NELSON MANDELA UNIVERSITY

RESEARCH OUTPUTS

2022

Faculty of Law

Editor: S Gillespie

TABLE OF CONTENTS

ARTICLES

1.1 ADMINISTRATIVE LAW

1.1.1 Ndimurwimo, LA and Chimbala-Kalenga, R "Understanding Legal Challenges in Operating in the Liquor Industry: A Case Study of Port Elizabeth"

Journal of Human Ecology 2022 77(1-3) 36–44

ABSTRACT

This paper seeks to bring an understanding to the legal challenges faced by people from previously disadvantaged communities who intend to get involved in the liquor industry as retailers. The ecological theories underpinned the study. A qualitative approach was used to answer the research questions. One focus group with 10 participants was done and 6 individual interviews were done to collect data. Snowball sampling was used to identify the participants. Data was analyzed through categorizations of the themes that was evident from the interviews. The main finding was that most of the illegal traders were being supplied the merchandise from people who had trading licenses. This paper concludes that illegal retailers should be helped with facilitation of obtaining liquor trading licenses. The paper recommends awareness and advocacy on acquiring trading licenses for those who are interested in trading in the liquor industry.

1.2 CLINICAL LEGAL EDUCATION

1.2.1 Welgemoed, Marc and Du Plessis, MA (Riette) "Training for Legal Practice – Towards Effective Teaching Methodologies for Procedural Law Modules"

Obiter 2022 43(2) 205–233

ABSTRACT

Procedural laws play an important role in legal practice through their use in the enforcement of the substantive rights of members of the public. Civil procedure, criminal procedure, and the law of evidence are the building blocks whereby matters are presented in court. Legal representatives, representing members of the public, should therefore be skilled and professionally trained in procedural laws. Due to their importance, students should not only have a thorough and foundational theoretical knowledge of procedural laws, but also the necessary practical skills in applying their knowledge to practical scenarios, which should be instilled as part of the teaching of procedural modules. The inherent methodological content of conventional teaching methodologies applied when teaching procedural law modules, i.e., the Socratic and case dialogue methodologies, however, prove to be inadequate in transferring the required skills and practical training. Several constituent parties in the legal profession, including academics, legal practitioners, and presiding officers, have remarked that law students, upon graduation, lack the necessary skills, ingenuity, and practical knowledge to make a good start in legal practice. It furthermore appears that university law faculties are generally not willing to train law students for practice. There is also the necessity for the development of identified essential skills required of competent legal practitioners. The continuous development of these skills in the teaching and practical application of procedural laws afford students the ability to advance future client representation professionally and confidently. Cultural, social and human elements should form part of the teaching and learning of procedural law modules, which will create an important awareness among students that, when working with clients in legal practice, they are attending to the

rights and interests of human beings who may be of different races and cultures. This will further develop students' identities and values as professionals which include not only being responsible to individual clients, but also contributing services to the community. In developing the required identified skills, students will not only be able to apply technical legal procedures, but also learn how to assist clients more cost-effectively. By employing the Clinical Legal Education methodology in tandem with conventional lecture methodologies, students are introduced to the practical application of procedural laws, honing both their practical and intellectual skills. Application suggestions include tutorial sessions, mock trials, and reflective assignments. This article evaluates the efficacy of the current teaching methodologies applied in teaching procedural laws toward imparting students with the required practical skills. It recommends the development of procedural law modules by introducing applied practical skills to enable students to enter legal practice after graduation as more rounded and skilled future legal practitioners.

1.3 CONSTITUTIONAL LAW

1.3.1 Phorego, Molefhi S and Van As, Hendrik J "Fettering of Presidential Discretion: Did the Public Protector Overreach?"

Obiter 2022 43(4) 649–671

ABSTRACT

The President's power to establish a commission of inquiry confers a plethora of discretionary powers for the Head of State. In the exercise of this power, the President acts alone, seemingly without the constitutional obligation to consult any public functionary or institution. This creates challenges for the question of accountability that attends the exercise of the power. Following the release of the State Capture Report, the Public Protector found that the President had *inter alia* outsourced his power to appoint cabinet members to the Gupta family, notwithstanding that he was the only one empowered to exercise the power in terms of the Constitution. Consequently, the Public Protector directed the President to establish a commission of inquiry to probe the allegations further. The President argued that the Public Protector had overreached her powers and trespassed upon his powers as Head of State. In the *State Capture* judgment, the High Court found that the Public Protector's direction to the President to establish a commission of inquiry was lawful and binding. This article investigates whether the Public Protector may compel the President to establish a commission of inquiry, and whether such an order does not violate the doctrine of the separation of powers. It also probes the nature and extent of the Public Protector's investigatory powers, *vis-à-vis* the President's discretion in appointing a commission of inquiry. The article argues that the President's power in the process is too broad and should be curtailed to enhance accountability.

1.4 CRIMINAL PROCEDURE

1.4.1 Ntontela, M "SAPS Electronic Register for Perpetrators of Abuse Against Women"

Obiter 2022 43(4) 672–688

ABSTRACT

Abuse against women is a severe social problem that needs an effective combat mechanism. Globally, women have been subjected to violence to such an extent that the problem has caught the international community's attention. In response to the abuse of women, the international community has introduced a legal framework to assist countries in setting up preventative and protective measures to realise women's rights and make them free from all forms of violence. The instruments introduced by the international community include UN Resolutions, General Recommendations on violence against women and children, and the like. The Constitution of the Republic of South Africa, 1996 guarantees everyone the right to freedom of security, including the right to be free from all forms of violence. While South Africa has made great strides in passing legislation to protect women from violence, the preventative methods have not been effective in combating women abuse. Thus, South Africa needs more preventative mechanisms to protect women, and police at the forefront of implementing those preventative mechanisms. This article investigates mechanisms that the international community has suggested, looks at other countries' approaches to combating violence against women, and then argues for a process where women have access to information about a potential abuser's previous criminal history.

1.4.2 Goliath, Alphonso “A Short Critique of Minimum Sentences”

Obiter 2022 43(4) 779–796

ABSTRACT

The state has a constitutional duty to respect, promote and protect the rights of citizens. To this end, every citizen has the right to dignity, the right to equality, and the right to freedom and security of the person. Allied thereto is that they will not be subjected to punishment that is cruel, inhuman, and degrading, among others. With the advent of democracy, South Africa inherited a host of challenges and one of these challenges was the explosion of violent crime. Mandatory minimum sentences were introduced by the Criminal Law Amendment Act 105 of 1997 to serve as a temporary, emergency crime-control measure based on the commonly-held belief that harsh punishment would reduce crime. Since minimum sentencing legislation has been in full operation for more than two decades, one would expect crime in South Africa to be relatively under control. However, violent crimes like murder and rape in our society have not abated. It is argued that minimum sentences do not serve as a deterrent to violent crime, instead, they exacerbate prison overcrowding. Lengthy prison terms and high imprisonment rates fuel the conditions for higher crime rates as it impedes the objectives of rehabilitation and promotes recidivism. The state’s continued support for these increased sentences infringes on the constitutional rights of citizens. In this article, the author concludes that if we feel outraged by the high rate of violent crime, we need to find a sentencing regime that leads to the reduction rather than the exacerbation of crime in line with constitutional provisions.

1.5 CYBERCRIME LAW

1.5.1 Snail Ka Mtuze, S –"The Convergence of Legislation on Cybercrime and Data Protection in South Africa: A Practical Approach to the Cybercrimes Act 19 of 2020 and the Protection of Personal Information Act 4 of 2013"

Obiter 2022 43(3) 1–22

ABSTRACT

This article seeks to give a historical background to the development of cybercrime laws in South Africa. It commences with a discussion on the common-law position regarding cyber-criminality then the article goes on to discuss the Electronic Communications Transactions Act (ECT) and the new Cybercrimes Act. This is followed by a discussion on Protection of Personal Information Act (POPIA) and same converges with the Cybercrimes Act, as well as the POPIA.

1.6 ENVIRONMENTAL LAW

1.6.1 Adelman, S and Kotze, LJ "Environmental Law and the Unsustainability of Sustainable Development: A Tale of Disenchantment and of Hope"

Law and Critique 2022 1–22

ABSTRACT

In this article we argue that sustainable development is not a socio-ecologically friendly principle. The principle, which is deeply embedded in environmental law, policymaking and governance, drives environmentally destructive neoliberal economic growth that exploits and degrades the vulnerable living order. Despite seemingly well-meaning intentions behind the emergence of sustainable development, it almost invariably facilitates exploitative economic development activities that exacerbate systemic inequalities and injustices without noticeably protecting all life forms in the Anthropocene. We conclude the article by examining an attempt to construct alternatives to sustainable development through the indigenous onto-epistemology of *buen vivir*. While no panacea, *buen vivir* is a worldview that offers the potential to critically rethink how environmental law could re-orientate away from its 'centered', gendered and anthropocentric, neoliberal sustainable development ontology, to a radically different ontology that embraces ecologically sustainable ways of seeing, being, knowing and caring.

1.7 HUMAN RIGHTS LAW

1.7.1 Spies, A "A Culture of Exclusion: Re-Configuring Inclusive Education in South Africa"

International Human Rights Law Review 2022 11(2) 245–272

ABSTRACT

The realisation of the right to education under the South African Constitution remains complex despite progressive legislation and a supportive policy framework. The complexity has highlighted the continued cultural and structural inequality of the South African public schooling system. Specifically, inclusive education and its support for learners experiencing barriers to learning illustrate the contested nature of this right, with many of these learners remaining marginalised. This article explores the concept of inclusive education as it relates to the broader contextual framework of the South African right to education. It highlights the shortcomings of the South African Schools Act 84 of 1996, in supporting authoritarian management through School Governing Bodies that has eroded the intended purpose of the Act as a beacon of community participation and transparent decision making. Key to the analysis, is establishing how South African courts have assisted learners experiencing barriers to learning, and how litigating access to public schools in challenging the policy prescripts of School Governing Bodies have hindered the implementation of inclusive education.

