zealand” completed for April 2024 graduation. 82

10.2 DECEMBER 2024 GRADUATION 83

10.2.1 Van der Walt, JA supervised AUGUST, Joshua Cliff “The Review of a Disciplinary Finding or Sanction in terms of Section 158(1)(H) of the Labour Relations Act 66 of 1995” completed for December 2024 graduation. 83

10.2.2 Welgemoed, M supervised DAVIDS, Sesam Isipho “The Legality of Euthanasia Conducted by Medical Practitioners” completed for December 2024 graduation. 83

10.2.3 Hamukuaya, H supervised GAVU, Siphelele “Amendments to the Labour Law Relations Act 66 of 1995 to Addressing Violent and Intractable Strikes” for December 2024 graduation. 83

SUPERVISION OF LLD THESES 84

11.1 APRIL 2024 GRADUATION 84

11.1.1 Vrancken, PHG with co-supervisor Egede, EE supervised KAROMO, Adelaide Aquiline “The Regulation of Deep Seabed Mineral Mining in South Africa: Lessons from the United Kingdom” completed for graduation April 2024. 84

11.1.2 Van der Walt, JA supervised MALULEKE, Mongwena John “Balancing an Educator’s Right to Strike and a Child’s Right to Basic Education” completed for graduation April 2024. 85

11.1.2 Vrancken, PHG with co-supervisor Botha, JC supervised MASEKA, Ntemesha Mwila “The Horizontal Application of the Environmental Right to Juristic Persons at Sea” completed for graduation April 2024. 86

11.1.2 Ndimurwimo, LA with co-supervisor Makori, AF supervised WANJALA, Esther Nasimiyu “The Promotion of the Right to Access to Adequate Housing for Street Children in Kenya” completed for graduation April 2024. 87

ARTICLES

1.1 ADMINISTRATIVE LAW

1.1.1 Msimanga, Lwandile; Ngwenyama, Lerato Rudolph and Van Dyk, Frederik Rudolph "Sound Substantive Law Application Yet Dubious Adjectival Process in *R K v Minister of Basic Education* [2019] ZASCA 192"

Obiter 2024 45(3) 727–750

ABSTRACT

S K's was a life cut short. He was another victim of the dangerous and unsanitary school pit-latrine system, a rudimentary toilet infrastructure consisting of concrete slabs covering a French drain, with large holes that serve as a death trap for young pupils who accidentally fall through. Thousands of children from underprivileged conditions face this shameful latrine system daily, despite ageing government promises to address the situation promptly. The injustice of five-year-old S K's horrible drowning in a pit latrine at his Limpopo primary school in 2014 was finally vindicated in R K v Minister of Basic Education ([2019] ZASCA 192) when the Supreme Court of Appeal (SCA) delivered judgment in December 2019. The court awarded general damages to S K's family based on the emotional shock that they suffered and held that the common law is flexible enough to come to the aid of the aggrieved family. Although the court declined to award constitutional damages, it added to the context-sensitive body of jurisprudence that outlines constitutional damages as a relatively novel concept within the South African law of damages.

1.2 CLINICAL LEGAL EDUCATION

1.2.1 Welgemoed, M; Coetzee, L; Beerman, R and Van Vuuren, E "HiveLaw: Propelling the Nelson Mandela University Law Clinic into the Future: A Consideration of Technology's Integral Role in Modern Legal Service Delivery and the Consequences for Legal Education"

Potchefstroom Electronic Law Journal 2024 27 1–29

ABSTRACT

The effective training of law students, which demystifies technology, and the creation of cost effective, fit for purpose technology solutions are crucial to democratising legal technology and levelling the playing fields between "Big Law" and the legal services available to the bulk of South African citizens. A public/private partnership between the Nelson Mandela Faculty of Law, the university's Information and Communication Technology department and a consortium of legal practitioners (including Cliffe Dekker Hofmeyr and various industry players) has piloted HiveLaw, a SharePoint-based practice management solution custom designed to fit university law clinics' dual purpose of legal service delivery and practical legal education. This pilot serves as a case study firstly to investigate how legal technology can contribute to transformative teaching and learning and transformative legal practice at university law clinics, as it exposes staff and students to the benefits of digital and online activities. Secondly, the pilot illustrates how proficiency in the use of technology such as HiveLaw aids the staff and students to adapt to digital processes while improving access to justice for indigent communities. In this way staff and students make a difference in the working world by implementing their knowledge in legal practice, which is widely known for slowly adapting to digital processes, while being exposed to experiential learning and getting in touch with the demands of modern legal practice.

1.2.2 Welgemoed, M and Lerm, H "Justifying the Integration of Clinical Legal Education With Procedural-Law Modules to Develop Practical Skills in Law Students"

Obiter 2024 3(5) 569–594

ABSTRACT

This article focuses on the integration of Clinical Legal Education (CLE) with the conventional teaching methodologies traditionally employed for teaching procedural law modules, i.e., civil procedure, criminal procedure and the law of evidence at university level. The aim of this integration is to teach law students professional practical skills as a means to promote effective and efficient interpersonal relations with clients, including attorney-client consultations. This article addresses the concerns of many legal practitioners that law graduates need to improve their practical skills before entering legal practice. The legal education system at university level is often blamed for this inadequacy. It has been argued that universities have the responsibility to develop those students lacking practical skills to prepare them for practice. In this article, it is argued that an integrated teaching and learning approach, as far as CLE and procedural-law modules are concerned, should involve more than just the mere transmission of the theory of procedural law and the principles of substantive law to students. It should go further and involve students practising such theory to achieve the desired effect or goal of excellence in legal practice. The Legal Practice Act is supportive of this argument. In addition, the concept of transformative constitutionalism is invoked to strengthen the argument that there is a constitutional imperative on law teachers to conduct teaching and learning in a transformative manner. By teaching students only or mainly by way of lectures based on theoretical presentations, law schools are not doing students justice in preparing them for legal practice. It is consequently argued that blending CLE with the teaching and learning of procedural-law modules would combine the teaching of theory with practice, which is foundational in preparing law students for their entry into the profession. This means that students would be taught so as to make them more skilled and ready to enter the working world after graduation. Besides possessing a sound

theoretical basis required for practice, law graduates entering the profession would also then have some experience in legal practice; both legs of such an education serve the way in which the law should be applied practically.

1.3 COMPANY LAW

1.3.1 Coetzee, Lindi and Botha, Bernardus Hermanus "De Facto and Shadow Directors: Lessons From New Zealand"

SA Mercantile Law Journal 2024 36(2) 218–250

https://doi.org/10.47348/SAMLJ/v36/i2a5

ABSTRACT

The term 'director' is commonly limited to de jure directors. The Companies Act applies to those individuals who fall within the definition of 'director'. However, de jure directors are not the only type of director found in practical corporate settings. De facto directors are not appointed as directors but are held out by companies as directors. Shadow directors are persons who have not been validly appointed as directors and are not held out by a company as directors, but who exercise some measure of control over the affairs of a company. The existence of de facto and shadow directors is not peculiar to South Africa. New Zealand has seen it fit to regulate de facto and shadow directors and has done so for over 70 years. It is uncertain whether the wording of the definition of 'director' in the South African Companies Act, includes de facto and shadow directors. The practical effect of uncertainty is the absence of clear avenues of accountability to those who occupy a position of power within a company without being validly appointed. This article illustrates the far-reaching consequences of the non-regulation of de facto and shadow directors, and a possible solution is suggested.

1.3.2 Nzimande, MA, Botha, J & Denson, R "Should the Company's Dignity Be Protected Under Section 10 of the Constitution – The Question in *Reddell v Mineral Sands Resources (Pty) Limited* [2022] ZACC 38"

Obiter 2024 45(2) 492–504

ABSTRACT

In *Reddell v Mineral Sands Resources (Pty) Ltd* ([2022] ZACC 38), the Constitutional Court considered whether section 10 of the Constitution of the Republic of South Africa, 1996, as read with section 8(4), should be interpreted to protect the dignity of juristic persons (in this case, mining companies). The majority and minority judgments arrived at conflicting decisions on the point. Unterhalter AJ, for the minority, held that juristic persons should be protected under section 10, while Majiedt J, for the majority, held otherwise. The majority also developed the common law of defamation to limit the circumstances in which a juristic person may succeed in a claim for general damages for non-patrimonial loss.

The authors make two claims. First, it is argued that the minority judgment correctly interpreted the nature and purpose of section 10 (the guarantee of human dignity) when read with section 8(4) of the Constitution, which provides that juristic persons are entitled to bear the rights in the Bill of Rights as required by the nature of the right and the nature of the juristic person in issue. It is asserted that the two sections can be interpreted to entitle companies to rely on section 10 of the Constitution to protect their right to dignity, encompassing their good name and reputation. Secondly, it is argued that the majority's development of the common law of defamation – to create a special exception for cases where a juristic person sues for general damages – was unnecessary and has created legal uncertainty.

1.4 CONSTITUTIONAL LAW

1.4.1 Phorego, M & Van As, HJ "The Justiciability of Cabinet Appointments in South Africa"

Obiter 2024 45(4) 902–920

ABSTRACT

For most democracies, Cabinet appointments form part of a plethora of powers that are entrusted to the President alone. Courts are naturally cautious about interrogating the exercise of the power. In South Africa, courts confine themselves to the narrower legal question of how the power was exercised, not whether the President's decision was correct or incorrect. This is because the courts are wary of second-guessing the decisions of other branches of government, lest they fall foul of the doctrine of separation of powers. This article probes the President's power to appoint Cabinet members, and whether a court may set aside any unlawful exercise of the power without encroaching on the separation of powers. Owing to inadequate political oversight mechanisms over Cabinet appointments, the President's power is too broad and should be curtailed to enhance accountability for the exercise of the power. To this extent, the President's appointment of Cabinet members should be subject to parliamentary confirmation.

1.4.2 Phorego, M "Promoting Administrative Justice for Presidential Pardons in South Africa"

Obiter 2024 45(1) 137–160

ABSTRACT

The President's power to grant pardons, remit fines, penalties or forfeitures and the nature of the accountability for the exercise of such power remains unclear. The question of accountability relates to whether the President has a constitutional obligation to disclose the reasons for his decision. The nature of the power is broadly formulated and should undergo reform to enhance the attendant accountability. Over the years, there were debates on whether the granting of pardons constitutes administrative action in terms of the Promotion of Administrative Justice Act (PAJA). Because it is a power that potentially has an adverse effect on rights enshrined in the Bill of Rights, it is submitted that it should be construed in terms of PAJA. Similarly, the role of Parliament in exercising oversight over the process is unclear and inadequate. The article submits that the President should exercise the power together with the relevant Cabinet Minister, and subject to legislative endorsement.

