

# LAW IN CONTEXT

Research in Law at UCT is championing African solutions for African challenges.



**Two of the most exciting loci of research in the Faculty of Law at the University of Cape Town are the Centre for Comparative Law in Africa and the Centre for Criminology. Each of them demonstrates that law, both substantively and in its application, is heavily influenced by the context in which it operates – and that the law and its application can be improved by closely investigating this context from different vantage points.**

Comparative law at its best takes account of the cultural, sociological and political background of the systems that are being compared. When done in this way, comparative law has the power to provide new solutions to old problems. Too often comparative-law scholarship neglects these dimensions, and for too long has our specifically African setting been ignored in research aimed at the improvement of our law. The Centre for Comparative Law in Africa, led by Professor Salvatore Mancuso, states that its aim is to address "the need to devise contextually sound law and policy responses to pervasive developmental challenges facing our continent" and "to develop a discipline that lends itself to optimal application in the pluralistic legal frameworks within which life is lived in Africa". This ambitious programme has already been put into action in several important ways as outlined below. (To learn more about the activities of the Centre for Comparative Law in Africa, visit its website at <http://www.comparativelaw.uct.ac.za/>).

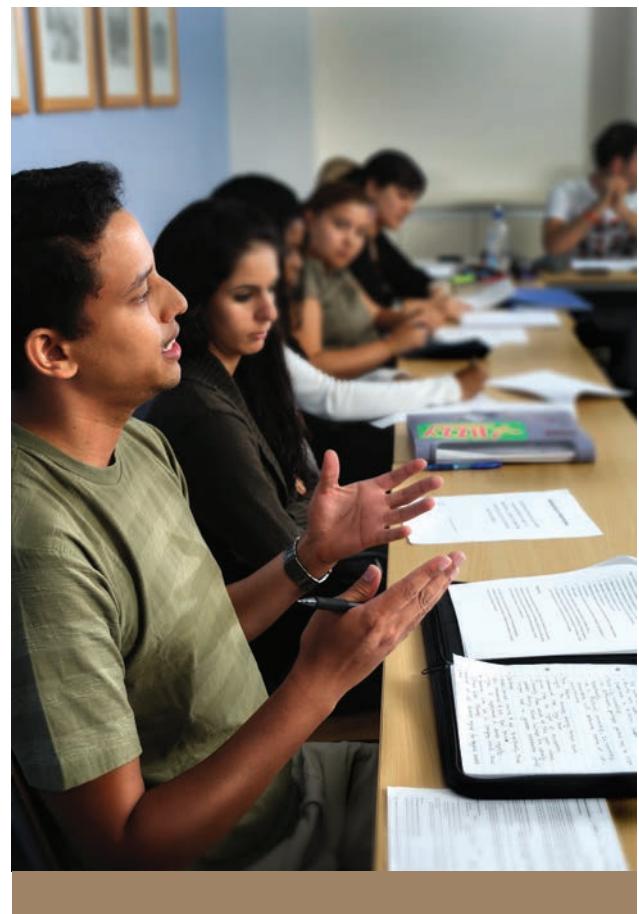
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As in all spheres of law, the efficacy of the criminal justice system is inextricably bound to the conditions, and attitudes to crime and criminal law, in the society for which it was created. In the context of the high levels of crime and violence in our society, the research of the Centre of Criminology is vital. Led by Professor Clifford Shearing, holder of the DST/NRF SARChI Chair in Security and Justice, the centre records that "it has a long history of engaging contemporary issues within the twin domains of justice and security" and that "this engagement has enabled it, since its inception in 1977, to remain Africa-focused and globally engaged".

The centre's research covers a wide range of topics in policing and in penal systems, as well as in the exciting and novel area pertaining to the risks associated with lowered



levels of environmental security. Some of this engaged research, which gives effect to the centre's slogan, "imagine, innovate, integrate", is outlined below (and to learn more about the work of the centre, visit its website, <http://www.criminology.uct.ac.za/>, and its two blogs [one on physical security and the other on environmental security]).