1.7.2 Moyo PT; Botha J and Govindjee A "The Constitutionality of the National Health Insurance Bill: The Treatment of Asylum Seekers"

PER / PELJ 2022 (25) 1–30

As the supreme law of the land, the Constitution of the Republic of South Africa, 1996 (the Constitution) requires that any law or conduct be consistent with its provisions. The Draft National Health Insurance Bill, 2019 (the Bill) is no exception. Clause 4 of the Bill states that South African citizens, permanent residents and refugees will have access to quality health care services whilst asylum seekers and undocumented migrants will have access to emergency medical services, as well as services for notifiable conditions of public health concern. The treatment of asylum seekers is concerning given the fact that asylum seekers are a vulnerable group which enjoys special status under international law. This article seeks to assess the constitutionality of clause 4 of the Bill in so far as it limits the access to health care services for asylum seekers. The objective is to ascertain the extent to which the differential treatment of asylum seekers is permissible. Clause 4 of the Bill will be benchmarked against sections 9 and 27 of the Constitution and international law.

1.8 LAW OF THE SEA

1.8.1 Wagenaar, T "A Principled Approach for BBNJ: An Idea Whose Time Has Come"

RECIEL 2022 31(3) 399–410

ABSTRACT

Healthy ecosystems and the services they provide depend on biodiversity. Considering the catastrophic impact, the collapse of ecosystem services would have, particularly on the most vulnerable, there can be no doubt that the loss of biodiversity undermines the full enjoyment of human rights. Because the maintenance of healthy biodiversity and ecosystems is the priority of a regime that provides for the conservation and sustainable use of biodiversity, such a regime supports the full enjoyment of human rights. The ocean provides key ecosystem services upon which humanity depends. As such, the transformation of ocean governance in a way that promotes the conservation and sustainable use of marine biodiversity is necessary to ensure the full realization of human rights. This article assesses the role that principles and/or approaches could play in achieving such a transition to sustainable ocean governance within the context of the new international legally binding instrument for biodiversity beyond national jurisdiction currently being deliberated by the international community, with specific reference to the application of precaution and the ecosystem approach.

1.9 PROPERTY LAW

1.9.1 Badenhorst, PJ "The Distinction Between Real Rights and Personal Rights in the Deeds Registration System of South Africa – Part Two: Pragmatic Distinction Between Real Rights and Personal Rights"

African Journal of International and Comparative Law 2022 30(4) 522–538

ABSTRACT

The second part of this article deals with the pragmatic approach of the South African courts to determine whether a right is real and, therefore, registrable in the deeds registry. The courts use a two-fold test to distinguish between real and personal rights, namely the subtraction from the dominium test and the intention test. It is indicated that the first test focuses on the impact of the right under investigation upon ownership while the second test focuses on the intention of the parties regarding the nature of the right when it was created. The application of the subtraction from the dominium test by the courts is discussed against the backdrop of a newly suggested classification of entitlements of ownership of land that are relevant within the context of the registrability of real rights. It is concluded that the common law distinctions between personal and real rights, and between ownership and limited real rights, still provide a solid conceptual basis in post-apartheid South African property theory.

OTHER PUBLICATIONS

2.1 Gathongo, JK "Unequal Pay for Education of Equal Value: A Subtle Discrimination Against Non-SADC International Undergraduate Students – Lessons from *Larbi-Odam v MEC for Education (North-West Province)* 1998 1 SA 745 (CC)"

Journal of Conflict Management and Sustainable Development 2022 8(2) 25–51

ABSTRACT

Inequality and unfair discrimination remain among the complex social problems that have taken different forms over the years. This has been confirmed through case law and statutes. While these statutes are complex, they exist to serve a clear intention; the need to accommodate difference, diversity and to break down practices of systemic group disadvantage. South Africa is one of the leading exporters of higher education in the African continent. In the recent past, South African universities have witnessed an increase of international undergraduate student admission both from Southern African Development Community (SADC) and Non-SADC countries. While it must be acknowledged that these universities play a significant role in social and economic development, the same is perhaps riddled with a subtle discriminative practice that singles out only Non-SADC international undergraduate students for different treatment. The practice is that only Non-SADC students are obliged to pay an additional amount classified as 'international levy'. This happens yet both Non-SADC and SADC international undergraduate students enroll for the same courses or programs, attend an equal number of lecture times, receive equal number of study materials, etc. but pay unequal tuition fees. The article reveals that the practice of demanding the payment of the 'international levy' is purely based on the fact that these students are citizens of Non-SADC countries.

2.2 Lerm, H and Stellenberg, E “South African doctors call for law reform, fearing a harsh penalty if patients die”

The Conversation, an International Journal encouraging academic rigour, February 21, 2022

ABSTRACT

This Article considered the current legal position in South Africa when healthcare practitioners may be charged with Culpable Homicide arising from the death of a patient where the death is reasonably foreseen. South Africa has a low threshold for criminal culpability even where healthcare practitioners act in good faith or an error of judgment where the degree of negligence is ever so slight, the prosecutor could formulate charges and prosecute the healthcare practitioner. What is called for is law reform in South Africa in which the threshold for criminal liability be increased to gross negligence or recklessness. That, aligns with International jurisdiction found in Scottish law, New Zealand and India. What is also suggested is that our legal system moves from a culture of blame and fault to a system of learning from mistakes.

2.3 Lerm, H The South African Medico – Legal Association ("SAMLA") consolidated Representations and Comments to the South African Law Reform Commission Discussion Paper 154 Project 141 submitted 28 February 2022

ABSTRACT

In his capacity as Non – Executive President of the South African Medico – Legal Association, Professor Lerm spearheaded the Organization in trying to stem the undesirable tide of the rampant escalation of medical negligence claims against the different Members of the Executive Council's ("MECs") for Health in the different Provinces. Besides commenting on the present state of affairs, SAMLA identified reasons for the untenable position South Africa is faced with. SAMLA also suggested measures to be put into place to avert the crisis, including but not limited to the creation of medico – legal units in each province; patient safety measures; compulsory budgeting for medico – legal litigation; the establishment of a dedicated National Monitoring Body; building leadership and management structures to improve quality care at hospitals; introducing mediation as a means of dispute resolution that is quicker and less expensive than litigation.

2.4 Schrage, EJH "De Potestatieve Voorwaarde: Grond Voornietigheid van de Verbintenis?"

Contracteren 2022 2 55–68

ABSTRACT

The breakdown of negotiations at a stage when this is no longer reasonably permitted has led to widespread case law. The brief summary of this is that it is not a question of unacceptably shaming the judicial trust of the other party. The concept of potestative condition is of little help in determining whether this is the case. It goes without saying that commitments made under a purely potestative condition ('if I want, I will ...') are null and void, but whether this is the case in the present case will have to be interpreted in the legal act. Meijers' brief justification for banning the potestative condition from the Civil Code is still extremely effective: 'Unnecessary, insofar as it would not mean more than that a commitment 'if I want' – still – should not count as a commitment, and undesirable, insofar as it would mean more.'

2.5 Ngcukaitobi, T Remembering Arthur Chaskalson “The Rule of Law in Times of Political Crisis”

ADVOCATE December 2022 55–66

2.6 Olivier, M "Advancing Migrant Workers’ Social Protection: A Critical Evaluation of Bilateralism"

Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS), 2022 36(1) 122–144

CONFERENCES

3.1 NATIONAL CONFERENCES

3.1.1 Badenhorst, PJ "William Blackstone and the Doctrine of Subjective Rights", Private Law and Social Justice Conference, Nelson Mandela University, 29 August 2022

ABSTRACT

The doctrine of subjective rights forms part of South African jurisprudence. This is not the case in English law, which for instance, does not clearly distinguish between property, as a legal object, and property rights. However, if one considers Sir William Blackstone's famous definition of property in his *Commentaries on the Laws of England* it does contain some features of the doctrine: The definition is about the "right of property" and its features. Property, as object, and right of property, as a right are distinguished. A right of property has entitlements and operates against third parties. A property right involves a legal relationship between a person and a thing and a legal relationship between a person and third parties. In conclusion, the Blackstonian definition contains features of the doctrine of rights that are useful to analyse property rights in English common law systems.

3.1.2 Ntontela, M and Ntlama-Makhanya N "Contesting the Element of Consent in Sexual Rights Violations in *Coko v S* (CA&R 219/2020) [2021] ZAECGHC 91 and *R v Gondwe* [2021] MWHC 102: the case of South Africa and Malawi", Southern African Teachers Law Conference, 11-15 July 2022

ABSTRACT

In constitutional democracies in Africa, the judiciary is a catalyst to and is integral to an effective system of upholding the rule of law. It is entrusted with the ultimate authority to constitutionalise the evolution of human rights. It also has the potential to minimise tyranny and impunity in the enhancement of people's ability to enforce their rights. The court's role is significant, particularly with its independent status encapsulated in the doctrine of separation of powers. The latter doctrine is at the thrust of the new constitutional order in present-day Africa to ensure its duties' performance distinctively from the other two branches (legislature and executive).

However, with its status and responsibility, the judiciary operates in a context where Gender Based Violence and Femicide (GBVF), especially sexual violence, strips women of their foundational human rights. Women in contemporary Africa have a greater chance of sexual violation. The element of 'consent' in sexual rights violations has been a subject of contested interpretation by the courts. The judiciary seems, at times, to view and endorse the 'consent' element through the woman's physical appearance and body language.

This article assesses the impact of the recent review judgments in *Coko v S* (CA&R 219/2020) [2021] ZAECGHC 91 in South Africa and *R v Gondwe* [2021] MWHC 102 in Malawi on the interpretation of the element of 'consent' in rape and the impact of the rights of women to access justice in Africa. The objective is to examine the lens through which the rights language on the element of 'consent' is applied and developed by the courts in the two countries. The limitation in these two countries is motivated by their sharing of the attainment of democracy in 1994 and Constitutions of supreme status over any other law in the respective Republics.