1.4.3 Van Dyk, O and Scott-Ngoepe T "Did the CPA Shut the Bathroom Doors for Transgender and Non-Binary People? A Critical Legal Reflection of Section 9(2) of the CPA"

Potchefstroom Electronic Law Journal 2024 27 1–34

http://dx.doi.org/10.17159/1727-3781/2024/v27i0a17935

ABSTRACT

The Consumer Protection Act 68 of 2008 (CPA) introduced a variety of consumer rights that are intended to protect consumers in their engagement with suppliers. Amongst these rights is the consumer's right to equality in the consumer market. Section 8 of the CPA sets out practices that are considered to be prohibited discriminatory marketing practices; while section 9 of the CPA provides instances that constitute reasonable grounds for differential treatment in certain circumstances. In particular, section 9(2) of the CPA provides that a supplier may provide and designate facilities that are separate but equal for the exclusive use of each gender. Alternatively, the supplier is permitted to offer access to a facility to one gender exclusively. Over the years, the LGBTQI+ community has increased awareness around gender stereotypes; and stressed that not all persons conform to a binary-gender allocation. Therefore, the question that arises is whether section 9(2) of the CPA, in permitting the designation of facilities to exclusively one gender, is unfairly discriminating against transgender and non-binary persons and is therefore unconstitutional. To the extent that the provision is constitutional, the paper considers whether the continued practice of having gender-segregated bathrooms to the exclusion of transgender and non-binary persons is constitutional.

1.5 CONSUMER PROTECTION LAW

1.5.1 Tait, AM "Cession and the Application of the Consumer Protection Act, 2008: A Discussion of the *South African Securitisation Programme (RF) Ltd v Jaglal-Govindpershad* (5835/2022) [2023] ZAGPJHC 728 and *South African Securitisation Programme (RF) Ltd v Lucic* (2022/6034) [2023] ZAGPJHC 768 (6 July 2023) Cases"

Speculum Juris 2024 38(2) 484–496

ABSTRACT

The discussion of the cases considered the impact, if any, of a cession of rights on the rights of consumers to cancel a fixed-term contract in terms of s14 of the Consumer Protection Act (CPA). The argument was raised by the applicant that the effect of a cession of rights meant that the right of the respondents (consumers) to cancel a fixed-term contract could only be exercised against the cedent and had no effect on the cessionary's right to receive payment in terms of the original contract (i.e. the debtor had to continue payment to the cessionary after the cession even when the fixed-term contract had been cancelled in terms of s14 of the CPA). It was argued that this approach is not sustainable in view of the common law principles pertaining to cession, including that one cannot cede more rights than what one has, and that the cession may not be to the disadvantage of the debtor. Such an approach would also negate the consumer's right to cancel provided by s14 of the CPA.

1.5.2 Tait, AM "Supervening Impossibility and the Supplier's Duty to Perform in Terms of Section 19 of the Consumer Protection Act, 2008 *National Consumer Commission v Crystal Tears Investment 206 CC t/a Misty River and Elizabeth Hoogenhout t/a Misty River* NCT/261684/2023/73(2)(b)"

Obiter 2024 45(4) 1026–1035

https://obiter.mandela.ac.za/article/view/20976

ABSTRACT

The case discussion considered the question whether the National Consumer Tribunal was correct in applying s19 of the Consumer Protection Act in the matter. It was argued that the contractual relationship between the parties had been terminated through supervening impossibility – the Covid-pandemic and resultant declaring of a lock-down by the government prohibiting social gatherings. As the contractual relationship was terminated there were no longer any existing contractual obligations that could be enforced. The parties were obliged to make restitution where relevant, but the supplier should not have been found to have been in breach of the provision of s19 of the Act, requiring the supplier to perform contractual obligations in a certain specified manner.

1.6 CRIMINAL PROCEDURE LAW

1.6.1 Gumboh, Esther "Mitigating Malawi's Corruption Crisis: Lessons from Botswana"

Perspectives of Law and Public Administration 2024 13(4) 556–565

https://doi.org/10.70139/rolacc.2024.1.3

ABSTRACT

Malawi is losing its fight against corruption. Despite improvements to its anti-corruption measures, the country continues to multiply its high-level corruption scandals. Anti-corruption agencies work in a challenging environment underpinned by systemic challenges. Recent events at the Anti-Corruption Bureau (ACB), Malawi's main corruption watchdog, have further dented the country's anti-corruption efforts, undermining public trust in the ACB and fuelling speculation on political interference in the institution. A presidential commission of inquiry into the matters revealed a sombre image of a broken anti-corruption front fostered by misconceptions of absolute independence that have bred animosity and mistrust. Worse, stripped of integrity and public trust, the Bureau is isolated from key anti-corruption agencies like the Director of Public Prosecutions, the Attorney General, and the Malawi Police Service. Unsurprising, Malawi's anti-corruption fight has been left compromised. Meanwhile, despite its challenges, Botswana remains a beacon for anti-corruption strategies in Africa and offers some lessons. Sustained genuine political will and cooperation amongst anti-corruption institutions are key. These factors, plus an enabling institutional environment uninterrupted by political interference and which fosters well-resourced and unified mechanisms, will assist Malawi to restore public trust in its anti-corruption drive and steer the country towards success.

1.7 FAMILY LAW

1.7.1 Denson, R "A Step in the Right Direction or Additional Burden for Women Married in Terms of Islamic Law? – *Women's Legal Centre Trust v President of the Republic of South Africa* [2022] ZACC 2"

Obiter 2024 45(3) 696–710

ABSTRACT

Marriages concluded in terms of Islamic rites have until recently not enjoyed the same legal recognition that is accorded to civil and customary marriages. The non-recognition of Muslim marriages meant that there was no legal regulatory framework to enforce any of the consequences that arise as a result of the marriage. Furthermore, parties to a Muslim marriage were left without adequate legal protection when the marriage was dissolved either by death or divorce. In the absence of legal recognition and regulation of their marriages, Muslims (particularly Muslim women) endured many hardships and challenges. The consequence of non-recognition and non-regulation of Muslim marriages was that the married lives of Muslims remained unpredictable and outside their control. Non-recognition has also effectively meant that although parties to a Muslim marriage regard themselves as married, there has been no legal connection between them. The confirmation judgment of the Constitutional Court in *Women's Legal Centre Trust v President of the Republic of South Africa* ([2022] ZACC 23) sought to remedy the dire situation in which parties found themselves when they were married in terms of Islamic law; it provides interim relief for Muslim marriages until such time as the State either enacts legislation or amends existing legislation to grant legal recognition and regulation of Muslim marriages.

1.7.2 Denson, R & Van der Walt, G "*Locus Standi In Iudicio* – The Right of a Parent to Claim Maintenance on Behalf of an Adult Dependent Child – *Z v Z* 2022 (5) SA 451 (SCA)"

Obiter 2024 45(1)

ABSTRACT

This matter dealt with an appeal to the Supreme Court of Appeal (SCA) from the Eastern Cape Local Division of the High Court in respect of a claim for maintenance by one parent on behalf of the adult dependent children against the other parent. The facts of the case were as follows. Mrs Z (the mother) and Mr Z (the father) were married on 10 January 1995. Two children were born of the marriage. The marriage deteriorated and Mr and Mrs Z separated for a period. Both parents continued to support their children financially. Mr Z had been maintaining the children by depositing amounts directly into their individual bank accounts. The marriage relationship between mother and father deteriorated, resulting in Mrs Z initiating divorce proceedings and claiming from Mr Z, *inter alia,* maintenance for herself and the two major and financially dependent children. Although they were majors, in that they were both over the age of 18, the children were financially dependent on their parents at the time of the divorce. T

In defending the action, Mr Z raised a special plea, claiming that Mrs Z could not lodge a claim for maintenance on behalf of the children born of the marriage, since they were both adults and, therefore, had the necessary capacity to claim maintenance on their own behalf *(Z v Z* par 2). As a result, Mr Z contended that Mrs Z lacked the *locus standi in iudicio* to initiate a claim on behalf of the major children.

The issue that both the Eastern Cape High Court and the SCA were required to consider was whether a parent can institute a claim for maintenance against the other parent on behalf of their adult dependent child. In other words, the courts were called upon to decide whether a parent has the necessary *locus standi in iudicio* to lodge a claim against the other parent on behalf of an adult dependent child.

1.7.3 Van der Walt, Glynis "The Best Interests of a Child in Alternative Care and Intercountry Adoption – A Model for a Uniform Approach"

Obiter 2024 45(1)

ABSTRACT

Where a child is orphaned or abandoned, an obligation rests on the State to provide appropriate alternative care for the child concerned. It is of fundamental importance that a child who is found to be struggling emotionally, economically, physically and psychologically be protected. Such children need, and have a legal right, to be cared for and protected. Governments have a legal obligation to respond. Both international and national law recognise the standard of the best interests of a child and the principle is fundamental when determining *inter alia* whether alternative care for the child concerned is the most appropriate option. However, the best-interests principle is a vague and indeterminate concept, allowing for decisions to be based on a subjective approach. A model is proposed in the article in an attempt to provide a uniform approach for reaching a decision regarding the placement of an orphaned or abandoned child in appropriate alternative care.

1.8 GENDER AND LAW

1.8.1 Spies, Amanda "Judging Gender: The Sentencing of South African Mothers Who Murder Their Children"

Criminal Law Forum 2024 35(3) 223–253

ABSTRACT

Women who commit filicide are not only judged for their crime but also for their compliance/deviation from societal expectations of motherhood. Motherhood is interpreted through a specific set of socio-cultural norms with mothers needing to be loving, warm, selfless, and protective at all times. Any deviation from these norms can result in harsher sentencing. This article explores the complexity of maternal filicide and, the extent to which gendered constructions of motherhood are used in the South African criminal justice system to sentence women who murder their children. It examines how the dominant narrative identities of the bad/mad/sad mother influence the sentencing of these women and leads to inconsistent sentencing practice within the South African legal framework. By highlighting the disparities in sentencing and the importance of considering contextual information, it calls for reforms to ensure that sentencing aligns with the circumstances of these women, rather than reinforcing stereotypical perceptions of motherhood. It further highlights the need for reform to protect children from filicide.

1.9 HUMAN RIGHTS LAW

1.9.1 Gumboh, Esther "The Abolition of the Mandatory Death Penalty in Africa and the Resentencing of the Innocent"

Perspectives of Law and Public Administration 2024 13(4) 556–565

DOI: 10.62768/PLPA/2024/13/4/06

ABSTRACT

The abolition of the mandatory death penalty in Africa has triggered resentencing processes for offenders on death row. Resentencing courts proceed on the basis that an offender is guilty; they are trial courts thus are not empowered to revisit the verdict. What should happen when a resentencing court opines that an offender is innocent of murder? Drawing from the experience in Malawi, this paper argues that a resentencing court has no more jurisdiction to impose a sentence on an offender than a trial court has to sentence an accused it acquits. Therefore, African nations that strike down the mandatory death penalty must provide for a procedure to provide exceptional circumstances in which a resentencing court can reconsider the conviction of the offender. The resentencing process calls for courts a proactive approach in achieving justice and upholding the rights of prisoners previously sentenced to the mandatory death penalty. At the very least, a court which realises that the accused is in fact innocent must not impose any further punishment on them because it then has no legal basis for knowingly sentencing an 'innocent offender'. It is never justifiable to knowingly punish the innocent.

1.9.2 Ndimurwimo, LA; Wanjala, EN & Makori, AF "A Critique of the Efficacy of the Right to Shelter for Street Children in Kenya"

Law Democracy & Development 2024 28 102–128

https://doi.org/10.17159/2077-4907/2024/ldd.v28.5

ABSTRACT

The right to housing is a fundamental right that has been given recognition at national, regional, and international levels. Despite the right to access housing and basic shelter for everyone being anchored in the Constitution of Kenya, 2010 and various international and regional human rights instruments, however, there is no specific legislation or policy that cater for the right to access housing or shelter for street families and children in Kenya.