Highlighting the African focus and social relevance of these particular two endeavours in the Faculty of Law does not mean, of course, that the other research in the faculty is of a different kind. All law inevitably shapes the community in which it operates and all research in law is therefore, in one way or another, societally relevant. To give a flavour of the wide range of the important research in the faculty, this report profiles four of the faculty's top researchers and highlights the doctoral theses and books produced by members of the staff of the faculty in the course of 2012.



**The Centre for Comparative Law in Africa (CCLA) was established in 2011 to promote the study of comparative law and draw on the strengths of comparative methodology to research into the multifaceted field of law in Africa.**

**T**he centre presents an opportunity to develop a discipline that lends itself to optimal application in the pluralistic legal frameworks within which life is lived in Africa. In its mission to contribute to the development of comparative law in Africa, the strategy of the CCLA is to establish the field at UCT, build capacity in it across the continent through academic programmes, apply comparative law expertise in consultancies and disseminate new knowledge in comparative law in Africa through conferences, publications and professional networks.

Its location within the Department of Commercial Law recognises the centrality of comparative law to ongoing efforts at economic integration on the African continent. The CCLA offers an LLM in Comparative Law and conducts research on a variety of themes that apply the comparative methodology. Its innovative LLM course, Chinese Law and Investments in Africa, launching as a bloc course in September 2013, has attracted many students. Currently the centre is involved in a collaborative research project on mineral law and policy in three southern African countries (Namibia, Botswana and Zambia) under the UCT PERC Africa Knowledge Project and is also hosting a project on Eritrean land law.

### Mineral Law in Africa

The aim of the mineral law for Africa project is to create a systematic, academic commentary on mining and mineral laws in Africa, starting with a selection of Southern African countries which present comparative case studies in relation to South Africa. The choice of the research subject is located within the key goals of PERC, namely, to develop a collaborative research-based team, establish research collaboration with academic colleagues in other African universities and generate research findings that are relevant to Africa and which reflect its situational realities.



The project is also aligned to the broader mandate of the Centre for Comparative Law in Africa in the sense that by creating a multi-jurisdictional research team, it expands the Law Faculty's research networks. Further, it seeks to be socially responsive by addressing a subject that affects the lives and livelihoods of much of the African working population. In addition, it builds academic capacity through its involvement of academic staff and postgraduate students in the collaborating institutions, namely UCT and the universities of Botswana, Namibia and Zambia.

Outputs from this research project will include articles presenting an overview of the research findings and a book on each jurisdiction studied, which will constitute Juta's Library of Mining Law in Africa. This project is led by Professor Hanri Mostert of the Department of Private Law with the Chair in Comparative Law in Africa providing expertise on comparative methodology. Another projected outcome is the launch of a website for the uploading of the data from the research project. It is expected that this project will be followed by studies of other African regions.

### Eritrean Land Law

The aim of the Eritrean land-law project is to enrich the scarce bibliographic resources on Eritrean law with a comprehensive analysis of its legal framework on land law. Previous research done on this subject will be expanded to create a comprehensive and updated legal material which will represent the reference in a sector – that of land – which is extremely important for the Eritrean livelihood. The project aims to produce a book which will give comparative insights into land tenure in Eritrea (including customary), among other systems of land administration. The book will be published in Italian (Trieste University Press, 2013), and thereafter translated into English and published in South Africa under the "Comparative Law in Africa" book series (Juta Press).

The project is also aligned to the broader mandate of the CCLA in the sense that it is framed in the Afropolitan vision of UCT, and it will position the CCLA as a leading institution in the research on key themes of African law. Further, it seeks to be socially responsive by addressing a subject that affects the lives and livelihoods of almost all Eritrean citizens and giving them full information on the legal regime applicable to their land.

### Future activities

The CCLA is in the process of peer-reviewing papers for the first edition of its journal, the *Journal of Comparative*



Professor Salvatore Mancuso

*Law in Africa*. Furthermore, papers presented at its workshop on comparative law methodology in Africa held in October 2012 are being peer-reviewed for publication as the inaugural volume in the above-mentioned CCLA book series.