3.1.3 Ntontela, M "Connectivism and the Use of Online Tools for First-Year Law Modules", Southern African Teachers Law Conference, 11-15 July 2022

ABSTRACT

The COVID-19 pandemic and the shift to blended learning have forced many institutions to develop innovative ways of equipping students for the legal profession. However, this shift has come with challenges. Many first-year students are used to face-to-face teaching and learning; some need to become acquainted with the online tools used for teaching and learning at the university level. On the other hand, the new approach of blended learning methods has yet to escape criticism and resistance. The lack of synchronised shift from face-to-face learning to online tools forces all the role players to adapt to new innovative ways of teaching and learning. Lecturers can consider various online tools and learning theories when engaging with first-year students. Based on the Connectivism learning theory, teachers can use social media tools, interactive videos, infographics, mind maps, and learning management systems to interact with first-year students meaningfully. The Connectivism learning theory accepts that technology is a significant part of the learning process and that our constant connectedness allows us to make choices about our learning. Using the tools above will ensure constant interaction between learners and teachers without meeting face-to-face. Using various online tools to interact with students instead of one (usually rigid) official platform facilitates more meaningful communication. Thus, this paper challenges those teaching first-year modules to strongly consider incorporating various learning tools and Connectivism learning theory in engaging with the students. The paper further proposes ways teachers can meaningfully engage with students using online tools.

3.1.4 Denson, R "A Critical Analysis of *Women's Legal Centre Trust v President of the Republic of South Africa* CCT24/21 [2022] ZACC 23" Private Law & Social Justice Conference, Nelson Mandela University, 29-30 August 2022

ABSTRACT

Marriages concluded in terms of Islamic rites do not enjoy the same legal recognition that is accorded to civil and customary marriages. The non-recognition of Muslim marriages means that there is no legal regulatory framework to enforce any of the consequences that arise as a result of the marriage Furthermore, parties to a Muslim marriage are left without adequate legal protection, where the marriage is dissolved either by death or divorce. In the absence of the legal recognition of Muslim marriages, Muslims, particularly Muslim women, have to endure many hardships and challenges.

With the result, the married lives of Muslims remain unpredictable and outside their control. The non-recognition of Muslim marriages effectively means that despite the fact that the parties to a Muslim marriage may regard themselves as married, there is no legal connection between them. The decision of the Constitutional Court in Women's Legal Centre Trust v President of the Republic of South Africa seeks to remedy the dire situation that parties find themselves in when they are marries in terms of Muslim rites. The Constitutional Court declared that the Marriage Act 25 of 1961 and the Divorce Act 70 of 1979 are inconsistent with sections 9 (right to equality), 10 (right to dignity), 28 (children's rights) and 34 (right to access to court) of the Constitution in that they fail to recognise marriages solemnised in accordance with Sharia law (Muslim marriages) which have not been registered as civil marriages, as valid marriages for all purposes in South Africa, and to regulate the consequences of such recognition.

3.1.5 Christoffels-Du Plessis, A and Hamukuaya, H "Indigenous Communities and Meaningful Consultations: A Case Study of South Africa" Ocean Justice & Human Rights Conference, Ocean Sciences Campus, Nelson Mandela University, 3–5 November 2022

ABSTRACT

Indigenous Communities and Meaningful Consultations: A Case Study of South Africa

South Africa has diverse ocean users, including indigenous communities that rely on the ocean, for example, for medicinal and subsistence purposes. The importance of the ocean to various users cannot be stressed enough. It is often indigenous communities who are neglected during consultative processes despite the Constitution of the Republic of South Africa, 1996 mandating that consultative processes must occur when decisions take place that impacts users. The courts have emphasised that consultation processes 'demonstrates the legitimacy of public decision-making, and it is one of the public participatory mechanisms mandated in the Constitution as a means of building trust with affected parties or the citizenry and in furtherance of the rule of law.' Therefore, consultations are necessary when the rights and interests of people are likely to be impacted by the proposed law, policy or administrative action. There is no doubt that the consultative process in South Africa has had mixed results, and it is within the above context this presentation explores the content and application of this constitutional imperative of consultative mechanisms through recent case law.

3.1.6 Christoffels-Du Plessis, A "Fishers' Rights are Human Rights" Nelson Mandela University Inaugural Research Week nGAP Seminar, Ocean Sciences Campus, Nelson Mandela University, 7–11 November 2022

ABSTRACT

The discussion is based on the case note published in the South African Journal on Human Rights, Special Issue on Class Action Litigation in South 37:1, 126-139, (2021), entitled 'Fishers' rights are human rights': George v Minister of Environmental Affairs and Tourism 2005 (6) SA 297. In 2004, artisanal fishers, community-based and non-governmental organisations representing approximately 5,000 artisanal fishers from various fishing communities sought relief inter alia under the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 as a result of the unfair discrimination against them because of the fisheries legal framework. This discussion will focus on this unique class action brought by the fishers in the Equality Court and the decisions resulting from the case. The relief sought by the fishers to remedy the discrimination and inequity was to compel the then Minister of Environmental Affairs and Tourism to make proper and adequate provision for artisanal fishers in terms of the fisheries legal framework, giving them equitable access to marine resources alongside other marine resource users. The discussion will also briefly look at the impact of the order of the Equality Court, as it served as the trigger to transform small-scale fisheries in South Africa and the human-rights-centred themes reflected in the South African Small-Scale Fisheries Policy and considers the extent to which this policy is aligned to the United Nations Food and Agriculture Organisation's Small-Scale Fisheries Guidelines of 2015.

3.1.7 Botha JC and Mukheibir A "Combatting Gender-Based Violence Through the Private Law of Delict: Developing a New Standard for Police Liability", 14th Annual Private Law and Social Justice Conference, Nelson Mandela University, August 2022

ABSTRACT

Gender-based violence is a scourge in South Africa. *AK v Minister of Police* (2023 (1) SACR 113 (CC)) is the latest in a long line of constitutional court cases dealing with violence against women, starting with *Carmichele v Minister of Safety and Security* (2001 (4) SA 938 (CC)).

The Constitutional Court, having established negligence and causation, applied the same test for wrongfulness as the Supreme Court of Appeal, but the court took the reality of gender-based violence into account by referring to *Carmichele*. It emphasised the duty of the police to eradicate all forms of gender-based violence and held that it was necessary to hold SAPS liable for their “below par” work as this should improve the efficacy of their work and build public confidence.

This paper explored the *AK* decision against the background of sections 39(2), 173 and 8(3) of the Constitution, explaining that the connection between sections 8 and 39 has caused confusion. Section 39(2) has been used for indirect application of the Bill of Rights to the common law and is preferred by private lawyers. Section 8(2), which provides for direct application, has been used sparingly. In *AK* the Constitutional Court developed the law of delict to align with the spirit, purport and objects of Bill of Rights in terms of the law of delict. However, only section 39(2) was used, i.e. indirect application. The paper posed the question of whether it is time to consider how section 8 can be used to ensure direct application of the Bill of Rights to the law of delict.

3.1.8 Wagenaar, T "Obligations of Non-State Actors to Realise a Transition to Sustainable Ocean Governance", Oceans, Justice and Human Rights Conference, Nelson Mandela University, November 2022

ABSTRACT

This paper discussed how and to what extent section 24 of the Constitution and enabling legislation applies to the marine environment; the meaning of an environment that is not harmful to human health or well-being within the context of the new internationally-recognised right to a healthy environment; the extent to which non-State actors are obliged to realise a healthy environment; and the need to apply a human rights-based approach to the marine environment in order to achieve a system of ocean governance that does not violate human rights, which is arguably a fundamental requirement for sustainable ocean governance.

3.1.9 Botha, JC “Concluding Remarks: New Possibilities for the Horizontal Application of Section 24 to Non-State Actors”, Oceans, Justice and Human Rights Conference, Nelson Mandela University, 3-5 November 2022

3.1.10 Van Tonder, J "The Impact of Household Energy Efficient Products on Consumers' Willingness to Pay: Implications for Regulation", Competition Policy and Regulation in Digital Markets, Stellenbosch, 30 September 2022

ABSTRACT

In this paper, we estimate a differentiated products demand model to analyse consumers' choices and willingness to pay for energy efficient household washing machines in the European Union. We find that energy efficiency positively influences consumer purchasing decisions for household washing machines. In particular, we find that consumers have a significant willingness to pay for products that are energy efficient. On average consumers are willing to pay €143.46 for a washing machine that is energy efficient. When compared with the average price of products in our dataset, this represents around a 29% premium. This strong willingness to pay for energy efficiency is encouraging for policy makers, who want to reach climate change targets and create regulation that allows manufacturers to differentiate themselves based on energy efficient product attributes.

3.1.11 Ndimurwimo, LA "The Right to Equality in the South African Refugee Law Perspective", Transformation Office: A Part of Equality Promotion Project, Nelson Mandela University, 24 March 2022

ABSTRACT

The right to equality is a fundamental right recognisable at national, regional, and international levels. The right to equality is provided for under various human rights instruments which include, but are not limited to, the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 196, International Covenant on Economic Social and Cultural Rights, 1966 and African Charter on Human and Peoples' Rights, 1981 which all together prohibit any form of discrimination. The provisions of international and regional instruments are reinforced through section 9 of the Constitution of the Republic of South Africa, 1996. This paper examines the extent to which the right to equality is protected and promoted under South African refugee law and policies. It recommends the measures that can be taken to ensure that the refugees' right to equality not violated.

3.1.12 Snail Ka Mtuze, S “Crypto Currency in South Africa”, Cyber Crime and the Protection of Personal Information (Data Protection), University of Pretoria, 15 September 2022

Prof Snail Ka Mtuze was asked to open the 3rd day by discussing the State of Affairs of Crypto Currency and its regulations in South Africa. A brief history and future regulatory insights.