The gap that exists in laws and policies has resulted into street families and children as vulnerable groups being left behind in terms of missing out on their inclusion in socio-economic programmes and interventions by the government which target vulnerable and marginalized persons in Kenya. Street children are the most hidden and invisible human beings around the world. Their invisibility is occasioned by a lack of reliable data concerning their number and identity and making it exceptionally difficult for the government authorities to ensure that they access critical and basic services such as housing, health care services, and education. In reality, children in street situations generally are deprived of many of their rights, both before and during their time on the street. The situation in Kenya is not different, since street families in Kenya do not benefit from the socio-economic interventions by the government because the government does not have statistics of this group of persons to enable the government to plan for their intervention.

This article examines how the right to shelter of street children in Kenya can be protected. It recommends measures that may be taken to protect the right to shelter for street children in Kenya and the protection of other socio-economic rights as a pathway to equality and human dignity as enshrined in the Constitution.

1.9.3 Ndimurwimo, LA "The Impact of the Flaws of Transitional Justice Mechanisms in Burundi on Aspiration 4 of the African Union's Agenda 2063"

Law Democracy & Development 2024 28 336–366

https://doi.org/10.17159/2077-4907/2024/ldd.v28.15

ABSTRACT

This article examines how transitional justice mechanisms have been used to reconcile warring parties in Burundi. It draws on the findings of the Truth and Reconciliation Commission (or Commission vérité et reconciliation, commonly known as the CVR) to demonstrate the deficiencies of transitional justice in addressing Burundi's dark history. Among the key findings of the CVR report of 2021 is the revelation that the mass killings of 1972 amount to the international crime of genocide, a characterisation which is still contentious in Burundi. This article explores the strained relations between Burundi and international donors. As the year 2024 marks the passage of 52 years since the 1972 mass killings, it is surprising that many Burundians are still waiting for justice to be served. The article critically examines the application of transitional justice mechanisms through the flaws of truth-telling, reconciliation, and reconstruction in post-conflict Burundi..

1.9.4 Spies, Amanda and Pieterse, Marius "Corporations and Cities Under Distress: Organised Business and 'Emergency' Governance in Nelson Mandela Bay, South Africa"

Urban Studies 2024 62(7) 1316–1333

ABSTRACT

This article considers private sector embroilment in urban governance under disaster/crisis conditions in cities of the developing world, paying particular attention to the role of law in structuring urban governance regimes. Through a case study detailing the changing relationship dynamics between organised business and the South African metropolitan municipality of Nelson Mandela Bay during a confluence of the Covid-19 pandemic and a debilitating drought, the article shows that crisis conditions can induce moments of civic solidarity between urban local governments and their non-state stakeholders, which might be leveraged to produce progressive 'everyday' urban governance arrangements. However, the incomplete consolidation of such an arrangement in Nelson Mandela Bay leads the article to consider the adequacy of the South African legal framework for urban governance, thereby highlighting how urban law may enable, stabilise and ensure accountability for 'emergency' urban governance.

1.9.5 Spies, A; Ndimurwimo, L & Nxumalo, N "The Importance of Litigating the Right to Access Sufficient Food: *Equal Education v Minister of Basic Education*"

South African Journal on Human Rights 2024 39(4) 341–352

https://doi.org/10.1080/02587203.2024.2346493

ABSTRACT

The right to food is a universally recognised right with prominent importance in International and regional human rights instruments. However, giving effect to the right is far more complex than its recognition, with billions suffering from hunger globally. The Covid-19 pandemic has highlighted the importance of food security and the need to ensure access to safe and nutritious food. With the South African National School Nutrition Programme especially hard hit by the pandemic, an analysis of the *Equal Education v Minister of Basic Education (Equal Education)* case highlights the complexity of litigating the right to food and the need for strong jurisprudence to give effect to it. The indivisibility and interrelated nature of the right is explored and how it complicates its justiciability in providing recourse in South Africa and the continent at large.

1.10 INTERNATIONAL LAW

1.10.1 Ali, Kamal-Deen; Agyekum, Humphrey A; Bueger, Christian and Larsen, Stephanie L "Maritime security and the inter-agency challenge: The case of Ghana"

African Security Review 2024 33(4) 353–370

https://doi.org/10.1080/10246029.2024.2314467

ABSTRACT

Maritime security is a major international concern with the Gulf of Guinea recognised as one of the global hotspots of blue crime, such as piracy, kidnap for ransom, trafficking of narcotics, human and arms, and illegal fishing. The complex and complicated challenge of maritime security, a wicked problem, calls for inter-agency coordination, synergy of efforts and scaling up of responses. Given the complexity of maritime security threats, no single organisation has the institutional muscle to single-handedly deal with it. Drawing on evidence from Ghana, where the arrival of maritime security as a concept triggered a shift from single to a multi-agency approach to dealing with maritime issues, the article examines the potential of and challenges associated with inter-agency coordination. In line with recent international developments, African nations like Ghana aim to apply the concept of inter-agency coordination to tackle maritime insecurity in its waters. The paper assesses how inter-agency coordination could be used in an African maritime security governance context, while examining power imbalance, strife for agency autonomy and other obstacles that have to be addressed to ensure that the promises associated with the concept are fulfilled.

1.10.2 Franckx, Erik "Arctic Straight Baselines: Time for a Revisit?—An Essay in Honor of Ted L. McDorman"

Ocean Development & International Law 2024 55(4) 444–452

https://doi.org/10.1080/00908320.2024.2419919

ABSTRACT

Ever since the International Court of Justice (ICJ) considered the straight baselines established by Norway not to be contrary to international law, state practice has developed in favor of a liberal interpretation of the conventional provisions that tried to formulate a general rule starting from the specificities of this 1951 ICJ decision. In 2022 the ICJ was given the opportunity to revisit this issue. It is argued that the ICJ's restrictive application of the conventional rules, which it moreover stated to form part of customary international law, might well have Arctic connotations.

1.11 LABOUR LAW

1.11.1 Hlwatika, Siphile "Salary Deductions: Can Employers Resort to 'Self-Help'?"

Obiter 2024 45(2) 505–531

ABSTRACT

In the context of an employment relationship, an employee may cause the employer to incur loss or damages. In such an event, an employer would be entitled, with the employee's consent, to recover the loss or damage caused by the employee by deducting the corresponding amount from the employee's remuneration. It is also common for employers to enter into loan agreements with employees, in terms of which employees are required to repay a loan in instalments by way of deductions from their remuneration. These situations do not, in practice, tend to be controversial.

The controversy, however, tends to lie in respect of instances where an employer pays an employee additional money to which the employee is not contractually entitled. This may occur as a result of an administrative payroll error. In other instances, the employee may receive additional remuneration in respect of hours or days not worked. The latter instance may also be attributed to an administrative error resulting in erroneous overpayment, depending on the circumstances. The employer, upon realising such an administrative error, may want to recover the additional remuneration paid to the employee.

However, an employer may be faced with an employee who contends that they are not to blame for the administrative error, or that they are entitled to the remuneration, and that, as a result, the employer may not proceed to deduct amounts from future remuneration without their consent. This impasse raises questions regarding the employer's ability to resort to "self-help" by proceeding to effect deductions from the employee's remuneration without the employee's consent. It further raises questions regarding whether the employer may rely on the common-law doctrine of set-off in effecting deductions. This article considers

whether the employer is empowered to effect deductions from the employee's remuneration without the employee's consent and, if so, whether the employer is required to follow a process in making the deductions.

1.11.2 Mukheibir, André "Revisiting Uber Drivers as Employees — Comparing South African and UK Law"

Industrial Law Journal 2024 45(1) 24–41

ABSTRACT

The UK Supreme Court in the case *Uber BV v Aslam* [2021] UKSC 5 recently held that Uber drivers in London were workers for the purposes of inter alia minimum wage regulations. In South Africa, the Labour Court in *Uber SA Technology Services (Pty) Ltd v National Union of Public Service & Allied Workers* (2018) 39 ILJ 903 (LC) (*Uber SA*) held that the Commission for Conciliation, Mediation and Arbitration (CCMA) had erred in finding that South African Uber drivers were employees of Uber SA. This note compares the two cases, as well as considering the distinction between 'employees', 'workers' and 'independent contractors'.

1.11.3 Myburgh, Anton "Reasonableness Review – The Quest for Consistency"

Industrial Law Journal 2024 45 July 1377–1394

ABSTRACT

Reasonableness reviews in the Labour Court are something of a lottery because different judges have different thresholds for unreasonableness. This article discusses three things that the labour courts can do with a view to achieving a measure of consistency in decision-making: firstly, by determining the intensity with which reasonableness reviews should be undertaken, particularly in relation to dismissal for misconduct awards; secondly, by setting uniform standards for the threshold for unreasonableness; and, thirdly, by adopting a uniform approach to the methodology involved in testing for reasonableness on review.

1.11.4 Myburgh, Anton and Bosch, Craig "Systemic Delays and Penalty Reviews: *Govender & others v CCMA & others* (2024) 45 *ILJ* 1197 (LAC)"

Industrial Law Journal 2024 45 July 1377–1394

ABSTRACT

This judgment is important for two main reasons. Firstly, it highlights that systemic delays in the determination of review applications remain the norm, and it is a case study in the Labour Appeal Court (LAC) attempting to combat the consequences by way of creative decision-making. Secondly, it is another example of the LAC having engaged in a high-intensity penalty review, but arguably having gone too far and not having applied the test for reasonableness correctly.

1.12 LAW OF DELICT

1.12.1 Mukheibir, André "*Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality* [2022] ZACC 41"

Obiter 2024 45(2) 442–457

ABSTRACT

The Constitutional Court, in the recent case of *Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality* ([2022] ZACC 41), had to decide whether a tenderer, whose tender failed as a result of the intentional misconduct of the State, could claim from the State damages in delict for loss of profits (par 1).

The High Court and the Supreme Court of Appeal both applied the *res iudicata* rule, holding that the matter had already been raised. In both instances, the courts also found that wrongfulness and causation had not been proved.

In addition to finding that the applicant had not proven wrongfulness, the Constitutional Court held that the delictual claim had to fail and, "[t]he appropriate avenue for a claim for compensation for loss sustained as a result of a breach of the precepts of administrative justice is [the Promotion of Administrative Justice Act (3 of 2000) (PAJA)]" (par 27). The court, per Theron J, thus invoked the principle of subsidiarity (see discussion below) as the reason that the applicant was precluded from claiming damages in terms of the law of delict.

This note addresses the correctness of the Constitutional Court judgment, with regard, *inter alia*, to the finding of lack of wrongfulness and the application of the principle of subsidiarity. The application of the *res iudicata* rule and the application of the tests for factual and legal causation, as addressed by the High Court and the Supreme Court of Appeal, are also examined.