The CCLA has recently secured an endowment to support its academic visitors programme and has been nominated to host a fellow under the All Africa House fellowships from September to December 2013. The CCLA is home to the emerging African Association of Comparative Law and is connected to a number of other networks, including the African Legal Support Facility, the Organisation for the Harmonisation of Business Law in Africa, the Global Forum on Law Justice and Development, and the International Association of Legal Sciences.

In its effort to be one of the main actors of legal development in Africa and beyond, the CCLA has been already involved in some relevant activities in this respect: the Chair has been the facilitator of the last meeting held by the African Legal Support Facility (emanating from the African Development Bank) on capacity-building for lawyers in Africa. He has also been a member of the teams of experts advising the Egyptian government on the Draft Mediation Law and the Ghanaian government on the Legal Aid Bill. He is presently a member of the team of experts advising the government of Fiji on the Draft Mineral Law.

The CCLA is also currently working on the organisation of a group involving Somali scholars and jurists resident in South Africa and lawyers interested in Somali law to create a working group to advise the Somali government in the rebuilding of their legal system and to do systematic research on Somali law.



**R**esearch on policing at the Centre of Criminology is concerned both with public police and private policing developments in South Africa and in transitional contexts, particularly in Africa.

During the course of 2012, research under the direction of Professor Elrena van der Spuy explored policing in the context of peacekeeping. This entailed an exploration of the way in which the transnational space of peace missions places new demands on the national police as well as the role of policy transfer. It also involved an investigation into the politics and logistics of policing conflict through the examination of national and regional case studies. Professor van der Spuy also undertook research on the Social History of Criminal Justice Reform in South Africa post-1990, in relation to the police, the former Independent Complaints Directorate, the Judicial Inspectorate of Prisons and the National Prosecuting Authority.

The Polycentric Governance Programme, directed by Julie Berg, explored changes in the character of policing by focusing attention on the authorities who direct, and the providers who undertake, policing. Research foci within this area include:

- City Improvement Districts and their security governance
- accountability of the private security industry
- developing a "whole of society" approach to security governance within the Western Cape
- developing innovative policy with The Safety Lab, a project of the Cape Town Partnership and the Provincial Government of the Western Cape and the Western Cape Department of Community Safety
- developing a networked, international research programme on transnational private security

Initial discussions were held with the Safety and Violence Initiative at UCT about establishing a multidisciplinary programme on manifestations and dynamics of non-state violence in Africa.

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The Centre's Penal Policy programme, led by Dr Gail Super, an NRF postdoctoral research fellow, explored the relationship between punishment and society and the role of punishment in state-making. Dr Super's book *Governing through Crime in South Africa: the Politics of Race and Class in Neoliberalizing Regimes* will be published by Ashgate Publishing in 2013.

In the light of the sharp deterioration of the global environment, and the local impact this is having on ecosystems and communities across Africa, the Centre of Criminology has introduced environmental security governance within its research ambit.

This research stream, led by Professor Clifford Shearing, explored how influential "fulcrum" institutions, with the capacity to lever societal change, are responding to the risks presented by an increasingly insecure environment. Partners within this programme include the World Wide Fund for Nature (WWF), several municipalities and private sector institutions.



## Inspiring the NEXT GENERATION OF SCHOLARS

Scholarship at the Centre for Law and Society is always orientated outward to what it sees as the key challenges facing South Africa today, while from within its teaching and supervision programme develops a new generation of engaged scholars and activists.

The Centre for Law and Society (CLS) has consolidated and expanded its flagship programmes – the Law, Race and Gender Research Unit (LRG), and the Rural Women's Action Research Project (RWAR) – led by Dr Aninka Claassens, director of RWAR; and Associate Professor Dee Smythe, director of the CLS.

For two decades LRG has carried out in-depth research, and has trained and mentored more than a thousand judicial decision-makers on a range of social issues, even as it has actively sought to support the transformation of the justice system.

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The CLS has been closely involved with law reform, constitutional litigation and community organising, which has led to the establishment in 2012 of the Alliance for Rural Democracy.

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RWAR, too, has adopted a distinctive methodology: combining regular rural, community-based consultations with empirical research, to establish the content of living customary law which is in contradistinction to the rule-bound versions of customary law entrenched by new, conservative laws.