3.1.13 Snijman, P "Amendments Needed to SA Legislation to Improve the Protection of MLRs", Oceans, Justice and Human Rights Conference, Nelson Mandela University, 3-5 November 2022

3.1.14 Olivier, M "The Need for Calibrated, Integrated and Developmental Social Protection Responses as a result of the COVID-19 Pandemic", 2022 SASPEN Annual Conference, Johannesburg, South Africa, 10 May 2022

3.2 INTERNATIONAL CONFERENCES

3.2.1 Mukheibir A and Botha JC "Transformative Constitutionalism: History in the Making" 6th Biennal Conference of the European Society for Comparative Legal History, Lisbon, Portugal, June 2022

ABSTRACT

In this paper we explore how the South African Constitutional Court has used section 39(2) of the Constitution and its horizontal application provisions to develop the South African common law of delict. We focus specifically on the Constitution's transformative potential and how its normative value system has infused the law of delict.

Constitutional rights traditionally apply only to the public sphere, not the private sphere. This means that constitutional rights usually bind State actors only. It is only in limited circumstances that private conduct falls within the reach of constitutional rights. The South African Constitution, however, is an exception to the norm, because private actors are bound by the human rights entrenched in the Constitution. The Constitution thus departs from traditional liberal models of constitutionalism with human rights applying between private actors in terms of section 8(2) of the Bill of Rights (Chapter Two of the Constitution). Additionally, the Constitution specifically mandates in section 39(2) that judges must develop the existing common law (which includes many aspects of private law, including the law of delict and the law of contract) in accordance with the spirit, purport and objects of the Bill of Rights – that is, to align with the Constitution's normative value system. For these and other reasons, the Constitution has been labelled a transformative Constitution.

In order to understand the significance of transformative constitutionalism in the development of the common law, we have taken as our example the South African law of delict.

The following cases were discussed:

- Carmichele v Minister of Safety and Security 2001 (4) SA 938 (CC);
- *K v Minister of Safety and Security* 2005 (6) SA 419 (CC);
- *H v Fetal Assessment Centre* 2015 (2) SA 193 (CC); and
- *AK v Minister of Police* 2023 (1) SACR 113 (CC*)*

We demonstrate that in these cases the court developed the test for wrongfulness, as well as that of vicarious liability, using section 39(2) of the Constitution.

3.2.2 Olivier, M "The Need to Regulate Social Security for Workers in Employee-Like Work Arrangements: Post-Pandemic Perspectives" Presentation: Australian Labour Law Association (ALLA), Eleventh Biennial National Conference, Sydney, 11-12 November 2022

ABSTRACT

The COVID-19 pandemic has accentuated the precarious position of workers in employee like work arrangements, also in the social security sense. Migrant and care workers are in particular affected, considering also gendered dimensions, and reported mental health implications. Access to among other superannuation, workers' compensation, sick leave, maternity leave and unemployment protection is a significant challenge for these workers –given the statutory focus on employee status required for coverage and the operation of exemption provisions. The non-employee characterisation of their work relationships inwritten contracts may have serious social security implications, also in view of the positions adopted by the High Court in *CCFMEU v Personnel Contracting Pty Ltd* and *ZG Operations Australia Pty Ltd v Jamsek*. Recommended measures to address the deficient social security regime applicable to these workers are contained in the Senate Select Committee on Job Security's Job Insecurity and preceding reports, relating to the reform of state-based workers' compensation schemes, the establishment of a portable sick leave scheme and enhanced access to superannuation. The recently introduced Victorian Sick Pay Guarantee scheme may hold some promise for some of these workers, as is the case with benefits for platform workers that may flow from the recent Uber-TWU agreement. Nevertheless, these promising developments remain piece mealed and fragmented. Benefiting also from recent European Union developments, a principled approach is called for, supported by the adoption of a regulatory framework providing for the decoupling of employment status from coverage by and access to social security and an aligned collective bargaining regime.

3.2.3 Spies, A; Ndimurwimo LA and Nxumalo NA "Reconfiguring the Right to Food: Food Security in Africa Post-COVID-19", Sokoine University of Agriculture, Morogoro and State University of Zanzibar, Tanzania, 30 June 2022 and 5 July 2022

ABSTRACT

The right to food is a fundamental right that is recognisable at national, regional, and international levels. A number of human rights instruments such as the Universal Declaration of Human Rights (UDHR), 1948, Covenant on Economic, Social and Cultural Rights (CESCR), 1966, and Universal Declaration on the Eradication of Hunger and Malnutrition (UDEHM), 1974 guarantee everyone with the right to a standard of living adequate for the health and well-being that includes food.

Despite the legal assurance of the right to food, many people around the world suffer from hunger, food insecurity, and malnutrition because they cannot access and/or afford the cost of healthy diets. Poor access to safe, nutritious, and sufficient food has become not only a public health issue but also a legal issue that affects more than two billion people around the world. For example, skipping meals, worrying about how to access food, and relying on donated or discarded food have the potential psychological and mental health problems which continue to affect the well-being of people, specifically the youth. Elgar *et al,* for example, state that food insecurity contributes to various stress-related health problems that are associated with mental illness, especially in developed countries. In Africa, it is indisputable fact that there are numerous challenges to overcome before the full realization of food security can be debated. As a result, there are negative psychological and behavioural effects that can be associated with food insecurity.

The nutritional status of many people in Africa in general, South Africa in particular, is likely to deteriorate further due to the health and socio-economic impacts of COVID-19. Justifiably, we are still facing challenges in accessing food, in terms of accessing healthy diets and affordability, and the right to food is not fully prioritised and even not often litigated in the courts. This paper uses the case of *Equal*

Education and Others v Minister of Basic Education and Others 2021 (1) SA 198 (GP) as an example to demonstrate how reconfiguring the right to food and food security in post-COVID-19 is necessary for Africa. It is acknowledged that by virtue of SUZA specializing in agricultural and food sciences, academic institutions in Africa have a major role to play in promoting the right to food security. SUZA and NMU's strategic objectives should be among the practical examples that are aligned with the UN Millennium Development Goals (2015), Sustainable Development Goals (SDGs) of 2030, and the African Union (AU) 's Goals and Priority Areas of Agenda 2063 which all put an emphasis on the high standard of living, quality of life, and well-being for all citizens in promoting food security and ensuring the access to sustainable food sources and protecting environmental resources.

3.2.4 Ndimurwimo, LA "The Puzzles of the Transitional Justice Mechanisms in Burundi", First Annual Burundi Friends of Education Mission Symposium, 16 April 2022

ABSTRACT

The truth, reconciliation, and conflict resolution mechanisms in Burundi are among the most contentious issues which continue to attract the attention of academic discourse. The international community has played a major role in trying to resolve Burundi's conflicts. For example, United Nations, Presidents: Mwalimu J.K. Nyerere of Tanzania and Nelson Mandela of South Africa initiated peace dialogues that aimed to resolve the conflicts and resulted in the conclusion of the Arusha Peace and Reconciliation Agreement of 2000 (APRA) and the subsequent peace and ceasefire agreements of 2003, 2006, 2008 and 2009. Similarly, the East African Community Heads of State appointed President Yoweri Museveni as the mediator for the Burundi conflict, with former Tanzanian President Benjamin Mkapa as the facilitator of the peace process in 2015.

The APRA, the 2005 Constitution which was amended in 2018, and the Penal Code all provide for, among others, prosecution, monitoring, prevention, and eradication of genocide, war crimes, and crimes against humanity. After long-suffering and much bloodshed, the APRA for example offered a ray of hope for peace and reconciliation in Burundi. This peace agreement provided some practical mechanisms to this effect. Burundi's Truth and Reconciliation Commission or *Commission vérité et réconciliation* (CVR) was established to investigate crimes committed during ethnic conflicts since Burundi became an independent state in 1962. All these efforts justified the need for effective transitional justice mechanisms to resolve the cycles of ethnic armed conflicts in Burundi through truth-telling and bring about meaningful reconciliation and healing.

This paper investigates the existing transitional justice mechanisms, the reports on Burundi's past dark history, and the initiatives done to reconcile Burundians and uses the CVR report of 2021 as an example, which has revealed that the

mass killings of 1972 amount to genocide. The paper refers to the strained relations between the Burundi international donors that have been re-established. As the year of 2022 marks fifty years since the 1972 mass killings, it is surprising that many Burundians are still looking forward for justice to being served. Therefore, the paper critically examines the application of transitional justice mechanisms of truth-telling, reconciliation, and reconstruction in post-conflict Burundi and recommends practical guidelines which should be put in place to bring about healing and economic and social development.

3.2.5 Olivier, M “Social Protection in Need of Reform: The Quest for Dedicated Models of Social Protection for Vulnerable Workers”, 2nd ILTRAS (Latin American Institute of Labor Law and Social Security) World Congress, February 2022

3.2.6 Olivier, M “Social Security for Platform Workers in the Wake of the COVID-19 Pandemic”, Conference in Commemoration of Prof Marco Biagi, Modena, Italy, 26-27 May 2022

COLLOQUIUMS AND SEMINARS

4.1 Lerm, H and David, D “Informed Consent and Ethics”, Medico-Legal Practice National Seminar, Youth Day – South African Medico-Legal Association (SAMLA), 28 June 2022

ABSTRACT

The seminar discusses the concept ‘informed consent’ and how it affects the relationship between the healthcare practitioner and patient. The seminar also unpacks the legislative and constitutional influence on the application of informed consent inter alia how they regulate informed consent. The seminar discussed how the failure to obtain informed consent can contribute to both civil and criminal liability. It also explores how this can be prevented.

4.2 Lerm, H “Informed Consent and Ethics”, Clinical Care Practice National Seminar – Clinical Care Platform for Health Care Practitioners, 26 July 2022

ABSTRACT

The seminar explores how the practice of informed consent and the adherence to ethics improve clinical care in private practice, clinics and hospitals. The seminar sought to inform the attendees how in a practical way, clinical care may be improved through the shift from paternalism to a more patient autonomy approach in the Healthcare Practitioner – Patient relationship.