1.13 MINERAL LAW

1.13.1 Badenhorst, PJ "A Theory of (Subjective) Rights to Minerals in South Africa"

TSAR 2024 3 453-468

ABSTRACT

The article examines the content of the state's custodial power (or *imperium*) in the context of the granting or issuing of rights, permissions and permits. The entitlements of the state by virtue of the state's custodial power are listed. The article explains what happens when rights, permissions or permits are administratively granted or issued by the state and identifies the duties arising from these administrative acts. The conclusion of a prospecting right (contract) and mining right (contract) is dealt with to illustrate the nature of the rights that are created contractually. The possible conclusion of a contract in the case of permissions or permits to minerals is also dealt with. The creation of real rights upon registration of prospecting rights or mining rights is explained and the issue of whether the recording of permissions or permits also creates real rights is raised and discussed. The article explains how a subtraction from the *imperium* takes place when prospecting rights or mining rights are registered. Other limitations imposed upon the state's imperium are also indicated. The article also deals with the possible subtraction from the imperium in the case of the recording of permissions or permits to minerals. The article concludes that once the entitlements by virtue of the state's custodial power are identified as a point of departure, the granting or issuing of rights, permissions and permits to minerals can be explained theoretically

1.13.2 Badenhorst, PJ and Hepburn, S "Bridging the divide between rights *in personam* and rights *in rem* in Land Transactions: A Comparative perspective of Australian and South African law"

African Journal of International and Comparative Law 2024 32(1) 90–111

ABSTRACT

Historically, additional or special rights or interests have been conferred upon the vendor and purchaser to provide protection for the period between the creation of rights *in personam* by contract, and the creation of rights *in rem* by registration. These protective rights are recognised in different ways in both Australia and South Africa via common law, equity, and legislation. The focus of this article is to identify and examine the nature and operation of these protective rights and compare their application in Australia and South Africa. Part II of the article examines the equitable rights or interests that can arise under Australian law, for both vendor and purchaser, where a specifically enforceable contract for the sale of land exists. Part III examines the special kind of personal right that is recognised under South African law in similar circumstances. The scope of the protection given to these rights under general law is examined in the awareness that limited protection is also available under the statutory registration frameworks that operate in each country. The enforcement of these protective rights will depend upon the nature of the contract entered into, the extent to which the terms and conditions have been completed, and any preliminary protection measures the parties may have already carried out.

1.14 TECHNOLOGY LAW / CYBERLAW / INFORMATION TECHNOLOGY LAW

1.14.1 Snail Ka Mtuze, Sizwe and Morige, Masego "Towards Drafting Artificial Intelligence (AI) Legislation in South Africa"

Obiter 2024 45(1) 161–179

ABSTRACT

Artificial Intelligence also abbreviated as "AI" has been the subject of much legal debate and legal writing. This article seeks to identify internationally accepted AI principles and norms that are contained in the South African Constitution. This article also seeks to identify policy such as the PC4IR Report and legislation that regulates and accommodates the use of AI in South Africa. What emerges clearly is that there has never been a deliberate attempt to legislate AI, and that the legislation referred to is applicable by coincidence not intention. The article goes on to highlight African and BRICS policies and best practices on AI, European best practices and legal norms and values on AI, and the draft EU AI Act. The article concludes with a recommendation that South Africa introduce AI legislation as a matter of urgency.

1.15 TRUST LAW

1.15.1 Nel, Eben (EC) "Fiduciary Law in South Africa: A Good Time to Come of Age"

Journal for Juridical Science 2024 49(1) 53–76

ABSTRACT

Fiduciary law as a separate legal discipline has not been under the spotlight within a South African context. As it is often limited to its association with trustees and company directors, fiduciary law has been under-analysed and not recognised as a distinctive body of law. In this article, the position of fiduciary law is regarded as within the broader context of the private-law landscape, considering both contractual and relationship theories. Its application within a trust-law context is used to illustrate the practical value of fiduciary law. The potential role of public policy as well as the impact of the mixed-law tradition are discussed, emphasising the importance of the responsible development of fiduciary law. This development relies on a sound theoretical understanding of the objectives and intended results of fiduciary law. In addition, it necessitates the identification and application of an officially recognised normative assessment for determining the parameters of the fiduciary relationship. A few potential common factors for determining the nature, origin, and reach of fiduciary law are identified, with the intention of stimulating the debate and further research. These factors include the purpose of the fiduciary concept, the undertaking by the functionary, the legal source of the individual's appointment, and aspects such as independence, discretion, duties, capacity, and assessment.

1.15.2 Nel, Eben (EC) The South African Trust as a Potential Estate Planning Tool for Foreigners

Kwartaalbericht Estate Planning 2024 4 4–10

ABSTRACT

The trust figure has various roles to fulfil in estate planning, asset protection, business structures, investment structures, employee protection, empowerment transactions, and pension fund structures. It has become a crucial part of the South African wealth, financial and economic systems, with assets worth billions of rands tied up in trusts and trust structures. It has positioned itself as a flexible and dynamic legal vehicle (without legal personality) in a wide variety of fields, with minimum interference by the legislator. Any estate or financial planner whose client has assets or consider acquiring assets in South Africa should be aware of the potential advantages of incorporating a trust structure.

CONFERENCES

2.1 NATIONAL CONFERENCES

2.1.1 De Lange, MC “Illegal Fishing as Transnational Organised Crime and the FishFORCE Approach” Nelson Mandela University Research Week: Inclusive and Sustainable use of Coastal and Marine Resources: Fisheries from Nursery to Governance in Gqeberha, South Africa. 10 September 2024

2.1.2 Denson, R & Van der Walt, G delivered a paper titled: "The Hague Convention on the Civil Aspects of Child Abduction: *The Ad Hoc Central Authority for the Republic of SA and Another v Koch N.O. and Another* [2023] ZACC 37" at the Private Law and Social Justice Conference, titled *Back to the Future or Back to Basics? The Paradigm of Private Law and Social Justice – A Journey or a Destination?* hosted by the Private Law Department, Nelson Mandela University on 5-6 August 2024

ABSTRACT

In *Ad hoc Central Authority for the Republic of South Africa v Koch NO (*[2023] ZACC 37*)*, the Constitutional Court considered an appeal from the judgment of the Supreme Court of Appeal *(Koch N O and Another v Ad hoc Central Authority for the Republic of South Africa and Another* 2022 (6) SA 323 (SCA) (26 April 2022). The Constitutional Court delivered its judgement on the 23 November 2023. The case is important and takes the broader context of international law into consideration and illustrates the multi-faceted challenges created by international child abduction. The main issue which the Constitutional Court was required to consider was the interpretation of Article 13 (a) and (b) of the Hague Convention on the Civil Aspects of International Child Abduction, 1980 (the Convention) (Ratified by South Africa on 16 July 1995). Article 13 provides that a court is not under an obligation to order the return of a child if it is established that the person, institution or other body that opposes the return (a) had consented to or subsequently acquiesced in the removal or retention of the child; or (b) the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

2.1.3 Denson, R delivered a paper titled: "An analysis of the amendments to the Divorce Act 70 of 1979 in respect of the recognition of Muslim marriages" at the Family Law Colloquium hosted by UCT on 5-6 September 2024

ABSTRACT

The Divorce Amendment Bill, 2022 was first published for public comment in November 2022. Thereafter, the Divorce Amendment Bill was approved by the National Council of Provinces in February 2024, whereafter it was referred to the President for assent. On 9 May 2024, the President signed into law the Divorce Amendment Bill which amends the Divorce Act 70 of 1979 so as to grant legal recognition to marriages solemnised according to Muslim rites.

The Divorce Amendment Act was introduced to remedy the lacuna that existed in South African law since Muslim marriages were not recognised or regulated, before the enactment of the Divorce Amendment Act. The non-recognition of Muslim marriages meant that the parties who were married in terms of Muslim rites could not seek a divorce from a court nor were the party's privy to the protective measures which were available to parties married in terms of civil law.

The Divorce Amendment Act, 2024, marks a significant milestone in the recognition and protection of Muslim marriages in South Africa. By integrating specific provisions for Muslim marriages into the existing Divorce Act of 1979, legal recognition, clarity, and protection for Muslim marriages in South Africa are now granted.

2.1.4 Erasmus, D “Corruption in Resource Allocation: Defeating the Objectives of Social Justice”. A paper presented at the SA Law Teachers Conference in Sun City from 15–19 January 2024.

2.1.5 Knoetze, E "'Waiving' customary marriages goodbye: handing over a bride and agreement on the payment of *lobolo* in terms of *Lijane v Kekana* (21/43942) [2023] ZAGPJHC 5 (5 January 2023)" at the Private Law and Social Justice Conference, titled *Back to the Future or Back to Basics? The Paradigm of Private Law and Social Justice – A Journey or a Destination?* hosted by the Private Law Department, Nelson Mandela University on 5-6 August 2024

ABSTRACT

The commitment of Mr Lijane and Ms Sauls to conclude an African customary marriage was undisputed. However, when Ms Sauls passed away, the validity of their customary marriage was challenged in the Gauteng Local Division of the High Court, Johannesburg. The ground for the challenge was that the marriage was invalid because it was not "negotiated and entered into or celebrated in accordance with customary law" as required by section 3(1)(b) of the Recognition of Customary Marriages Act 120 of 1998 (hereafter referred to as the RCMA).

Since the enactment of the RCMA in 2000, conflicting case law has emerged on the interpretation of section 3(1)(*b*). For example, in *Fanti v Boto* ([2008] 2 All SA 533 (C)) it was held that what was necessary before a marriage can be said to have been negotiated, entered into or celebrated depends on the existence of a set of basic requirements that, apart from consent, inescapably include the payment of brideswealth (*lobolo*) and the handing over of the bride to the groom's family. However, various other cases (including two Supreme Court of Appeal cases) held that (a) the requirement of the handing over of the bride can be waived, and a case heard in the High Court of South Africa Eastern Cape Local Division, Bhisho, similarly held that (b) even the requirement of the payment of *lobolo* may be waived (albeit under special circumstances). In *Lijane v Kekana* ((21/43942) [2023] ZAGPJHC 5 (5 January 2023)), the court had the opportunity to pronounce upon the waiver of both these requirements, hence the discussion thereof.

The waiver of these requirements, which distinguish customary marriages from civil marriages, raises various questions, such as when waiver can be inferred, how it impacts on legal certainty and whether it can lead to the “westernisation” of African customary marriages.

2.1.6 Ndimurwimo, LA "The International Human Rights Law and the Right of Self-Determination of the People of Palestine and Western Sahara". A paper presented to the National Conference on 30 Years of Human Rights in South Africa: Three Decades of Respect for and Promotion of Human Rights, 18–20 March 2024, Birchwood Hotel & OR Tambo Conference Centre, Johannesburg.

ABSTRACT

The right to self-determination is a fundamental principle in addressing global conflicts such as those in Palestine and Western Sahara. This right is enshrined in various international legal instruments. Article 1(2) of the UN Charter states that one of the purposes of the United Nations is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, thereby strengthening universal peace. This underscores the profound implications of self-determination for global peace, stability, and the advancement of human rights, as further supported by Articles 55 and 73 of the Charter.