The work of the Centre for Law and Society has resulted in high quality research outputs such as the *Acta Juridica* on Marriage, Land and Custom (forthcoming, 2013), edited by Claassens and Smythe. The CLS has also been closely involved with law reform, constitutional litigation and community organising, which has led to the establishment in 2012 of the Alliance for Rural Democracy.

Dr Aninka Claassens

## ■ Acting for Rural Women

Women make up 59 percent of the poorest areas in South Africa, and while research shows significant numbers of single women have managed to acquire independent land rights since 1994, these positive developments have been put at risk by recent traditional leadership laws that bolster the power of chiefs to unilaterally define the content of custom. These new laws have also exacerbated the tendency of chiefs to enter into unilateral mining and investment deals on communal land without consulting its occupants.

The apartheid tribal boundaries effectively re-imposed by these laws serve two purposes: they lock 16 million people into ascribed tribal identities, while simultaneously locking alternative institutions out. This pre-empts rural people's ability to organise themselves in any way other than as tribal subjects.

The Rural Women's Action Research Project highlights the danger of reactionary versions of customary law used to bolster autocratic chiefs and shut down processes of local transformative change. At the same time, there is enormous potential in recent Constitutional Court judgments that interpret customary law as 'living law' that develops as society changes.

So it becomes crucial to provide evidence of current practice and underlying values in challenging the distorted version of customary law entrenched by the new laws. This is necessary for litigation purposes in striking down the new laws, and to develop feasible alternatives to government's current approach.

RWAR's research shows that rural people are engaged in finding positive ways to reconcile citizenship rights and indigenous precedents. Rigorous empirical research is crucial, as is the involvement of rural people in the design and development of the research, and for the articulation of policy implications.

## ■ Documenting Traditional Courts

Researchers have documented on a daily basis for nine months – under the leadership of Dr Sindiso

Mnisi Weeks – the vernacular dispute management practices of six headmen in the Msinga area.

Drawing on this data, and further interviews with members of the Mchunu and Mthembu traditional councils, traditional leaders and disputants, Dr Mnisi Weeks will complete a monograph on the subject. The research provides a foundation for opposing the autocratic Traditional Courts Bill in its current form and is the basis for developing a position on the future regulation of these courts.

## ■ Pathways to Justice: Msinga and Surrounding Areas

This project, led by Associate Professor Dee Smythe with Diane Jefthas, complements research concerning Traditional Courts in the same area of Msinga.

It documents intersections between traditional justice mechanisms and the formal criminal justice system. Analysis of 1066 police dockets have begun to reveal patterns of vigilantism, compensation payments, and the relationship between police and traditional leaders. Qualitative research with traditional leaders, police, prosecutors and magistrates is under way.

## ■ Changing Marital Status and Access to Land for Rural Women

Massive processes of change are under way in rural areas in relation to single women's access to land since 1994, according to survey data.

Using in-depth qualitative research, Dr Aninka Claassens and Nolundi Luwaya, have set out to better understand the dynamics of change processes and the factors that both support and inhibit positive change. Research findings will be used in policy briefs and articles that critique current

## Professor Jaco Barnard-Naudé

Jaco Barnard-Naudé completed his law studies at the University of Pretoria and also holds a master's degree in creative writing from UCT. He is an NRF-rated researcher, an honorary Fellow at the Birkbeck Institute of Humanities, and a recipient of the UCT Fellows' Award, the Grotius Medal, the Santam Prize for Economics and the Gauteng Law Council Prize. He completed a doctorate in critical legal theory with specific focus on adjudication in the South African law of contract in transformation.



Professor Barnard-Naudé's research is primarily situated at the inter-disciplinary junctures of critical legal theory, political philosophy, literature and psychoanalysis. He has a particular interest in sexual minority freedom and, primarily in collaboration with Professor Pierre de Vos, has authored a

number of influential journal articles and book chapters on this topic in the context of both post-apartheid South Africa and foreign jurisdictions.