4.3 Olivier, M "Laudatio: Manfred Weiss" *Labour Law: Past, Present and Future*, Labour Law Colloquium, University of Stellenbosch, 2-3 September 2022

ABSTRACT

To pay homage to a person with the international stature and exceptional expertise of Professor Manfred Weiss, and his considerable contribution to labour law globally, and particularly in the South African and SADC contexts.

4.4 **Olivier, M "Social Protection for Platform Workers in the Wake of Global Uncertainty", 28th International Research Seminar of the Foundation for International Studies in Social Security (FISS) on Issues in Social Security, Sigtuna, Sweden, 6-7 June 2022**

4.5 **Olivier, M "Social Protection for Climate Change Displaced Persons", 28th International Research Seminar of the Foundation for International Studies in Social Security (FISS) on Issues in Social Security, Sigtuna, Sweden, 6-7 June 2022**

4.6 **Olivier, M and Dafuleya, G "Social Protection for Migrants in Egypt: (a) Migrant Workers in the Informal Economy; (b) Bilateral Labour Agreements/MOUs and Bilateral Social Security Agreements", IOM Webinar, 26 July 2022**

GROUP DISCUSSIONS/WORKSHOPS

5.1 Olivier, M “Draft National Labour Migration Policy for South Africa”, Employment Services Board Strategic Planning Workshop, 29 March 2022; Expert Roundtable on Social Justice, Economic Inclusion and Immigration, 12 May 2022 and Employment Services Board Strategic Planning Workshop, 23 May 2022

ABSTRACT

There are several reasons why it is necessary to adopt a Labour Migration Policy for South Africa. Firstly, this will fulfil South Africa's commitment, made at the level of the SADC ELS (Employment and Labour Sector), to develop and adopt labour migration policies by the end of 2019. Secondly, there is need to provide guidance to the Department of Employment and Labour, the Department of Home Affairs and other government departments on the desired policy framework applicable to labour migration impacting on South Africa. Thirdly, in a range of related areas (e.g., recruitment, data requirements, and labour migration to and from South Africa), policy frameworks are either insufficient or absent. An evidence-based and labour migration policy, which takes into consideration labour market needs, is required to deal with these concerns. Fourthly, there is need to inform an appropriate legislative framework (to accompany the Policy), serving as a mandate for State interventions. In the fifth and sixth instance, improved labour and social protection of migrant workers to and from South Africa requires clear policy direction, regulatory provision and operationalisation, while there is need to inform South Africa's responses to African Union and SADC regional instruments in the making and/or recently adopted. Finally, there is also need to inform the reconsideration of outdated bilateral labour agreements, which South Africa concluded many years ago with five southern African countries.

5.2 Ndimurwimo, LA and Jähnig, M "The Nexus between Statelessness and Climate Change: The Vulnerabilities of Stateless Persons in Southern Africa", Workshop Series on Statelessness – SADC Government Focal Persons, Organised by the UNHCR in collaboration with the Refugee Rights Unit, University of Cape Town, 14 – 18 November 2022

ABSTRACT

This paper looks at the nexus between statelessness and climate change: the vulnerabilities of stateless persons in Southern Africa. Statelessness is not only harmful to stateless persons themselves but can destabilise the society in which such persons live. Cross-border and permanent displacement due to the impacts of climate change is among the factors that can cause statelessness. Persons who are unable to prove their nationality often can be regarded as stateless. This paper investigates how statelessness can be associated with cross-border and permanent displacement due to the impacts of climate change. It uses case studies of South Africa, Mozambique, and Tanzania. It evaluates the likelihood that such circumstances may lead to uncertain rights and legal statuses of stateless persons, issues that have the potential to be passed on to subsequent generations. The paper concludes that climate change has far-reaching stateless implications. It recommends the law and policy review as among the possible solutions for effectively preventing statelessness and protecting and promoting stateless persons' rights in the Southern African region.

5.3 Ndimurwimo, LA and Jähnig, M "Statelessness and Climate Change: Law and Policy in Southern Africa", Workshop on Ending Statelessness AHMR Special Edition, UNHCR & SIHMA, 9 November 2022

ABSTRACT

This paper investigates the current statelessness legal regime in the Southern African Region. It evaluates the causes of climate change induced displacement in Southern Africa and how climate change induced displacement can lead to statelessness. The paper uses case studies of South Africa, Mozambique, and Tanzania to demonstrate how the current national legal regimes are inadequate to address climate-induced statelessness. It recommends that law and policy need to be revisited to prevent statelessness, protect and promote stateless persons' rights in the Southern African region.

5.4 Lerm, H "Mock Trial: Hospital on Trial" ZOOM National Workshop arranged on behalf of the South African Medico – Legal Association (SAMLA), 27 August 2022

ABSTRACT

The purpose of the workshop was to provide training for both Lawyers and Healthcare Practitioners on the roles they play in especially civil and criminal trials The former is called as experts and use is made of their Medico- Legal reports, supported by their testimony in court. Lawyers off course assists in the trial that is conducted. The workshop focuses specifically on criminal trials and has a critical look at inter alia criminal liability. It sheds some light on the common law crimes as well as the statutory offences with which doctors, specialists and nurses are being charged with. Some of the offences may include Murder, Culpable Homicide and Rape. The workshop critically looked at the procedure adopted in criminal trials. This is displayed through the lens of a video recording of a mock trial.

5.5 **Snail Ka Mtuze, S "Enforcing Data Protection Rights in Changing World", Computers, Privacy and Data Protection (CPDP) Conference 14th International Conference, 25-26 May 2022**

5.6 **Snail Ka Mtuze, S "Cyber Security Frame for Africa", IGF Africa Lilongwe Malawi – 2022 Africa Internet Governance Forum, 19-21 July 2022**

5.7 **Snail Ka Mtuze, S "Protection of Personal Data in e-Government Projects", IGF Africa – IGF 2022, Moderated WS #282, 1 December 2022**

BOOKS AND CONTRIBUTIONS TO BOOKS

6.1 Badenhorst, PJ "Mineral Law of South Africa: Text, Cases and Commentary" Juta (2022)

ABSTRACT

Mineral Law of South Africa: Text, cases and commentary aims to provide property and mineral law students, law teachers and practitioners with extracts of the important cases that have been delivered by the courts since the enactment on 1 May 2004 of the Mineral and Petroleum Resources Development Act 28 of 2002 MPRDA). A few cases from the previous mineral law dispensation have also been added.

Each chapter provides a brief introduction of law followed by a summary of the facts of the relevant case, extracts of the decision and commentary extracted from either case reviews and articles in law journals. This gives the reader case examples of the principles and an extensive discussion or review of each decision. The casebook also includes the MPRDA and Mining Titles Registration Act 16 of 1967.

The casebook can be used in conjunction with *Badenhorst and Mostert Mineral and Petroleum Law of South Africa* or other works.

6.2 Badenhorst, PJ and Van den Berg, HM "Rights to Minerals and Petroleum in South Africa: An Introduction" Juta (2022)

ABSTRACT

An introduction to rights to minerals and petroleum in South Africa aims to provide property and mineral law students, law teachers and practitioners with a brief introduction to this complex area of law.

The book provides:

- an historical overview of the development of mineral law prior to the enactment of the Mineral and Petroleum Resources Development Act 28 of 2002
- a theoretical analysis of the basis of the custodian structure that was adopted in the MPRDA
- a systematic exposition of the acquisition, nature, content, transfer and loss of rights, permissions and permits to minerals and petroleum
- an overview of conflict resolution between the exercise of rights to minerals by prospectors or miners and owners or occupiers of land
- synopsis of the registration of rights in the Mineral and Petroleum Titles Registration Office.

The MPRDA and Mining Titles Registration Act 16 of 1967 are also included for further reference.

The book can ideally be used in conjunction with Badenhorst *Mineral law in South Africa: Texts, cases and Commentary*.

6.3 Christoffels-Du Plessis, A, Erinosho, B, Major, L, Morgera, E, Sunde, J and Vermeylen, S "Navigating a Sea of Laws: Small-Scale Fishing Communities and Customary Rights in Ghana and South Africa" in Boswell, R; O'Kane, D and Hills, J (eds) *The Palgrave Handbook of Blue Heritage*, Palgrave Macmillan, Cham.

https://doi.org/10.1007/978-3-030-99347-4_18

ABSTRACT

After reflecting on the current status of international law and insights from studies on legal pluralism on the recognition of customary law, this chapter explores shared challenges and different approaches to ensuring the recognition of small-scale fishers' customary rights in Ghana and South Africa. The chapter concludes by drawing on international human rights law and international environmental law to identify procedural approaches to strengthen the protection for fishers' customary rights as a matter of implementation at the national level.

6.4 Adelman, S and Paliwala, A "Beyond Law and Development – Resistance, Empowerment and Social Injustice", Routledge (2022)

ABSTRACT

The book highlights new imaginaries required to transcend traditional approaches to law and development. The authors focus on injustices and harms to people and the environment, and confront global injustices involving impoverishment, patriarchy, forced migration, global pandemics and intellectual rights in traditional medicine resulting from maldevelopment, bad governance and aftermaths of colonialism. New imaginaries emphasise deconstruction of fashionable myths of law, development, human rights, governance and post-coloniality to focus on communal and feminist relationality, non-western legal systems, personal responsibility for justice and forms of resistance to injustices.

The book will be of interest to students and scholars of development, law and development, feminism, international law, environmental law, governance, politics, international relations, social justice and activism.

6.5 Adelman, S and Paliwala, A "Shifting the Frame from Law and Development to Ending Injustice" in Adelman, S and Paliwala, A (eds) *Beyond Law and Development – Resistance, Empowerment and Social Injustice*. Routledge, Taylor & Francis Group

DOI: 10.4324/9780203745298

ABSTRACT

The book highlights new imaginaries required to transcend traditional approaches to law and development. The authors focus on injustices and harms to people and the environment, and confront global injustices involving impoverishment, patriarchy, forced migration, global pandemics and intellectual rights in traditional medicine resulting from maldevelopment, bad governance and aftermaths of colonialism. New imaginaries emphasise deconstruction of fashionable myths of law, development, human rights, governance and post-coloniality to focus on communal and feminist relationality, non-western legal systems, personal responsibility for justice and forms of resistance to injustices.