This paper explores the critical role of self-determination in resolving international conflicts, using Palestine and Western Sahara as case studies. It emphasizes that the right to self-determination is recognized as an *erga omnes* obligation under international law binding all states and placing a collective responsibility on the international community to uphold peace, security, and justice. Despite its broad recognition at national, regional, and international levels, the realisation of genuine self-determination remains challenging, often hindered by inconsistent judicial interpretations and political complexities. The paper concludes by advocating for greater international cooperation to safeguard the right to self-determination, while also acknowledging ongoing debates regarding the roles and responsibilities of the Global North and South. Through sustained collaboration, meaningful progress can be achieved in resolving conflicts and upholding the rights of affected communities.

2.1.7 Nel, Eben (EC) "Some Thoughts on the Trust Theory in Fiduciary Law", *Trust and Succession Law Conference*, Academia, Centurion Campus, October 2024

ABSTRACT

Fiduciary law as a separate legal discipline and the potential role of public policy within the mixed-law reality of South Africa. An emphasis was placed on the responsible development of fiduciary law, based on a sound theoretical understanding of the objectives and intended results. Various factors for determining the nature, origin, and reach, of fiduciary law have been identified, with the intention of stimulating the debate and further researchIt is important that the aim of this paper will not be to prescribe and/or to prefer a particular way of assessing students. The aim is also not to discredit conventional tests and examinations. The aim is to propose alternative possibilities of assessment, duly keeping in mind whether the graduate attributes of students are being developed in order to prepare them for entry into the working world. A recommendation will be made that a system be devised that effectively blend the use of summative assessments with the submission of portfolios of evidence and self-assessment. In doing this, regard will not only be given to students who are academically strong, but also to students who are more practically orientated, thus duly attending to various factors that can contribute to make students employable in the working world.

2.1.8 **Olivier, M "EU TEI on Social Protection: Consultation on Regional Programme AAP 2025" (Presentation: Social Protection Consultation, EU Delegations in Africa, 23 May 2024)**

2.1.9 **Olivier, M "Labour and Social Protection for Temporary Migrant Workers: The Need for Further Reform" (ALLA Twelfth National Conference on "Assessing the Impact of Change and Reform in Australian Labour Law", Geelong, Victoria, 8–9 November 2024)**

2.1.10 **Phorego, M delivered a paper (co-authored with Van As, H) titled: "Ministerial Accountability for Granting Fishing Licenses to Rural Coastal Communities: The Case of Port St Johns" at Human Rights and Constitutional Accountability Conference to mark 30 years of Constitutional Democracy in Stellenbosch, South Africa, 28–29 November 2024**

2.1.11 **Welgemoed, M delivered a paper "HiveLaw: Propelling the Nelson Mandela University Law Clinic in the Future – A Consideration of Technology's Integral Role in Modern Legal Service Delivery and the Consequences for Legal Education" at the SLTSA Conference in Sun City from 15–19 January 2024.**

2.2 INTERNATIONAL CONFERENCES

2.2.1 Denson, R & Van der Walt, G delivered a paper titled: "The Right to Die when the Right to Live has Been Taken Away: South African Law and the Islamic Perspective" at the Athens Institute for Education & Research (ATINER) 21st Annual International Conference on Law, on 15-18 July 2024, Athens, Greece

ABSTRACT

The debate regarding the legalization of euthanasia and physician assisted suicide (EPAS) is not novel and has been a contentious issue in many countries around the globe, with some countries outrightly rejecting the legalisation of EPAS, others electing to enact legislation to legalise and regulate the practise of euthanasia under certain conditions. Whilst there are currently eight countries in the world which have promulgated legislation legalising euthanasia in certain circumstances, the legislator in South Africa been hesitant to enact legislation on this contentious issue. Instead, the judiciary has been left in a somewhat uncertain position to make *ad hoc* judgments without any guidance from Parliament. The Bill of Rights in the Constitution of the Republic of South Africa, 1996 (the Constitution)[1] contains fundamental human rights. As the supreme law of South Africa, compliance with the Constitution is mandatory subject to potential limitations as provided for in section 36. Religion, moral principles, and constitutional rights are at the centre of the debate. This research undertakes an investigation into the present and potential future approach to euthanasia in South Africa.

[1] Act 108 of 1996.

2.2.2 Ndimurwimo, LA & Wanjala, EN "A Critical Analysis of the State Obligation to Protect Children's Rights During Armed Conflicts: The Street Children in Kenya" paper presented at the International Conference on Children's Rights: Taking Stock, Plugging Gaps and Leveraging Emerging Opportunities, organized by Stellenbosch University Faculty of Law, 10–11 September 2024

ABSTRACT

Fostering of durable peace, security, and respect for human rights at the national and international levels is the core mission of the United Nations (UN). Goal 16 of the UN Sustainable Development Goals (SDGs) similarly makes a global call for peace, justice, and strong institutions. Settlement of disputes using armed forces and aggression is condemned under the UN Charter.

Armed conflicts often lead to children separation from their social and family networks, forcible displacement, recruitment and mobilization into child combatants. The protection and promotion of the Internally displaced persons (IDPs) rights before, during and after conflicts is anchored under the International Humanitarian Law (IHL) and the International Human Rights (IHR) legal frameworks which complement each other.

Kenya has experienced internal displacements on account of various causes, for example, the 2007 post-election violence, the current violent and forcible State demolitions of homes built on riparian lands along the Nairobi River and the deadly Gen-Z protests. Children are unfavourably impacted by displacements ensuing from destruction of homes, businesses, churches, health care services and other amenities of life that results in humanitarian crisis.

This paper interrogates the State obligation in the protection of children's rights during armed conflicts in reference to both the IHL and IHR legal frameworks. The central focus is to gauge the State compliance with its primary duty to observe, respect, protect, promote and fulfil children's rights during armed conflicts to avert children displacement with some ending up on the streets. The human rights approach is adopted for the secondary data analysis to achieve the set objective.

Findings are that existing laws and policies are inadequately implemented, hence a drawback in the realisation of the street children rights in Kenya. Recommendations are for a call for deliberate and targeted implementation measures for the existing legal frameworks under the IHL and IHR in order to achieve the realisation of the Kenyan children's rights during armed conflicts.

2.2.3 Ndimurwimo, LA; Stuurman, L & Nzuza, S "Climate Change: Indigenous Knowledge Systems and the Integration of Migrant Knowledge". A paper presented at the International Interdisciplinary Conference with the Celebration of African Traditional Medicine Day: African Thought and Indigenous Knowledge: A Portal for Health and Wellbeing, which took place at Nelson Mandela University, 29 August–01 September 2024

ABSTRACT

Indigenous Knowledge Systems (IKS) comprise a diverse body of knowledge developed, maintained, and transmitted through generations by indigenous communities. This knowledge is intricately linked to these communities' cultural traditions, skills, histories, and social practices and is deeply connected to their interactions with the natural environment. A pressing challenge confronting IKS in the contemporary world is the threat of climate change, which poses serious risks to indigenous communities' livelihoods, cultures, and identities. Climate change can result in the displacement of these communities from their ancestral lands, where they have developed and preserved their knowledge systems for generations. Displacement can also disrupt the transmission of IKS to younger generations and the maintenance of social networks and cultural practices that support IKS. Moreover, climate change can affect the availability and diversity of natural resources that are essential for IKS, such as medicinal plants, food crops, and wildlife. Therefore, it is crucial to recognise and protect the rights of indigenous communities to their lands, territories, and resources, as well as to their knowledge systems, in the face of climate change.

This paper is exploratory in nature, aiming to identify the legal regimes applicable and the extent thereof in protecting and preserving displaced indigenous communities and their knowledge, particularly in light of South Africa's recent climate change legislation.

2.2.4 **Olivier, M "Social Dialogue Within the Framework of the ILO Committee on Freedom of Association, and the Need to Better Accommodate Workers in the Informal Economy" (21st Conference in Commemoration of Prof Marco Biagi, Modena, Italy, 18–19 March 2024)**

2.2.5 **Olivier, M "Addressing Gender-Based Shortcomings in Social Protection: The Need for Critical Interventions" (Presentation: 30th Foundation for International Studies of Social Security (FISS) & The 20th East Asian Social Policy Network (EASP) Joint International Conference on Best Practices on Social Policy in Turbulent Times, Kyoto, Japan, 13–14 June 2024)**

2.2.6 **Olivier, M "Social Security – A Perspective from the 'Global South': Southern Africa as Example" (Presentation: 39th German Comparative Law Conference, Berlin, 12–14 September 2024)**

2.2.7 **Olivier, M "Community-Based Social Protection: Legal Considerations" (Keynote panel presentation) (2024 International SASPEN Conference on "Community-Based Social Protection: Inclusion, Challenges, and Prospects", Polokwane, South Africa, 21–22 November 2024)**

2.2.8 Tait, AM "Determining Reasonable Deposit and Cancellation Charges in Terms of the Consumer Protection Act, 2008 in the Hospitality Sector in South Africa" Paper presented at the 11th Advances in Hospitality and Tourism Marketing and Management (AHTMM) International Conference at the Ravenala Attitude Hotel, Mauritius (15–19 July 2024)

ABSTRACT

The Consumer Protection Act provides a consumer with a right to cancel an advance booking. This right is subject to the right of the supplier to require payment by the consumer of a reasonable deposit and the right to impose a reasonable cancellation charge in the event of an advance cancellation. The reasonableness of the deposit and cancellation charge is to be determined by considering specific factors. How to determine the amounts practically is not as easy and the paper proposes a model using a scorecard for determining these amounts.

2.2.9 **Van As, H "The Potential of Ocean Accounts Frameworks to Influence Local Government Budget Allocations to Reduce Fisheries Crimes" Bali, Indonesia, 3–5 July 2024**

2.2.10 **Van As, H "Addressing Crime in the Fisheries Sector" Third International Conference on Maritime Security in the Gulf of Guinea. Stellenbosch, South Africa, 5–6 September 2024**

2.2.11 **Van As, H "Addressing Crime in the Fisheries Sector" Third International Conference on Maritime Security in the Gulf of Guinea. Stellenbosch, South Africa, 5–6 September 2024**

2.2.12 **Van der Walt, G and Van der Walt "Substantive Equality and Transformative Constitutionalism" presented at the International Conference on Legal Systems and International Human Rights in Melbourne, Australia.**

2.2.11 Welgemoed, M "The Impact of Cultural and Religious Perspectives on Law Reform Relating to Euthanasia and Palliative Care", presented a workshop at the Athens Institute for Education and Research (ATINER), 21st Annual International Conference on Law, Athens, Greece, 15–18 July 2024

ABSTRACT

Euthanasia and assisted suicide are prohibited in many countries around the world. Cultural and religious perspectives, relating to euthanasia, play a significant role in this regard. Life should therefore be preserved and not taken. To preserve and prolong life, palliative care practices had developed already in during ancient times. In modern times, there are well-established and developed palliative care practices established in many countries throughout the world. There are also countries that do not have the necessary and required resources to effectively conduct palliative care practices, and any suggestions, to have euthanasia and assisted suicide legalised, are opposed. In a country like South Africa, the Constitution forms the supreme law of the land. The Constitution contains a Bill of Rights, specifying, *inter alia*, rights to privacy, dignity, equality, freedom and security of the person, as well as freedom of religion and cultural belief. There are religions and cultural beliefs that do not exclude refusal of treatment for dying patients, or even palliative care practices, where the effect of palliative medicine relieves pain, but in the process shorten the lifespan of the patient. This paper will focus on the way forward with regard to the apparent dichotomy between the following:

(a) cultures and religions, opposing euthanasia and assisted suicide and, in so doing, rather advancing pleas for adequate palliative care practices; and
(b) a Bill of Rights, allowing for rights that may advance arguments in favour of euthanasia and assisted suicide.

