

Editorial:

This edition contains two *orationes*, three edited conference papers, twelve articles and a note.

Orationes

- Judge Eberhard Bertelsmann of the North Gauteng High Court delivered the address published here as he delivered it in Afrikaans in the series of FW de Klerk lectures in Potchefstroom on 20 February 2012. He dealt with the role of and limitations on the judiciary to promote social peace in South Africa, pointing out the achievements of the courts in the establishment of the constitutional dispensation over the past decades. He however also showed that the courts are over-burdened and that court administration leaves much to be desired. Litigants and practitioners do not hesitate to abuse the system and ugly incidents of unethical conduct have marred the professions. Judges however do not take these trends lying down and measures to rectify the situation are well underway. Fair, understandable, predictable and speedy adjudication without fear, favour or prejudice continues to be the contribution of judges to the protection of the South African democracy.
- Emeritus Judge Louis Harms, formerly of the South African Supreme Court of Appeal, addressed the 12th International Conference of the International Academy of Linguistic Law in Bloemfontein on the 1st of November 2010. The paper on which this address was based, is published here. Judge Harms spoke on the critical issues of law and language in a multilingual society and concluded that the role of the law in protecting or promoting language is limited. The protection or promotion of minority languages such as Afrikaans, he said, was in the hands of the speakers of such languages.

Conference Papers

The establishment of accountable and democratic governments is not merely a matter of the constitutional framework in any given country. It is also a matter of servicing citizens, which is primarily done on the basis of decentralized and local government(s). In 2011, the *Gesellschaft für afrikanisches Recht* (African Law Association) held its annual meeting at the Max Planck Institute for Comparative Public and International Law in Heidelberg, Germany. Apart from discussing constitutional developments in Northern Africa, the Association's annual meeting focused on decentralization and local government. The participants were not only academic experts but also practitioners in the field. We are pleased to publish three of the papers dealing with decentralization presented at the conference. The organisers and co-editors of this part of the present edition, Hatem Elliesie and Thilo Marauhn, also wish to acknowledge the support provided by the Max Planck Institute, by the African Law Association and the editor of PER and express their appreciation for the efforts of the authors for their insightful contributions on the subject.

- Hartmut Hamann, professor on dispute resolution and international law at Freie Universität Berlin and Technische Universität Chemnitz addressed decentralisation in the Democratic

Republic of Congo, Rwanda and Burundi and offered valuable insights into the francophone discourse.

- Henry Ojambo of the Makarere University in Uganda reviewed Uganda's experience with decentralisation critically and provided interesting (background) information and reasons for the contradictions between the form and content of decentralization as exercised in Uganda.
- Petra Zimmermann-Steinhart and Yakob Bekele, both advisors to and experts in the House of Federation of the Federal Democratic Republic of Ethiopia showed, with reference to empirical data, the impact of decentralization in Ethiopia in three of the decentralized sectors, viz. health, water and education.

Articles

- In his article on public access to private land in Scotland, David Carey Miller of the University of Aberdeen and the Institute of Advanced Legal Studies in London considers the radical reform of Scottish land law and the "new" right of public access to private land for recreational purposes and the right to cross land. He also puts this in the context of the protection of property under the European Convention on Human Rights.
- With reference to child victims of armed conflict, Robbie Robinson of the NWU addresses the difficult question of the nature of the relationship in law between the state and the individual, both as bearers of legal subjectivity, making use of the theory of public subjective rights.
- The relationship between sustainable development and renewable energy is the theme of the contribution by Michelle Barnard of the NWU. She employs the principles developed in international law as criteria for assessment of South African renewable energy law and policy.
- Loma Steynberg and Raheel Ahmed of UNISA analyse the procedure under the South African Road Accident Fund for the determination of the nature of injuries sustained by claimants against the Fund for non-patrimonial loss suffered after a motor-vehicle accident.
- Magda Slabbert of UNISA and Herman Edeling, neurosurgeon, show that the South African Road Accident Fund is supposed to provide just compensation to persons who have suffered following a road accident. The claiming process for general damages is however cumbersome, confusing, complicated and socially unjust, requiring some formal adjustments and appropriate assessment of serious injuries.
- Murdoch Watney of the University of Johannesburg considers the question whether, given the opportunities afforded to criminals by globalization, South Africa has succeeded in establishing an appropriate framework to enable it to make a positive contribution to the fields of mutual legal assistance in cases of extradition.

- In their contribution Tamara Cohen and Luendree Moodley of the University of KwaZulu-Natal consider, with reference to five statistical indicators, the progress made by South Africa towards the attainment of decent work objectives against the background of the fundamental goal of the International Labour Organisation to secure decent and productive work for all.
- Rinda Botha and Jo-Mari Visser of the University of the Free State present a critical and comparative discussion of the historical development of section 49 of the Criminal Procedure Act of 1977 concerning the use of violence by the police, which some consider to guarantee suspects a right to flee.
- Aspects of cyber terrorism, its meaning, terrorist use of the Internet and countermeasures to curtail it in various countries are highlighted by Fawzia Cassim of UNISA and she points out that an environment has been created which may easily be infiltrated by cyber terrorists.
- With reference to the jurisprudence of the United States Supreme Court, which she finds to be highly suspect both intellectually and philosophically, Letetia van der Poll of the University of the Western Cape poses the question whether pornography is speech. She points out that the South African Constitutional Court has explicitly followed the US Supreme Court's philosophical justification as the basis for allowing "non-obscene" sexually explicit material as free speech and expression.
- In his analysis, Amos Saurombe of UNISA emphasizes the fact that member states' commitment to the work of institutions within a regional economic community like SADC is critical for the full implementation of its Treaty and its Protocols, but that SADC institutions are not capable of completely fulfilling their legal obligations, partly as a result of the legal instruments themselves being incomplete and being in need of further reform.
- Yousuf Vawda of the University of KwaZulu-Natal and Farhana Variawa, specialist radiologist, argue that, while significant recent discourse and jurisprudence have focused on the rights of patients in South Africa, the situation and rights of providers of health care services have not been adequately ventilated. They emphasize the challenges faced by the human resources personnel located at the centre of the roll-out of the government's ambitious programme of anti-retroviral (ARV) therapy in the combat against HIV/AIDS.
- Omphemetse Sibanda of UNISA evaluates the Canadian and the EU's implementation of the WTO's resolution that developed nations could export patented pharmaceutical drugs to member states in order to address public health challenges such as HIV/AIDS and other epidemics. He dismisses the arguments against TRIPS flexibilities-inspired legislation and similar measures as mostly mere rhetoric and hair-splitting, stating that they sometimes unwarrantedly dismiss a workable solution to public-health problems.

Note

- In his note on the South African retirement fund industry, Clement Marumoagae, candidate attorney in Benoni ventures to demonstrate that the boards of trustees of South African pension funds are accountable to and owe fiduciary duties only to the fund they serve and not to the members of those funds.

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