The book will be of interest to students and scholars of development, law and development, feminism, international law, environmental law, governance, politics, international relations, social justice and activism.

6.6 Ngcukaithobi, Tembeka "Foreword" in *The Contested Idea of South Africa* edited by Ndlovu-Gatsheni, Sabelo J and Ngcaweni, Busani, Routledge Contemporary South Africa (2022)

ABSTRACT

This is an unusual Foreword. I want to make an argument about the overarching uses of law in the construction of the idea of South Africa, as part of foregrounding what is contained in this important book. While South Africa has not been a single idea, but as this book amply demonstrates, is a multiplicity of contested ideas, law itself has been the single idea connecting the colonial, apartheid and the present state. How did this happen? How did law – in its different guises – survive over a period of three centuries? How has it shaped South Africa? In turn, how did the political, economic and social evolutions and revolutions of South Africa shape the law? These questions are more important this year, 2021, for two reasons: the South African parliament is engaged in difficult debates about the amendment to the Constitution in order to amend section 25 which guarantees compensation for land expropriate under land reform. Second, and linked to the debates in parliament, political discourse in South Africa is progressively deteriorating as political parties try to gain favour from the voters based on the promise of restoring the rule of law, protecting property on the one hand and on the other promising to 'dish out' the land to the masses.

6.7 Hussain, I "Trial Advocacy - The Art of Persuasion" LexisNexis, (2022)

ABSTRACT

What does it take to persuade a judge to accept your client's version of the facts? The answer is in this publication. Advocate Ismail Hussain, a former judge and an experienced senior advocate brings his valuable theoretical and practical experience on board to develop this new unique publication, Trial Advocacy: The Art of Persuasion.

An advocate may know what to say but is only effective when he or she knows how to be persuasive. Combining fact with know-how in order to persuade judges, the title imparts useful techniques to help practitioners look, sound, and feel natural and polished in the courtroom. It guides you from the initial steps of taking instructions to the preparation and presentation of your case. This publication is essential reading for legal professionals wanting to become more effective trial lawyers in both civil and criminal proceedings. A must-have for all candidates, pupils as well as practitioners interested in practicing and polishing their trial-related skills in the most practical and effective way

What is unique about this title:

It deals with trial technique from a judge's perspective.

Teaches you how to present in a virtual hearing and how to use technology to improve your presentation in court.

Teaches you how to present electronic documents and evidence sourced electronically.

Has interesting case studies that is used to explain court room technique.

It is a law publication that deals comprehensively with Voice and Pronunciation.

It deals with topics from vulnerable witnesses to difficult judges and from impossible witnesses to witness briefing.

6.8 Olivier, M "Freedom of Association in Africa and the Role of the ILO: Achievements, Opportunities and Prospects" in Curtis, K and Wolfson, O (eds) *70 Years of the ILO Committee on Freedom of Association: A Reliable Compass in Any Weather,* 2022 121–149

https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/WCMS_860150/lang--en/index.htm

ABSTRACT

The article reviews the challenges to freedom of association on the African continent, the measures taken to redress them through regional institutions and the critical role played by the ILO Committee on Freedom of Association (CFA) in filling certain gaps. The article reflects on the nexus between freedom of association, civil liberties and democratic governance in light of the crucial perspective of development, illustrated by examples from South Africa, Zimbabwe and Sudan. it further discusses the role and potential of the CFA in ensuring that workers in the informal economy are able to enjoy freedom of association rights in law and practice, highlighting a number of crucial concerns in this regard.

6.9 Olivier, M "Which Welfare Rights for Platform Workers" in Decent Work in Gyulavári, T and Menegatti E (eds) *The Digital Age: European and Comparative Perspectives*, 2022 165–184

ABSTRACT

Marius Olivier Platform workers typically sell their time or labour through a digital platform to a user, with crowdwork and work-on-demand being the most prevalent forms. There is no single, agreed definition, although the general sentiment seems to suggest that platform work is narrower than gig-work – the latter is often understood to refer to work outside the traditional employer–employee relationship or, generally, non-standard work. For the Organisation for Economic Co-operation and Development (OECD) platform workers are individuals who use an app or a website to match themselves with customers, in order to provide a service in return for money. The recently adopted Indian Code on Social Security of 2020 defines a platform worker as a person engaged in or undertaking platform work, which in turn is defined to mean 'a work arrangement outside of a traditional employer–employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment'.

6.10 Snail Ka Mtuze, S; Cronje, F and Jordaan, J “Cybercrime Act, The What You Need to Know” Pocket-Book, JUTA (2022)

Prof Sizwe Snail Ka Mtuze contributed a substantial segment in this publication which is from the Juta Pocket Book Series that seeks to unpack the Cyber Crime Act, Act 19 of 2021 in a manner that is accessible and understandable by both legally trained and non-legally trained person.

6.11 Olivier, M “Labour Relations in the Public Service” in Van Jaarsveld, SR; Belink, B; Le Roux, R; Olivier, MP; Prinsloo, C; Smit, N and Van Niekerk, A (eds) Principles and Practice of Labour Law 2022 (Chapter 19: "Public Service Employment: General Framework and Principles" par. 1080-1124 and chapter 20: "Special Categories of Civil Servants: Security Services and Public Education" par. 1130 – 1160) LexisNexis (2022)

PUBLIC LECTURES

7.1 Lerm, H; Stellenberg, E; Louw, H and Meijden, L "Nursing Leadership and Management and Medical Malpractice Cases", East London, 6 - 10 June 2022

ABSTRACT

The series of lectures was aimed at improving health care in the Eastern Cape through patient care. Because good governance is critical in health establishments to provide efficient and effective leadership for safe quality care to patients, the training sessions were focused on professional development designed to equip nursing managers with management and leadership skills, equipping them to play an effective oversight role. Professor Lerm's role was to focus on the medical malpractice cases that face the MEC for Health in the Eastern Cape and in respect of which, billions of Rands are annually spent on claims for damages and litigation costs. His lectures concentrated on inter alia what are the main causes of malpractice litigation, what are the main common mistakes made by nurses, causing litigation. Importantly, the lectures also focused on preventative measures that could be put in place to minimize the risks of being sued. One of the lectures focused on the use of mediation as means to resolve disputes in a more speed way and at less costs when hospitals and clinics face litigation.

7.2 **Snail Ka Mtuze, S "Data Protection Day Celebration – Intersection between the Protection of Personal Information, Act 4 of 2003 (POPIA) and Cyber Crime in South Africa", Nelson Mandela University, 28 January 2022**

7.3 **Snail Ka Mtuze, S "Evolving Data Privacy and Cyber Security Laws in Africa", ABSA Data Privacy Conference, 28 September 2022**

7.4 **Snail Ka Mtuze, S "Cybersecurity in the #BRICS Countries", CTS - FGV Direito Rio, Yale Law School and New York University, Organised by Centre for Technology and Society – 2nd #Cybersecurity Conversation, 8 August 2022**

7.5 **Snail Ka Mtuze, S "Evolving Data Privacy and Cyber Security laws in Africa", IGF 2022 – South Africa, 14 October 2022**

7.6 **Snail Ka Mtuze, S "Data Protection and Cyber Security in Africa", CTS - FGV Direito, University, Post Graduate Student – Colloquium, November 2022**

7.7 **Snail Ka Mtuze, S "Protection of Personal Information Act (POPIA) and Cyber Crime Act", University of Pretoria (UP), 15 November 2022**

7.8 **Snail Ka Mtuze, S "Evolving Data Privacy and Cyber Security laws in Africa" CTS- FGV Direito, Rio De Janeiro, 16 November 2022**

REPORTS AND POLICY DOCUMENTS

8.1 Egede, E “From Apathy to Action: Africa's Role in Deep Seabed Mining”, Institute for Security Studies (ISS), South Africa, 8 June 2022

https://issafrica.org/research/africa-report/from-apathy-to-action-africas-role-in-deep-seabed-mining

ABSTRACT

When the United Nations Convention on the Law of the Sea was adopted, Africa played an active role in developing the deep seabed mining regime. The continent should now play an equally active role in steering future debates on the subject. African countries must implement a clear action plan to transform the ideas presented in African blue economy instruments into action.

8.2 Lerm, H; Mabenge, M and Du Plessis, "Maternal and Child Health: Medico – Legal Challenges and Improving Patient Care", Faculty Collaborative Project Report between the Law Faculty and the Faculty of Health Science assigned by the Premier of the Eastern Cape, 22 September 2022

ABSTRACT

This Report represents a collaboration between the Office of the Premier for the Eastern Cape and the Nelson Mandela University's Faculties of Law and Health Science.

Quality care has become the mantra for all healthcare professionals, including doctors and midwives. Quality healthcare forms part of the ethical and professional duties of healthcare practitioners, including midwives. Besides, healthcare practitioners today, take centre stage because of the maternity obstetric cases involving nurses, midwives, obstetricians and doctors involved in litigations. The aims and objectives of the project include an investigation why there is an increase in medical negligence cases against the Department of Health, especially the Eastern Cape, with the view of intensifying medico-legal challenges in areas that give rise to these cases. The Report includes making recommendations in the form of action plans, setting out realistic and practical interventions.

8.3 Olivier, M "Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa", IOM, 2022

https://publications.iom.int/books/migrant-welfare-systems-africa-case-studies-selected-african-union-member-states-ethiopia

ABSTRACT

This report interrogates country-of-origin measures to extend social protection and broader-based support services to African migrant workers abroad. It reflects on the challenges faced by international migrants in accessing social protection and welfare support, and notes that in many respects and for a variety of reasons, African migrant workers are not able to access meaningful social protection – despite the human rights framework normatively informing the protection of migrant workers.