The paper will conclude with an assessment of what the most appropriate manner will be to bring about change – a watershed judgment by the courts, or circumspective legislation.

COLLOQUIUMS AND SEMINARS

3.1 Ndimurwimo, LA; Smith, M and Hencil, X "Are LLB Graduates Prepared for the World of Work?" A paper presented to the Dynamics of Humanisation Learning and Teaching Series, organised by the office of the Deputy Vice-Chancellor: Learning and Teaching, NMU 6–8 November 2024

ABSTRACT

This paper provides a brief overview of the extent to which LLB graduates are prepared for the workplace. It uses the Refugee Law module as a case study to illustrate how students can apply skills acquired at university to real-life scenarios as legal practitioners, researchers, or in other law-related careers. The study examines how the Legal Skills module equips students for their upper-year studies by outlining the practical tasks they undertake, the skills that are vital throughout their professional lives. Additionally, the paper explores trends and findings related to clinical legal education and the training of candidate attorneys, highlighting how these experiences contribute to shaping competent legal professionals.

3.2 Ndimurwimo, LA "Unpacking the Human Rights Crisis with the Genocide in DRC, the Need to Advocate for the Protection of Women, Children and Refugees in Times of Armed Conflict". A paper presented to the panel discussion *Unpacking the Human Rights Crisis with the Genocide in DRC, the Need to Advocate for the Protection of Women, Children and Refugees in Times of Armed Conflict* organised by the Transformation Office's Equality Promotion and Social Inclusion (EPSI) Project and the International Office in celebration of the International Day for People of African Descent, NMU 19 September 2024

ABSTRACT

The Democratic Republic of Congo (DRC) has long been at the centre of one of Africa's most protracted and devastating conflicts, often described as a humanitarian catastrophe and, at times, even referred to as a "genocide." While the term "genocide" is frequently invoked to capture the magnitude of the atrocities committed, the conflict in the DRC is far more complex and encompasses a wide array of violent acts that may not fall strictly within the legal definition of genocide as outlined in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide. The atrocities in the DRC include ongoing mass killings perpetrated by rebel groups such as the M23, a militia formed in 2012 by former Congolese soldiers previously aligned with the National Congress for the Defense of the People (CNDP). The group rebelled against the government, citing its failure to uphold the March 23, 2009 peace agreement. Alongside these rebel groups, other militias and even elements of national armed forces have committed grave human rights violations, especially in the eastern provinces of North and South Kivu. Civilians have borne the brunt of this violence, with widespread killings and the systematic use of sexual violence, particularly against women and girls employed as a weapon of war. The DRC has become emblematic of sexual violence in conflict zones, with some of the highest reported rates in the world.

In addition to physical violence, the conflict has displaced millions of Congolese citizens from their homes resulting in acute humanitarian and refugee crises, food

insecurity, and widespread malnutrition. Armed groups have financed their operations through the illicit extraction and trade of the DRC's vast natural resources including gold, diamonds, and coltan further fuelling the cycle of violence and instability.

This paper examines the immense human suffering caused by the DRC conflict and considers whether the mass atrocities committed in the DRC may be classified as genocide, or even as a form of colonial genocide. While certain instances of ethnic violence might meet the criteria for genocide, the broader conflict is best understood as the result of intersecting political, ethnic, and economic factors.

The paper concludes that continued political instability and widespread insecurity especially in Eastern DRC remain significant barriers to peace, development, and justice at national, regional, and international levels. Protecting vulnerable populations, particularly women, children, and refugees, is critical to any meaningful peacebuilding and reconstruction. Advocacy for these vulnerable groups' rights, their safety, and inclusion in legal and humanitarian frameworks is essential for breaking cycles of violence and mass killings akin to genocide. A comprehensive strategy combining legal accountability, humanitarian support, community empowerment, and justice mechanisms is vital for rebuilding the DRC's social fabric and ensuring long-term peace.

3.3 Ndimurwimo, LA "The Genocide Convention and the Recent ICJ Decision of *South Africa v Israel*: The Security and Political Outlook of the World and how to De-Escalate and Manage the Current and International Conflicts". A paper presented to the Seminar organised by the Centre for Security, Peace, and Conflict Resolution in collaboration with the Department of History and Political Studies, NMU, 4 March 2024

ABSTRACT

The world is currently grappling with a range of complex challenges, including national, regional, and international conflicts, terrorism, and escalating tensions among major powers. In particular, ongoing conflicts in Africa such as what is happening in the Great Lakes Region, pose a real risk of escalating into broader global confrontations. Simultaneously, rising tensions between superpowers such as the United States, China, and Russia threaten global peace and security.

This paper explores how the recent International Court of Justice (ICJ) ruling in *South Africa v Israel* may contribute to the de-escalation and management of contemporary international conflicts. It also examines whether international human rights can be effectively promoted in the absence of justice. The paper argues that while landmark genocide cases such as the Nuremberg Trials, and those concerning the former Yugoslavia, Rwanda, and Cambodia, have received significant attention and legal redress, while numerous other instances of mass killings remain under investigated. These include atrocities such as the Armenian genocide under the Ottoman Empire, the genocide of the Huron people in Canada, and the persecution of the Rohingya community in Myanmar. In Latin America, countries like Colombia, Venezuela, Mexico, Guatemala, and Bolivia have also witnessed severe human rights violations amounting to genocide. Within Africa, unresolved cases include those in Namibia (the Herero genocide), Tanzania (the Maji Maji rebellion, in which German forces killed approximately 300,000 people), Kenya (the Mau Mau uprising of 1952), Burundi, the Democratic Republic of Congo, the so-called "second Rwandan genocide" as detailed in the UN Mapping Report, Zimbabwe and potentially South Africa.

The paper concludes that global responses to genocide and mass atrocities continue to be shaped by geopolitical interests, power imbalances, insufficient political will at national, regional, and international levels, and the legal and practical challenges associated with conflict resolution. Factors such as the legacy of colonialism, imperialism, neo-colonialism, apartheid, and systemic racism further complicate efforts to ensure justice and accountability. The inability or unwillingness to investigate and acknowledge mass atrocities perpetuates cycles of violence, trauma, and impunity leaving victims and survivors without justice or closure. To manage and de-escalate current and future international conflicts, the paper calls for meaningful dialogue among all stakeholders. This must be grounded in a genuine willingness to compromise and pursue mutually acceptable solutions to the root causes of conflict. Such efforts should also include alternative dispute resolution mechanisms and a reimagining of the global security and political framework to prioritize justice, accountability, and lasting peace.

3.4 Olivier, M "Social Security: Overview of Developments" (Colloquium on "One Hundred Years of Labour Legislation", University of Stellenbosch, 3–4 October 2024)

3.5 Van As, HJ "Movement of Products of Illegal Wildlife Trafficking in Africa". Illegal Wildlife Trafficking (including Marine Living Resources) Colloquium for Mozambique and South Africa Judiciary Pretoria, South Africa, 25–27 October 2023

ABSTRACT

The paper addressed the value and drivers if the illegal wildlife trade (IWT) in southern Africa, and focused on the trafficking of marine living resources. It also included trafficking in leopard, lion and pangolin. I further addressed the latest trends in IWT such as geographic and species displacement, and the move from physical to online trade as well as the replacement of wild animals with animals bred in captivity. It also analysed the market states and identified action that need to be taken such as the introduction of Lacey-type legislation and compulsory health certification becoming a requirement in market states.

3.6 Van As, H “Link Between Harvesting Illegal Marine Living Resources and International Organised Crime”. Judicial Dialogue / Colloquium on Illegal Harvesting of Marine Living Resources, Gqeberha, South Africa, 26 March 2024

GROUP DISCUSSIONS/WORKSHOPS

4.1 CENTRE FOR LAW IN ACTION AND FISHFORCE ACADEMY Workshop to support the effectiveness of fisheries prosecutions, members of the judiciary are sensitised on the nature and extent of fisheries organised crime in South Africa on 26 March 2024.

ABSTRACT

FishFORCE acknowledges the strategic importance to include and engage with prosecuting authorities and members of the judiciary who are relevant to the protection of marine living resources, as well as FishFORCE's goal to create awareness about fisheries organised crime so that the prosecuting authorities and members of the judiciary can better understand the magnitude of the crimes they are tasked to judge. A one-day awareness workshop to members of the judiciary took place on 26 March 2024. The workshop focused on the impact of fisheries crime and Illegal, Unreported and Unregulated (IUU) fishing on society, the economy, and the environment.

4.2 CENTRE FOR LAW IN ACTION AND FISHFORCE ACADEMY Community Engagement Workshops in Namibia

ABSTRACT

A research report titled “Unravelling the Web of Wildlife Crime: Assessing Impact, Regulating Practices and Strengthening Enforcement Measures” was developed with the purpose of sharing with FishFORCE partner countries to convert to training material that can be used to sensitise the judiciary and communities. The emphasis of the document is on the impact of fisheries crimes on biodiversity, the rule of law, food security, peace and development and on national and rural economies in general. This was rolled out in Namibia by the University of Namibia as a Community Engagement Session on 24 September in Swakopmund and on 18 October in Walvis Bay.

4.3 **Olivier, M "ECOWAS Regional Resilience (Draft) Strategy: Situational analysis – Social Protection" (Presentation: ECOWAS/UNDP-organised workshop, Abuja, Nigeria 13–15 February 2024)**

4.4 **Olivier, M "ECOWAS Regional Resilience (Draft) Strategy: Social Protection – Seven Prioritised Recommendations" (Presentation: ECOWAS/UNDP-organised workshop, Abuja, Nigeria 13–15 February 2024)**

4.5 **Olivier, M "ECOWAS Regional Resilience (Draft) Strategy: Inter-theme relationship informing pathway connections" (Presentation: ECOWAS/UNDP-organised retreat, Abuja, Nigeria 27–29 May 2024)**

4.6 **Olivier, M "ECOWAS Regional Resilience (Draft) Strategy: Social Pathway" (with D. Yerokun) (Presentation: ECOWAS/UNDP-organised retreat, Abuja, Nigeria, 27–29 May 2024)**

BOOKS AND CONTRIBUTIONS TO BOOKS

5.1 Badenhorst, PJ; van den Berg, HM and Du Plessis, W "Minerals and Petroleum" comprising vol 30 of the *Law of South Africa* (3rd edition) LexisNexis (2024)

ABSTRACT

Volume 30 of the Encyclopedic work deals with the Mineral and Petroleum Law of South Africa.

5.2 Du Plessis, Max "Apartheid" in Pedro Caeiro, Sabine Gless, Valsamis Mitsilegas, Miguel João Costa, Janneke De Snaijer and Georgia Theodorakakou (eds), *Elgar Encyclopedia of Crime and Criminal Justice*, Volume I, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing Ltd, 95–103 (2024)

ABSTRACT

The *Elgar Encyclopedia of Crime and Criminal Justice* stands apart as the most comprehensive global reference title in its field.