In 2012, his published research reflected his interest in poststructuralist influences on literature, with two articles on the relationship between philosophy and literature in the context of the Afrikaans literary tradition. He also published an article in the *Stellenbosch Law Review* on the relationship between law and poetry against the background of protest poetry in the Afrikaans canon. Professor Barnard-Naudé brought his interest in a post-apartheid critical jurisprudence for South Africa specifically to bear on the four chapters he contributed in 2012 to a new textbook, *Introduction to law and legal skills*, published by Oxford University Press Southern Africa. In these contributions he stresses the importance of understanding the inextricable relationship between law and politics in the study of the South African transition to democracy.

2012 also saw Professors Barnard-Naudé and De Vos shifting their ongoing collaboration to contemporary politics in South Africa with the publication of an article on the politics of aesthetics in the context of the Jacob Zuma Spear debacle. In this contribution they draw on insights from postcolonial and aesthetic theory to plead for a nuanced understanding of Brett Murray's painting as a complex and problematic work, whilst at the same time arguing the importance of the constitutional right of freedom of expression for democracy. Professor Barnard-Naudé concluded his research outputs for 2012 with the publication in the *South African Law Journal* of a critical appreciation of Professor Jacques de Ville's *Jacques Derrida: Law as absolute hospitality* (2011). In this book review, he argues that current work on poststructuralist ethics all too often loses sight of the political *raison d'être* of the postcolonial context, namely that it is a context that calls for the building and maintenance of an ontologically post-apartheid, radically horizontal, public sphere, in which the (constitutional) ideal of equality plays a fundamental role.

## Professor Hugh Corder

Hugh Corder, a graduate of the universities of Cape Town, Cambridge and Oxford, has been Professor of Public Law at UCT since 1987. His main teaching and research interests fall within the field of Constitutional and Administrative Law, particularly judicial appointment and accountability, and mechanisms to further administrative accountability. Professor Corder has been widely involved in community work since his student days, concentrating on popular legal education, race relations, human rights and the abolition of the death penalty. He served as a technical adviser in the drafting of the transitional Bill of Rights for South Africa. He has written three books, edited a further seven, and contributed many articles and chapters in books.

Professor Corder had a busy and productive 2012, of which two research projects representing different aspects of his areas of interest are highlighted here. For him, research in law tends to be a solitary activity. Although he has occasionally written with others, and although he has also been part of a research team, usually for short periods of intense activity (such as drafting a bill for Parliament), his preferred position is to read, reflect and write on his own. The works highlighted below represent the outcome of both sorts of research.

His work in the area of constitutional law, and his particular focus for the past 35 years, has been the judicial branch of government, as well as a specialised area of constitutional law called administrative law, which is any legal system's response to the rapid growth and intrusiveness of executive authority over the last century. It typically centres on the courts' attempts to regulate the exercise of that power to ensure a measure of procedural fairness.

The first piece is a substantial chapter for a book on the judiciary in South Africa. The editors asked Professor Corder to write on judicial accountability, a particularly vexed topic, for the following reasons. Judicial impartiality and independence are critical to any constitutional democracy, but judges exercise authority on behalf of the state in interpreting and enforcing laws, so there must be methods to ensure their accountability to the electorate. One of the ways in which this occurs is through the doctrine of the "separation of powers" in government, and through the role of the executive and Parliament in appointing judges. This chapter focuses on accountability mechanisms for serving judges, such as that they sit in open court, that their judgments are criticised by other lawyers, academics and in the media, that judgments may be appealed to higher courts, and that judges who are guilty of gross misconduct may be impeached. Most of the chapter examines the structures and procedures introduced recently into our law by Parliament, such as a binding Code of Conduct as well as



tribunals established under the auspices of the Judicial Service Commission. One such notorious incident involves a judge who was found guilty of drunken driving, and whose case will soon be heard by a tribunal.

The second piece is a chapter in a book (edited by leading constitutional scholars from Australia, Switzerland and the USA) which seeks at an international level to explore themes common to constitutional law in a comparative manner. Professor Corder was twinned with a Swedish academic, and they were asked to write about access to information, a vital part of administrative justice in any modern system of constitutional governance. Sweden was the pioneer in this area, South Africa very much a latecomer, and the authors approach the issue from very different legal and cultural vantage points, so there was much of interest in the writing process. It is hoped that the outcome will be equally stimulating!