Note is taken of the important role of bilateral and multilateral agreements, but also of purely country-of-origin measures in the absence of any other meaningful modality of support. Particular attention is paid to the weak social (security) protection received by most African migrant workers in the Gulf countries. The social protection extended by six African countries, representing three African regions, to their workers abroad is reflected upon – particularly in terms of the supportive arrangements developed for this purpose. These are considered in light of the treatment in social security/protection terms enjoyed by (im)migrant workers in these and selected other countries, and against best practice examples.

8.4 Olivier, M “Draft National Labour Migration Policy for South Africa”, National Department of Employment and Labour, South Africa and the ILO, Feb 2022

https://www.labour.gov.za/DocumentCenter/Publications/Public%20Employment%20Services/National%20Labour%20Migration%20Policy%202021%202.pdf

ABSTRACT

There are several reasons why it is necessary to adopt a Labour Migration Policy for South Africa. Firstly, this will fulfil South Africa's commitment, made at the level of the SADC ELS (Employment and Labour Sector), to develop and adopt labour migration policies by the end of 2019. Secondly, there is need to provide guidance to the Department of Employment and Labour, the Department of Home Affairs and other government departments on the desired policy framework applicable to labour migration impacting on South Africa. Thirdly, in a range of related areas (e.g., recruitment, data requirements, and labour migration to and from South Africa), policy frameworks are either insufficient or absent. An evidence-based and labour migration policy, which takes into consideration labour market needs, is required to deal with these concerns. Fourthly, there is need to inform an appropriate legislative framework (to accompany the Policy), serving as a mandate for State interventions. In the fifth and sixth instance, improved labour and social protection of migrant workers to and from South Africa requires clear policy direction, regulatory provision and operationalisation, while there is need to inform South Africa's responses to African Union and SADC regional instruments in the making and/or recently adopted. Finally, there is also need to inform the reconsideration of outdated bilateral labour agreements, which South Africa concluded many years ago with five southern African countries.

8.5 Olivier, M “Lesotho National Migration and Development Policy”, IOM, 2022

ABSTRACT

The policy aims to provide both a basis and direction for the coherent and effective harnessing of migration for development in Lesotho. It also aims to address the migration and development policy gap by providing a framework for action at the national level.

8.6 Olivier, M “Viet Nam Social Security Law Reform: An Integrated Framework”, ILO, 2022

https://www.ilo.org/hanoi/Whatwedo/Publications/WCMS_840191/lang--en/index.htm

ABSTRACT

This report reflects on key dimensions of social security law reform in Viet Nam from the perspective of an integrated framework, which are conceptual and normative framework challenges, reflections on an integrated social security system, the importance of universal and multi-tiered approaches of relevance to Viet Nam, extending coverage, reflecting on key coverage gaps; improving the scope and adequacy of the benefit regime; implementing social security legal and institutional reform and system integration, and recommendations.

8.7 Olivier, M; Dafuleya, G and Mahil N “Social Protection – An Operational Tool for the Humanitarian, Development and Peace Nexus: Linkages between Cash-based Interventions and Social Protection in Humanitarian and Non-humanitarian Settings”, International Organization for Migration, IOM, Cairo 2022

https://publications.iom.int/books/social-protection-operational-tool-humanitarian-development-and-peace-nexus-linkages-between

ABSTRACT

This paper explores linkages between cash-based interventions (CBIs) and social protection in humanitarian and non-humanitarian settings, focusing on linkages between humanitarian aid and sustainable social protection for migrants, including communities affected by forced displacement such as internally displaced persons and refugees, climate change events or economic factors. Many of these target groups are effectively undocumented and reliant on humanitarian aid, informal economic activity, and informal forms of social protection to generate income and for economic survival. The paper focuses on the Middle East and North America region (MENA) but draws from experiences elsewhere in the world and simultaneously reflects on the normative framework from the perspective of international norms and standards. The impact of COVID-19 on migrants and displaced populations in MENA region has emphasized the need for a renewed focus on strengthening the links between CBI and social protection.

8.8 **Olivier, M "(Draft) National Development Planning Act, Maldives" and "Commentary/Explanatory Memorandum: Draft Maldives National Development Planning Act", UNDP Maldives, 2021–2022**

8.9 **Olivier, M "Draft Roadmap for Implementation of the Memorandum of Understanding (MOU) between the State of Libya and the Republic of Niger for Cooperation in the Field of Regulating and Facilitating the Mobility of Labour", IOM, 2022**

8.10 **Olivier, M "Overall Recommendations: Draft Roadmap for Implementation of the Memorandum of Understanding (MOU) between the State of Libya and the Republic of Niger for Cooperation in the Field of Regulating and Facilitating the Mobility of Labour", IOM, 2022**

8.11 **Olivier, M "Terms of Reference: Joint Monitoring Committee for the Implementation of the Memorandum of Understanding (MOU) between the Ministry of Labor and Rehabilitation in the State of Libya and the Ministry of Employment, Labor and Social Protection in the Republic of Niger for Cooperation in the Field of Regulating and Facilitating Labour Mobility", IOM, 2022**

8.12 **Olivier, M Series of 16 podcasts on social protection for migrants (co-author), IOM, 2022**

8.13 **Olivier, M "Implementation Plan National Labour Migration Policy" (South Africa) (draft), National Department of Employment and Labour, South Africa and the ILO, May 2022**

8.14 **Olivier, M "Strengthening Migrants' Access to Social Protection in Lebanon" policy paper, IOM, publication forthcoming**

AWARDS AND ACHIEVEMENTS

9.1 Botha, J Researcher of the Year, Faculty of Law

9.2 Ntontela, M Best First-Time Presenter Award at the Southern African Law Teachers Conference (2022)

9.3 Welgemoed, M Law Faculty Excellent Teacher of the Year Award

NEWSPAPER ARTICLES AND NEWSLETTERS

10.1 Van As, H "Fisheries Crime is a Huge Parallel Economic System – FishFORCE is Harnessing Tech to Fight it"

Daily Maverick South Africa, 26 July 2022

https://www.dailymaverick.co.za/article/2022-07-26-fisheries-crime-is-a-huge-parallel-economic-system-heres-how-to-fight-it/

ABSTRACT

South African fisheries are a target for organised crime and the country is losing huge amounts of revenue. Treasury and the taxman must become more involved. Billions of rands and national marine resources are being lost.

Organised crime, with its link to the illegal harvesting, processing and trading of fish and seafood globally, is so huge that it is in effect a parallel economic system, undermining sustainable economic growth and posing a significant challenge to fisheries law enforcement agencies across the world.

The many crimes affecting the global fisheries sector range from illegal fishing and extraction of marine resources, to human and drug trafficking, forced labour, fraud, forgery, corruption, money laundering and tax and customs evasion.

The FishFORCE Academy was established in 2016 as a result of a growing realisation that illegal fishing is far more than this, and that in many instances the activities are undertaken by international organised crime syndicates.

FishFORCE aims to improve the knowledge and skills of fisheries control officers and inspectors, to promote the prioritisation of fisheries crime and intelligence-led investigations and to improve prosecutions of fisheries crime in Africa and globally.

From the outset we have strongly advocated that fisheries crimes be addressed as priority crimes due to their links to transnational organised crime, and

prosecuted as such under the Prevention of Organised Crime Act, with severe penalties of 25 years to life.

Countries are being deprived of taxes, citizens of jobs, food and income, and fisheries and environments are being destroyed. Many developing countries are unable to effectively enforce fisheries laws and are therefore unable to manage their coastal zones.

10.2 Schrage, EJH “Zwanzig Jahre Legalisierung aktiver Sterbehilfe in den Niederlanden – die Ausnahmen verdrängten die Hauptregel”

Frankfurter Allgemeine Einspruch 2022 56–69

http://https//www.faz.net/aktuell/spruch-exklusiv-zwanzig-jahre-legalisierung-aktiver-sterbehilfe-in-den-niederlanden-17925569.html

ABSTRACT

On April 1, 2022, legal legalization of active Euthanasia in the Netherlands became twenty years old. The regulation was from the outset controversial - the assumption at the time that at some point even dementia patients would take recourse to that statute has proved to be true. In the meantime, there is even a public discussion going on whether euthanasia should be allowed also for children and over-75-year-olds in general. The Netherlands must prevent this tendency from going on almost unnoticed.

10.3 Casalin, D "'Development-Oriented' Durable Solutions: (Re-)Entry Point for a Human Rights-Based Approach?"

ABSTRACT

The 2021 report by the UN High-Level Panel on Internal Displacement calls for a "development-oriented approach" to durable solutions. This largely appears to align with a human rights-based approach, in that durable solutions should be "in line with established norms". Arguing that a clear understanding of these norms and their implications is important in supporting IDPs' rights and advocating for accountability, this contribution proposes a need to identify the key international legal obligations that underpin and concretize "development-oriented" durable solutions.

10.4 Snail Ka Mtuze, S “Jurisdiction No Longer an Issue in Social Media Defamation”

Sunday Independent News, 23 November 2022

https://www.iol.co.za/sundayindependent/news/jurisdiction-no-longer-an-issue-in-social-media-defamation-cases-e985765b-bc48-41d7-83e5-2b3a310a4436

ABSTRACT

This article discussed the fact that when dealing with social media defamation our Courts are equipped to deal with, adjudicate and dispose of deformation suits or indicates as a result of comment made on social media platforms that are based in Foreign Jurisdiction.