Featuring the work of over 200 scholars and practitioners from around the world, the Encyclopedia presents an accessible and uniquely far-reaching set of entries on topics associated with crime and criminal justice.

The Elgar Encyclopedia of Crime and Criminal Justice chapter on apartheid explores the nature of the South African apartheid system as a crime against humanity. It examines the origins, nature, and current status of apartheid practices as both a war crime and a crime against humanity.

5.3 Nel, Eben (Editor); King, Ronald; Blignaut, Eileen; Van Vuren, Louis; Van der Westhuizen, Willie and Van Zyl, Rika *Fiduciary Services Handbook 2025* (LexisNexis, November 2024)

ABSTRACT

An extensive work for practitioners in the fiduciary services industry and scholars in the field.

5.4 Olivier, M; Govindjee, A and Kalula, E "Migration Vulnerability and Access to Social Protection for Select Migrant Categories: An Overview" in *Migration Vulnerability: Access to Social Protection for Select Migrant Categories* (eds: Olivier, M; Kalula, E & Govindjee, A) (African Sun Media 2024) 29–50

ABSTRACT

Social protection deficits shared by migrants generally are particularly noticeable in the case of specific migrant categories. This publication focuses on three such categories, which have been identified in the African and Southern African context, and which have informed a four-year team investigative project involving a number of key researchers from various disciplines. The project has enjoyed the support and endorsement of the Stellenbosch Institute for Advanced Study (STIAS). The key matter addressed by the project, as outlined in this overview chapter, concerns the availability, adequacy and access to social protection of these selected vulnerable migrant categories, i.e.: (i) migrants exposed to climate or environmental change; (ii) migrants in the informal economy, with specific reference to migrants who move in an informal work capacity (e.g., informal cross-border traders) and migrant workers who become part of the informal economy in the country/area of destination; and (iii) high-skilled professionals, including business persons and investors, and intra- corporate transferees.

5.5 Olivier, M "Climate Change, Human Mobility and Displacement: The Quest for an Adjusted Social Protection Paradigm" in *Green Transition and the Quality of Work: Implications, Linkages and Perspectives* (eds: Ales, E; Addabbo, T; Curzi, Y; Fabbri, T & Senatori, I) (Palgrave/Springer 2024) 153–177

ABSTRACT

The chapter critically interrogates traditional responses in relation to persons displaced as a result of climate change (which tend to focus on humanitarian assistance) and investigates the need for an adjusted developmental-focused paradigm, informed by the concrete reality of the nexus between climate change-movement/displacement-urbanisation-changing livelihoods—with an emphasis on a displaced persons/societies-centred and whole-of-government approach. There is a need for an adjusted social risk-based conceptual approach, which acknowledges exposure to climate/environmental change as a particular social protection risk, and the associated risk framework, requiring an integrated social protection response framework. An expansion of the traditional ILO risk categories is needed, based on the lived experiences of affected persons. Beyond social protection compensatory measures, there is need for preventive social protection arrangements and integration in the labour market and societal sense of affected workers and their families, and accommodating the transformative dimension of social protection. Furthermore, the concrete implications of expanded social protection implication needs in the climate change human mobility context have to be appreciated. An adjusted social protection paradigm requires critical reforms at the institutional and policy levels, as well as in relation to the redesign of social protection systems, programmes and operations. In view of the transboundary nature of climate change event and the extent of the financial burden to roll out appropriate social protection interventions, innovative financing mechanisms would have to be considered. Especially in the Global South, special arrangements to extend formalised forms of social protection to climate change-induced displacing workers in the informal economy have to be considered. Furthermore, currently absent and inadequate normative parameters have to be

designed and implemented. Finally, there is need to strengthen voice and representation for those affected by climate change-induced displacement.

5.6 Olivier, M and Mbokazi, S "A Critical Appraisal of Labour Mobility Trends and Their Impact on Regional Integration" in *International Organization for Migration (IOM) Africa Migration Report (Second Edition) – Comparing the Threads: Linking Policy, Practice and the Welfare of the African Migrant* (IOM 2024) 77–92

ABSTRACT

The *Second Edition of the Africa Migration Report* (AMRII) takes a regional approach on migration and human mobility by producing knowledge and analysis that will contribute to the African integration agenda. Building on the success and lessons drawn from the first edition, it will generate qualitative research, data and knowledge on migration in the continent to embed human mobility into broader development and continental integration policies as outlined in the African Union Agenda 2063. The report focuses on the different policy frameworks, processes and thematic areas on the status of continental integration. The report takes into consideration the cross-cutting topic of migration and health, climate-induced migration trends, data-based analysis of current and future human mobility trends, migration and trade, labour mobility, missing persons, and the role of new technology in facilitating interconnectivity and human mobility in Africa.

5.7 Olivier, M "Social Security for Migrants Post-COVID-19: Revisiting the Legal and Policy Framework" in Motala, S; Hart, T & Ngandu S (eds) *Social Security Review 2024 – Evolution of Social Security in South Africa: An Agenda for Action* (2024) 20–39

ABSTRACT

This chapter critically reflects on the legal and policy framework informing social security policy-development and-implementation in relation to migrants – given the heightened vulnerability and movement restrictions experienced during the COVID-19 pandemic. The adoption of COVID-19 social security measures had some impact on particular migrant categories – temporary migrant workers and undocumented migrants being left extremely exposed. The existing legal and policy framework is restrictive and incomplete while the judicial responses have been consistently mindful of the protection to be afforded to migrants. With reference to constitutional prescripts and international law standards, a pandemic context requires much more extensive access to medical treatment and services, and to basic forms of assistance, irrespective of migrant category. This is justified by the heightened vulnerability experienced by asylum-seekers in the event of a public health emergency, including pandemics such as COVID-19, and as a result of movement restrictions. Considering that international law perspectives on migrants' social security protection are particularly instructive, and given the international law-friendly approach of the South African Constitution, it is argued that South Africa could benefit from ratifying and implementing a number of key social security conventions at the global and regional level, and concluding dedicated bilateral labour and social security agreements, providing for migrants' social security protection on a reciprocal basis. There appears to be an urgent need for the design and implementation of an integrated policy dealing with access to social security for migrants, also in a pandemic context, to be *accompanied by an aligned legal framework.*

5.8 Olivier, M "Labour Relations in the Public Service" in *Principles and Practice of Labour Law* (LexisNexis, 2024) (chapter 19: "Public Service Employment: General Framework and Principles" and chapter 20: "Special Categories of Civil Servants: Security Services and Public Education")

ISBN 060PRINPRASYS

ABSTRACT

Principles and Practice of Labour Law outlines the basic principles underlying South African labour law through a discussion of court decisions and legislation.

It investigates both the theory and practice of labour law and contains a comprehensive examination of the labour dispensation as provided for in the Labour Relations Act 66 of 1995, Basic Conditions of Employment Act 75 of 1997 and Employment Equity Act 55 of 1998.

5.9 Snail Ka Mtuze, Sizwe; Morige, Masego and Nzimande, Mbali "The law on artificial intelligence (AI) in South Africa in the evolving African legal landscape" in *AI from the Global Majority Official Outcome of the UN IGF Data and Artificial Intelligence Governance Coalition* (November 2024) 45–56

ABSTRACT

This research article will look at the status of AI Laws and Policies in South Africa, the South African Draft AI Strategy (SADAIS) and critique thereof, South Africa's National Artificial Intelligence Policy Framework (NAIPF) as well as African initiatives to regulate Artificial Intelligence as it evolves. The article concludes with a thought on how South Africa is dealing with Artificial Intelligence and the scramble to publish Policy Frameworks to govern it.

5.10 Snail Ka Mtuze, Sizwe; Morige, Masego and Nzimande, Mbali "The law on artificial intelligence (AI) in South Africa in the evolving African legal landscape" in *AI from the Global Majority Official Outcome of the UN IGF Data and Artificial Intelligence Governance Coalition* (2024)

ABSTRACT

This research article will look at the status of AI Laws and Policies in South Africa, the South African Draft AI Strategy (SADAIS) and critique thereof, South Africa's National Artificial Intelligence Policy Framework (NAIPF) as well as African initiatives to regulate Artificial Intelligence as it evolves. The article concludes with a thought on how South Africa is dealing with Artificial Intelligence and the scramble to publish Policy Frameworks to govern it.

AWARDS AND ACHIEVEMENTS

6.1 **Welgemoed, M (and the rest of the HiveLaw team) Engagement Excellence Award 2024 for the HiveLaw project**

6.2 **Ndimurwimo LA, received the Visiting Fulbright South African Research Scholarship Award for 2024–2025 Program, hosted by James E Rogers College of Law, University of Arizona, Tucson, Arizona USA**

NEWSLETTERS

7.1 One Ocean Hub. Fisheries Law Enforcement Academy FishFORCE The Herald – 5 June 2024 “NMU expert joins SADC task force to combat illegal fishing”

SELECTED REPORTS, STUDIES AND POLICY DOCUMENTS

8.1 **Olivier, M "Regional Team Europe Initiative (TEI) on social protection in sub-Saharan Africa" (report: European Commission, 2024)**

8.2 **Olivier, M "Development of a legal policy paper and a draft model law on labour migration in Africa" (Pan-African Parliament/ILO, 2024)**

8.3 **Olivier, M "Social protection for migrant workers in Pacific Island Countries – Policy and legislation review" (ILO, 2024)**

8.4 **Olivier, M ECOWAS Regional Resilience Strategy for West Africa 2024-2050 – Social Protection contribution (submitted to the UNDP, for ECOWAS) (2024)**

8.5 **Olivier, M "Social protection in West Africa" (submitted to the UNDP, for ECOWAS) (2024)**

8.6 **Olivier, M "Situation analysis: Social protection in West Africa (Summary)" (submitted to the UNDP, for ECOWAS) (2024)**

8.7 **Olivier, M "Diagnostic of informality: Namibia – Literature Review Report" (Final editor and contributor to report) (submitted to Synergy Business Advisory and Consultancy CC ("Synergy BAC") and Genesis Analytics (Pty) Ltd, for the National Working Group on Informality (NWGI)) (2024)**

8.8 **Phorego, M and Van As, HJ "Unravelling the Web of Wildlife Crime: Assessing Impact, Regulating Practices and Strengthening Enforcement Measures"**

8.9 Van As, HJ "Value chain analysis of the fisheries sector in South Africa, April 2024, UNODC"

ABSTRACT

South Africa has an extensive suite of legislative and other regulatory instruments that enables it to address most threats and criminalities, but they are not always fully implemented and the technical capacity to undertake all the functions is sometimes lacking. A reluctance to adopt innovative ways of doing this has also been noted.

The most pertinent findings of the study included the exposure of South Africa's fisheries sector to a wide range of crimes, the levels of corruption that permeate the industry and make government agencies vulnerable to the corruption risks, the lack of proper inter-agency cooperation, and the severe lack of funding, resources, and capacity. This leads to the inability of agencies to fulfil their fisheries associated functions and a lack of at-sea surveillance of vessel movements and transshipments. There are some issues with foreign fishing vessels, but the levels could not be determined. The are also issues that the national prosecuting authority should address, and the judiciary should be sensitised. Although South Africa's Constitution lists access to justice as a basic right, many cases drag on too long.