## Professor Hanri Mostert

Professor Hanri Mostert's undergraduate studies in Humanities and Law at Stellenbosch University piqued her interest in the resource potential of land. Throughout her doctoral studies she pursued the question of how land as a scarce resource of great public importance could be appropriately regulated, whilst simultaneously private claims to it could be acknowledged. Having honed her research skills at the Max Planck Institute for Public and International Law in Germany, she completed her doctorate in 2000.



Since then, through her appointments at Stellenbosch University (2001 and 2008), and the University of Cape Town (since 2008), she has endeavoured to share her insights with new generations of property-law students. Her work has had impact both locally and internationally, through her appointment as a visiting Professor at the Rijksuniversiteit Groningen in the Netherlands, her involvement in the International

Alliance for Land Tenure and Administration, and her work supporting the South African Law Commission, World Bank and international and national litigation.

Professor Mostert's original interests in property law have matured into specialisations in land law and mineral law. In these fields, she has contributed to the most authoritative sources on South African law, addressing issues of constitutional property protection, landlessness, tenure security, restitution, nationalisation, land governance and mineral-resource regulation. Her latest monograph, *Mineral Law – Principles and Policies in Perspective* (Juta, 2012), has already assisted the courts' understanding of mineral law.

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Her work emphasises the state's duties to achieve better living standards and ensure responsible individual autonomy. She defends the notion of engaged citizenship in the enhancement of freedom and quality of life for individuals and the community and comments on the role of the judiciary in building a society subscribing to principles of accountability and trust in property law.

Professor Mostert has now embarked on a project to create a book series dealing with the mineral laws of Africa, and building a network of African mineral law specialists. With Juta Law Publishers she is also working on a series of opinion pieces on law, the first of its kind in South African legal publishing.

Professor Mostert holds a B rating from the National Research Foundation. She also held fellowships of the Commonwealth Programme, the Max Planck Foundation, the German Academic Exchange Service and the Alexander Von Humboldt Foundation.

## Professor Chuma Himonga

Professor Chuma Himonga completed an LLB at the University of Zambia, an LLM at King's College London, and a PhD at the London School of Economics and Political Science. She is Professor of Law at the University of Cape Town and an NRF-rated researcher. She has served as a former deputy dean of undergraduate and postgraduate studies at UCT, an Akademische Rätin auf Zeit at the University of Bayreuth, Germany (1988–1994), and as a lecturer at the University of Zambia (1978–1988). She has collaborated in three major international and regional academic research projects in Europe and Africa, and is a former member of the South African Law Reform Commission Project Committee on Customary Law.

Professor Himonga convenes public and postgraduate seminars in All Africa House (where she serves as the warden), and manages a fellowship programme for academics from other African universities, funded by UCT. She has served on a number of boards of trustees, including the International Association of Law Schools Board from 2005 to 2010.

Professor Himonga's current preoccupation as holder of the South African Research Chair in Customary Law is refocusing research in customary law from theoretical studies to "grounded" empirically based investigations of the actual workings of customary law. This approach reflects the changed conceptualisation of customary law as living customary law in legal theoretical discourses. It is furthermore consistent with the normative frame of living customary law confirmed as the legitimate sources of law by the South African Constitution and Constitutional Court, and increasingly by other African legal systems.

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A true and more realistic determination of the relationship between customary law and other components of Africa's legal pluralistic landscape depends on how well the former is researched and understood as a system of living law.

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The ground-breaking nature of the direction of the South African Research Chair in Customary Law's research is to be viewed against the dearth of research on the African continent that takes the empirical investigation of customary law as a normative system seriously. While volumes of important literature have been published on customary law, little is based on the actual practices of the people who are subject to customary law, and therefore of little relevance to the lives of this legal system's adherents and its implementation by the state.



A true and more realistic determination of the relationship between customary law and other components of Africa's legal pluralistic landscape, including human rights and democratic governance, also depends on how well the former is researched and understood as a system of living law. These underscore the significance of Professor Himonga's scholarly undertakings and the direction of the research at her Chair.