SUPERVISION OF LLM TREATISES/DISSERTATION/THESES

11.1 APRIL 2022 GRADUATION

11.1.1 **Gumboh, E with co-supervisor Lerm, HW supervised Dweba, Asavela "The Criminal Liability of Health Care Practitioners for Culpable Homicide" completed for April 2022 graduation.**

11.1.2 **Joubert, D supervised Fourie, Jako "The Pay-Now-Argue-Later Rule and the Recourse Available to Taxpayers" completed for April 2022 graduation.**

11.1.3 **Van der Walt, JA supervised Hlwatika, Siphile "An Employer's Ability to Substitute a Disciplinary Hearing Sanction" completed for April 2022 graduation.**

11.1.4 **Joubert, D supervised Kepu, Sinethemba "Section 70 of the Tax Administration Act, 2011 and the Exclusion of the Public Protector from Access to Taxpayers' Confidential Information" completed for April 2022 graduation.**

11.1.5 **Lerm, HW with co-supervisor Thysse, JN supervised Kolobe, Bridget Nqobile Maria "Self-Defence as a Ground of Justification in Cases of Battered Women Who Kill Their Abusive Partners" completed for April 2022 graduation.**

11.1.6 **Botha, JC supervised Lotter, Danielle "Farm Murders and Attacks as Hate Crimes" completed for April 2022 graduation.**

11.1.7 **Qotoyi, T supervised Louw, Samuel Liphant "Protracted and Violent Strikes: Statutory Intervention in South Africa" completed for April 2022 graduation.**

11.1.8 **Ncume, AZ supervised Mabika, Tanaka Shalom "The Classification of Illegal Immigrant Workers as Employees" completed for April 2022 graduation.**

11.1.9 **Keith-Bandath, RE with co-supervisor Van der Walt, JA supervised Mac Master, Hillary Ian "Proving a Case of Unequal Pay for Work of Equal Value" completed for April 2022 graduation.**

11.1.10 **Qotoyi, T supervised Mncanca, Siyamthanda "The Application of the Prescription Act in Labour Disputes" completed for April 2022 graduation.**

11.1.11 **Van der Walt, JA supervised Ndzoyiya, Zuko Sibongisenia "Majoritarianism in the Labour Relations Act" completed for April 2022 graduation.**

11.1.12 **Gathongo, JK supervised Njuze, Fundiswa "Regulatory Challenges Relating to Social Media Misconduct in the Workplace: A Comparative Study" completed for April 2022 graduation.**

11.1.13 **Van der Walt, JA and co-supervisor Van der Walt, G supervised Padi, Kekulu Maria "The Regulation of Child Labour in South Africa" completed for April 2022 graduation.**

11.1.14 **Welgemoed, M supervised Plaatjies, Lance Calvin "The Suitability of the Accusatorial Criminal Justice System in the Context of Gender-Based Violence" completed for April 2022 graduation.**

11.1.15 **Qotoyi, T and co-supervisor Newton, DA supervised Raxangana, Sandiso "The Inter-Relationship Between Administrative Law and Labour Law in the Context of Public Sector Employment" completed for April 2022 graduation.**

11.1.16 **Gathongo, JK supervised Sibhene, Vuyisa "Vicarious Liability of Employers for Privacy Breaches" completed for April 2022 graduation.**

11.1.17 Van der Walt, JA supervised Vabantu, Sithembiso "Discipline and Dismissal Relating to Social Media Abuse" completed for April 2022 graduation.

11.1.18 Coetzee, L supervised Mmangitsa, Mphatso "Comparative Analysis of the Regulation of High Frequency Trading in South Africa, the United States of America and the European Union" completed for April 2022 graduation.

11.1.19 Coetzee, L supervised Naicker, Crystalene "Constitutionality of the Ownership Provisions in the BBBE Empowerment Codes of Good Practice" completed for April 2022 graduation.

11.2 DECEMBER 2022 GRADUATION

11.2.1 **Qotoyi, T supervised Lupondwana, Masiza Howard "The Extension of Collective Agreements to Non-Parties for Dismissal for Operational Requirements" completed for December 2022 graduation.**

11.2.2 **Keith-Bandath, RE supervised Mafa, Bonolo Kathleen Lerato "Amendments to the Labour Relations Act to Curb Violent and Intractable Strikes" completed for December 2022 graduation.**

11.2.3 **Qotoyi, T supervised Mbewana, Inga "Termination of Employment in the Public Service Sector: The Constitutionality of the Deeming Provisions" completed for December 2022 graduation.**

11.2.4 **Erasmus, D supervised Ndude, Tembinkosi "The Principle of Fairness in South African Criminal Trials" completed for December 2022 graduation.**

11.2.5 **David, DL supervised Somandi, Siphuxolo "Selected Aspects of the Crime of Necrophilia" completed for December 2022 graduation.**

11.2.6 **David, DL supervised Witi, Bulelani Evliveta "The Preparation of Expert Witnesses to Testify in Medical Negligence Cases" completed for December 2022 graduation.**

11.2.7 **Vrancken, PHG supervised Kuture, Dudzai Chandisaita "Protection of the Environment from Pollution Emanating from Offshore Oil Installations" completed for December 2022 graduation.**

11.2.8 **Ndimurwimo, LA supervised Nnko, Ruth Anaeli "The Protection and Promotion of the Rights of Journalists in Tanzania" completed for December 2022 graduation.**

SUPERVISION OF LLD THESES

12.1 APRIL 2022 GRADUATION

12.1.1 Van der Walt, JA supervised Gondoza, Dennis "The Reform of Labour Dispute Resolution in Zimbabwe" completed for graduation April 2022.

ABSTRACT

This study analyses the Zimbabwean labour dispute resolution system and its compliance with international labour standards. The study includes a comparison with the dispute-resolution system in South African labour law. A recommendation of a new independent statutory body employing alternative dispute resolution processes, the Zimbabwean Commission for Mediation and Arbitration (ZCMA), is made as it will depoliticise the labour dispute resolution system. If successful, it can become a beacon for dispute resolution in other spheres in a country that is so beset with problems. What is required is stakeholder consultation, training, funding and a realisation by all stakeholders, including the Zimbabwean government that an alternative labour dispute-resolution (ADR) system as proposed by this study is of utmost necessity in Zimbabwe.

12.1.2 Vrancken, PHG with co-supervisor Van As, HJ supervised Hamukuaya, Nghililewanga Hashali "Drug Trafficking as a Fisheries Crime in Namibia" completed for graduation April 2022.

ABSTRACT

Given the rise in the use of fishing vessels to conduct illegal fishing activities and the links with illicit drug trafficking and organised crime, the study assesses Namibia's legislative regime to determine whether Namibia's legislation is adequate to combat fisheries crime as a racketeering offence. Namibia's legislative framework was tested against global standards. The study also compared Namibia's legislative system to that of South Africa, to determine whether there are lessons to be learned from South Africa, which has successfully prosecuted fisheries crime. It was found that Namibia is not compliant with the relevant global instruments and there were lessons Namibia could learn from the South African approach. The study provides recommendations to close the legislative gaps identified in the study.

12.1.3 Botha, JC with co-supervisors Adelman, SE and Van Dyk, EE supervised Van Huyssteen, Roelof Cornelis "The Regulation of Renewable Energy in South Africa" completed for graduation April 2022.

ABSTRACT

This thesis highlights the fact that South Africa's current energy laws and policies are entrenched in the promotion of fossil fuels. These laws neither accommodate, nor support, the efficient regulation and development of renewable energy. By considering the provisions of international law and the regulatory frameworks for renewable energy in Germany and the United Kingdom, the thesis proposed regulatory principles and associated legislative design recommendations to underpin South Africa's renewable energy legal framework. The thesis argues that regulatory reform and a new renewable energy statute must be founded on the fundamental principles of sustainable development, namely economic, environmental, and social development.

12.2 DECEMBER 2022 GRADUATION

12.2.1 Vrancken, PHG with co-supervisor Marx, FE supervised Dare, Foluke Mary "The Legality of Anticipatory Self-Defence Against a Maritime Cyber-Attack" completed for graduation December 2022.

ABSTRACT

This study analyses the international law principle of anticipatory self-defence against the emerging threat of maritime cyber-attack with a focus on article 51 of the United Nations Charter and relevant law-of-the-sea instruments in order to identify the challenges associated with applying this principle in the context of maritime cybersecurity. It concludes by stressing that the uniqueness of the emerging threat of cyber-attacks against maritime security needs to be taken into account when assessing the lawfulness of actions taken by States to thwart these attacks.

FACULTY OF LAW STAFF MEMBERS GRADUATING

13.1 Casalin, D "The Role of International (Quasi-)Judicial Mechanisms in Ensuring Reparation for Arbitrary Displacement" (De Feyter, K (supervisor))

Defended June 2022 at the University of Antwerp Faculty of Law, Belgium

ABSTRACT

This research highlights how displaced people worldwide have pursued justice for being obliged to leave their homes without adequate legal protection – whether due to injustices linked to conflicts, disasters, exclusionary development projects, or forced evictions. More specifically, it contains a comprehensive and systematic legal analysis of decisions on displaced people's claims before international human rights courts and commissions (i.e. the European, African and Inter-American mechanisms, plus the UN treaty bodies). It finds that these have significantly shaped international norms on displacement reparations to recognize the experiences and rights of displaced people and communities. Additionally, three diverse in-depth case studies on the effects of such decisions - focusing on displacement situations caused by conflict in Suriname, development projects in Kenya, and the mortgage crisis in Spain - also provide insights into the long and complex process for stakeholders to ensure that these decisions are effective, and which legal, social, political or economic factors may help or hinder this.

CONFERENCES AND COLLOQUIUMS HOSTED BY THE NELSON MANDELA FACULTY OF LAW

14.1 International Conference: 14th Annual Private Law and Social Justice Conference, hosted by Nelson Mandela University, August 2022

14.2 International Conference: Oceans, Justice and Human Rights Conference, hosted by Nelson Mandela University, 3-5 November 2022

BOOK LAUNCHES

FACULTY OF LAW GUEST LECTURES

15.1 **Erasmus, Deon "The Trial of Millionaire Schrien Dewani: Finding the Truth in Court – Reality or Myth", Maribor University, Slovenia, 3 – 10 June 2022**

15.2 **Erasmus, Deon "The Trial of Millionaire Schrien Dewani: Finding the Truth in Court – Reality or Myth" and "The Supersized Trial of Paralympian Oscar Pistorius: The Principle of Open Justice and the Right to a Fair Trial", Prague Summer Schools, Czech Republic, hosted by Schola Empirica, 1 – 8 July 2022**

15.3 **Erasmus, Deon "The Legal Regulation of Cyber Bullying", Summer School on Cyberlaw, Maribor University, 2/09/22 – 16/10/2022**