8.10 Van As, HJ "The Development of Lacey-Type Provisions to combat Transnational Organised Crime in the Trafficking of Illicit Aquatic Living Resources in Southern Africa"

8.11 Van As, HJ and Phorego, M "Unravelling the Web of Wildlife Crime: Assessing Impact, Regulating Practices and Strengthening Enforcement Measures"

ACHIEVEMENTS AND MILESTONES

9.1 CENTRE FOR LAW IN ACTION

Centre for Law in Action Appointed by the Food and Agriculture Organisation of the United Nations for Governing Sustainable Agrifood Systems: Strengthening Legislation, Developing Curricula and Building Capacity to Support Implementation, Compliance and Enforcement in Southern Africa

The Development Law Service of the Legal Office of FAO is leading a new Programme entitled “Governing for Sustainable Agrifood Systems: Strengthening Legislation and Building Capacity to Support Implementation, Compliance and Enforcement” (FVC/GLO/223/MUL), hereafter “ACE Programme”. Its key outcome is the strengthening of FAO Members’ regulatory instruments and institutional capacity to promote accountable governance for sustainable agrifood systems towards food security and nutrition through effective implementation, compliance with, and enforcement of relevant agrifood systems legal frameworks.

Legislation remains the most powerful tool to create the backbone for the operationalisation of accepted international guidelines regarding the sustainable management of the environment and natural resources towards realising food security and nutrition objectives. Having national laws and regulations in place to govern essential agrifood systems and natural resource sectors is undeniably important; however, ensuring that the appropriate governance mechanisms and resources are in place to give effect to these laws is a critical element often lacking. To address this weakness, the ACE Programme aims to strengthen existing inter-disciplinary and cross-sectoral approaches to assess regulatory reform and ensure the integrity of the legal frameworks for effective implementation of these laws, as well as assess the adequacy of knowledge, capacity, and resources available to ensure effective compliance and enforcement of these laws.

To implement, ensure compliance and enforcement of their national laws, Governments require that appropriate mechanisms, resources, capacity, and

knowledge to be in place, which will be the focus of this project. This Programme is therefore fundamental to achieving the objectives of the laws in the long term, to uphold good governance, and ultimately the rule of law.

The ACE Programme will adopt a One Health approach and address climate change as cross-cutting issues. The Programme will focus on the Southern African region, including Eswatini, Lesotho and Zimbabwe.

In this context, FAO LEGN, in collaboration with the relevant FAO technical divisions, FAO Subregional Office for Southern Africa and the relevant decentralised country offices and partners, organised an inception workshop with the main goal of launching the ACE Programme. The workshops aimed to:

- provide comprehensive information about the Programme, its components and implementation;
- discuss key issues underpinning the compliance and enforcement of agrifood systems, which will feed into the Curriculum to be developed by the Programme;
- raise awareness and build technical capacity of participants in relation to the One Health approach and the components of the Programme focused on antimicrobial resistance (AMR) and climate change.

Representatives from different entities under key Ministries with a role on compliance and enforcement of agrifood systems legislation, including government officials from the human health, animal health (both in terrestrial and aquatic sectors), fisheries, food safety, plant protection and environmental sectors were in attendance.

Director of FishFORCE Academy appointed to the Board of Directors of the SADC Fisheries Monitoring Control and Surveillance Coordination Centre

Professor Hennie van As was appointed to the Board of Directors of the SADC Fisheries Monitoring Control and Surveillance Coordination Centre (MCSCC) for a period of two (2) years, starting 01 June 2024. The SADC Ministers of

Agriculture, Food Security, Fisheries and Aquaculture approved the appointment of Prof van As to serve on the board as a legal expert.

As a member of the MCSCC BoD, Prof van As will be part of the principal institutions responsible for the direction and implementation of the Charter establishing the MCSCC. The MCSCC is one of the key regional organisations established by SADC Member States to promote the responsible, sustainable use and protection of living aquatic resources and biodiversity to enhance food security, generate economic opportunities and alleviate poverty. In achieving this, the MCSCC is expected to establish common operational standards and policies for fisheries monitoring control and surveillance (MCS), harmonise, to the extent possible, conditions of access, licensing, and operations of foreign fishing vessels in the regional waters, and promote regional cooperation, information sharing and cost-effective coordination and shared use of MCS assets to eliminate illegal, unreported, and unregulated (IUU) fishing in the region.

Participation at the 17th Meeting of the Regional Technical Team (RTT) for the SADC Regional Fisheries Monitoring Control and Surveillance Coordination Centre (MCSCC), 17-20 June 2024, Maputo, Mozambique

The 17th meeting of the RTT reviewed the progress made in the implementation of the Roadmap of the Interim Project Management Unit (IPMU) on operationalisation of the MCSCC, providing inputs into the second phase of Si Ager project and the Sustainable Aquatic Foods projects to support the MCSCC, and review implementation of projects supporting the MCSCC. The RTT members also participated in the orientation session for the MCSCC Board of Directors and provided insights into the work of the MCSCC.

SUPERVISION OF LLM TREATISES/DISSERTATION/THESES

10.1 APRIL 2024 GRADUATION

10.1.1 **Qotoyi, T supervised ADDAE, Charles Kwadwo "Reasonable Accommodation for Persons with Disabilities in the Workplace" completed for April 2024 graduation.**

10.1.2 **Keith-Bandath, RE with co-supervisor Van der Walt, JA supervised KARUAIHE, Janee Raahua Sigrfried "The Right of Non-Unionised Employees and Minority Unions to be Consulted Prior to Dismissals Based on Operational Requirements" completed for April 2024 graduation.**

10.1.3 **Hamukuaya, H supervised KAYAMA, Ohms Moven "Regulation of Sexual Harassment at the Workplace in Namibia" completed for April 2024 graduation.**

10.1.4 **Hamukuaya, H supervised KHESWA, Zimasa Purity "Resignation in Employment Law" completed for April 2024 graduation.**

10.1.5 **Qotoyi, T supervised MALEKA, Reuben Mpono "Collective Bargaining in the Public Service Sector" completed for April 2024 graduation.**

10.1.6 **Gathongo, JK with co-supervisor Van der Walt, JA supervised MASAYA, Ruvimbo Cheryl "Statutory Conciliation as a Labour-Dispute-Resolution Mechanism" completed for April 2024 graduation.**

10.1.7 **Welgemoed, M with co-supervisor Lerm, H supervised MINNAAR, Evolia Geraldine "Minimum Sentencing Disparities in the Criminal Justice System" completed for April 2024 graduation.**

10.1.8 Keith-Bandath, RE supervised MINNIE, Wouter Jacobus Theron "The Labour Court's Approach in Awarding Costs" completed for April 2024 graduation.

10.1.9 Gathongo, JK supervised NONYUKELA, Thembelihle Yolanda "The Right to Parental Leave for Employees in Same Sex Marriages" completed for April 2024 graduation.

10.1.10 Van der Walt, JA supervised SYCE, Donato Burchelle "Discipline and Dismissal of Employees for Testing Positive for Cannabis" completed for April 2024 graduation.

10.1.11 Keith-Bandath, RE supervised TINYANE, Nthabeleng "Public Policy Considerations and the Enforcement of Restraint of Trade Agreements" completed for April 2024 graduation.

10.1.12 Coetzee, L supervised BOTHA, Bernardus Hermanus "Defining and Regulating the Regulation of De Jure De Facto and Shadow Directors: Lessons from New Zealand" completed for April 2024 graduation.

10.2 DECEMBER 2024 GRADUATION

10.2.1 Van der Walt, JA supervised AUGUST, Joshua Cliff "The Review of a Disciplinary Finding or Sanction in terms of Section 158(1)(H) of the Labour Relations Act 66 of 1995" completed for December 2024 graduation.

10.2.2 Welgemoed, M supervised DAVIDS, Sesam Isipho "The Legality of Euthanasia Conducted by Medical Practitioners" completed for December 2024 graduation.

10.2.3 Hamukuaya, H supervised GAVU, Siphelele "Amendments to the Labour Law Relations Act 66 of 1995 to Addressing Violent and Intractable Strikes" for December 2024 graduation.

SUPERVISION OF LLD THESES

11.1 APRIL 2024 GRADUATION

11.1.1 Vrancken, PHG with co-supervisor Egede, EE supervised KAROMO, Adelaide Aquiline "The Regulation of Deep Seabed Mineral Mining in South Africa: Lessons from the United Kingdom" completed for graduation April 2024.

ABSTRACT

The exploitation of mineral resources in the Area (i.e., the seabed, subsoil and ocean floor beyond the coastal States' continental shelves) is on the horizon. Despite this, African States, including South Africa, are not actively participating in prospection and exploration activities in the Area. The thesis focused on a future seabed-mining regulatory framework for South Africa by drawing lessons from the United Kingdom with the aim to guide South Africa in developing a legal regime consistent with the 1982 United Nations Convention on the Law of the Sea, the 1994 Agreement Relating to the Implementation of Part XI of the Convention and the International Seabed Authority's Mining Code. The lessons drawn covered three specific aspects: (i) mining concessions; (ii) fiscal management; and (iii) marine environmental protection. Detailed recommendations were made for the drafting process, which will hopefully take place soon.

11.1.2 Van der Walt, JA supervised MALULEKE, Mongwena John "Balancing an Educator's Right to Strike and a Child's Right to Basic Education" completed for graduation April 2024.

ABSTRACT

The candidate examines how a fair balance can be realised between the educator's right to strike and the child's right to education. International and constitutional frameworks are analysed to uncover South Africa's position on the two opposing rights and the various balancing approaches available. This thesis recommends a consensus-based approach to balance the rights of educators with that of the child's right to education. It further proposes the establishment of a structured and organised forum or institution with the sole purpose of dealing with the rights of educators that compete with the rights of learners.

11.1.2 Vrancken, PHG with co-supervisor Botha, JC supervised MASEKA, Ntemesha Mwila "The Horizontal Application of the Environmental Right to Juristic Persons at Sea" completed for graduation April 2024.

ABSTRACT

This study aimed to assess whether, and to what extent, section 24 of the Constitution, which entrenches the environmental right in South African law, binds private juristic persons at sea. Taking into account that, in ocean-related matters, the assessment of the jurisdictional connecting factor between South Africa and the juristic person is a much more complex process than in other matters and after examining that process in depth, the study showed that, in principle, section 24 binds juristic persons within South Africa's territorial jurisdiction, exclusive economic zone jurisdiction and continental shelf jurisdiction as well as those under South Africa's flag jurisdiction and personal jurisdiction.

11.1.2 Ndimurwimo, LA with co-supervisor Makori, AF supervised WANJALA, Esther Nasimiyu "The Promotion of the Right to Access to Adequate Housing for Street Children in Kenya" completed for graduation April 2024.

ABSTRACT

This thesis explores the fundamental right to housing and its application to street children in Kenya. It establishes why street children do not enjoy housing and shelter rights and face exclusions despite the constitutional safeguards. Examination of international, regional and national legal frameworks is explored to uncover hindrances to street children realisation of their rights. Findings reveal that lack of specific policy and legislation coupled with lack of deliberate efforts by institutions cause violations of these children's rights. Conclusions and recommendations are for a legal and policy review for protection of these children's rights guided by constitution and international standards.