# Books Published in 2012

## ■ Reinventing Labour Law



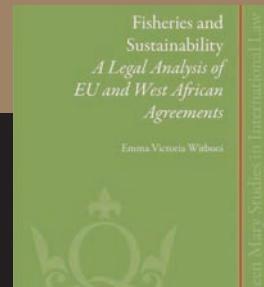
Rochelle Le Roux and Alan Rycroft

The employment relationship has throughout the centuries been one of the most regulated of contracts. This regulation has extended to basic conditions, health and safety, unemployment insurance, dismissals, strike law, and much more. Most regulation reflects the priorities and policies of the government of the day. The Labour Relations Act 66 of 1995 (1995 LRA) was historically a fresh start in a democratic South Africa, an act harnessed to the Bill of Rights which, for the first time, guaranteed a range of labour-related rights.

This volume of *Acta Juridica* is partly devoted to a critical review of the first 15 years of the 1995 LRA. However, the intention was that the contributing authors should focus on more than the successes and failures of the act and that at least some of the contributions should have a strong prospective emphasis, exploring the possible future challenges to and solutions for regulating the labour market post-2011. In other words, the editors intended this volume to assist in tracking the future of labour-market regulation in South Africa.

## ■ Fisheries and Sustainability. A Legal Analysis of EU and West African Agreements

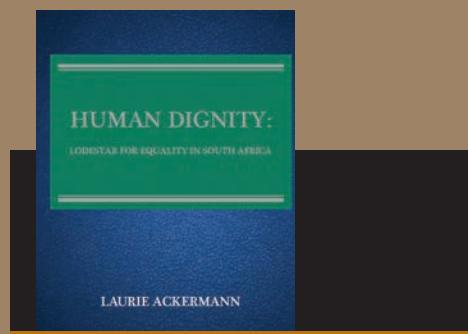
Marine-living resources are currently under severe threat from unsustainable use. International law urges a precautionary approach in the use of remaining fish stocks, necessitating rational domestic management of coastal fisheries and requiring foreign nations accessing these stocks to co-operate to this end. The manner in which bilateral fishing relations between the EU and various West African states have historically played out, however, has not followed this route. This book is a legal study of these relations from an inter-disciplinary and contextual perspective with particular reference to sustainability



Emma Witbooi

questions, using three broad conceptual lenses – common resource management, integration towards sustainable development, and the colonial legacy – to interrogate the extent to which these interactions operated as legal instruments of sustainability.

## ■ Human Dignity: Lodestar for Equality in South Africa



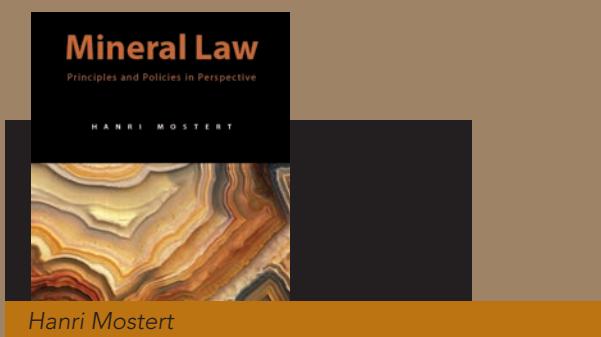
Laurie Ackermann

*Human Dignity: Lodestar for Equality in South Africa* provides an in-depth analysis of human dignity and its relationship to equality in South African law. The author argues that human dignity is the attributive key that unlocks the constitutional meaning of equality and unfair discrimination. Equality cannot be usefully debated without first asking the vital question “Equality of what?” The answer, it is contended, must be “human dignity”. The philosophical and Abrahamic religious roots of these constitutional concepts of dignity and equality are investigated, then further explored and illustrated in the comparative context of South African, German and Canadian constitutional jurisprudence.

Clashes and tensions between rights inevitably occur when the equality and non-discrimination rights of a Bill of Rights are applied horizontally, that is between subjects of the state themselves. The human dignity

of the contestants plays a vital role in resolving such tensions and conflicts. Human dignity moreover has a determining function when applying constitutionally mandated restitutive (compensatory) equality and when determining what the legitimate extent and duration of such restitution is. These issues are also considered in a comparative constitutional context

## ■ Mineral Law: Principles and Policies in Perspective

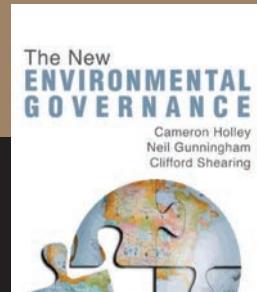


Hanri Mostert

*Mineral Law: Principles and Policies in Perspective* provides a unique look at the context of current mineral law. It examines the system introduced by the Mineral and Petroleum Resources Act 28 of 2002 by juxtaposing it with preceding generations of mineral law. It deals with the regulatory and proprietary aspects of mineral law, the constitutionality of the transitional provisions introducing the new mineral law order, and its continuity with former generations of mineral law.

## ■ The New Environmental Governance

*The New Environmental Governance* (NEG) explores a bold and profoundly new way of governing global environmental problems. It seeks to help overcome the limitations associated with relying on an interventionist state, and its market-based approach to governance, and to offer more effective and legitimate solutions to today's most pressing environmental problems. As such, NEG emphasises a host of alternative characteristics of governance that integrate participation, collaboration, deliberation, learning and adaptation, and "new" forms of accountability.



Cameron Holley, Neil Gunningham and Clifford Shearing

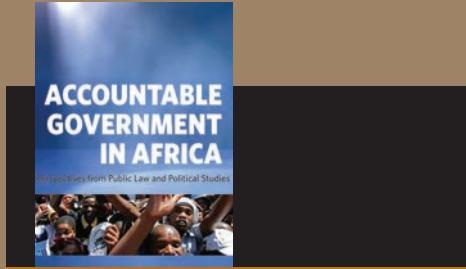
Yet, while these unique features have generated significant praise from legal and governance scholars, there have been few systematic evaluations of NEG in practice. Indeed it is still unclear whether NEG will in fact "work" and, if so, when and how. This book offers one of the most rigorous research investigations into cutting-edge trends in environmental governance to date. Focusing its inquiry on some of the most central, controversial and/or under-researched characteristics of NEG, the book offers fresh insights into the conditions under which we can best achieve successful NEG.

The book synthesises its findings to identify seven key pillars of "good" NEG, central to its success, that will provide useful guidance for policymakers and scholars seeking to apply new governance to a wide range of environmental and non-environmental policy contexts. The book also advances our understanding of state governance and is a valuable reference for scholars, researchers and students working in law and regulation studies, especially those in the field of environmental law.



# Books Published in 2012

## ■ Accountable Government in Africa: Perspectives from Public Law and Political Studies



Danwood Chirwa and Lia Nijzink

The book brings together a number of leading experts in the fields of public law, political science and democratisation studies to discuss problems of accountability, identify ways of making African governments accountable and describe the extent to which these mechanisms work in practice. Thus it presents new knowledge about legal and political developments in a number of African countries that is relevant to the policy goal of developing and deepening democratic governance and accountable government on the continent. *Accountable Government in Africa* will be of interest to academics, students and practitioners in the fields of public law, public administration, political studies and African studies, as well as anyone who has an interest in developing and deepening democratic governance and accountable government on the African continent.



Tom Bennett, Eva Brems, Giselle Corradi, Lia Nijzink and Martien Schotsmans

## ■ African Perspectives on Tradition and Justice

This volume aims to produce a better understanding of the relationship between tradition and justice in Africa. It presents six contributions of African scholars related to current international discourses on access to justice and human rights and on the localisation of transitional justice.



The contributions suggest that access to justice and appropriate, context-specific transitional justice strategies need to consider diversity and legal pluralism. In this sense, they all stress that dialogical approaches are the way forward. Whether it is in the context of legal reforms, transitional processes in post-war societies or the promotion of human rights in general, all contributors accentuate that it is by means of co-operation, conversation and cross-fertilisation between different legal realities that positive achievements can be realised.

The contributions in this book illustrate the perspectives on this dialectical process from those operating on the ground, and more specifically from Sierra Leone, Mozambique, Malawi, South Africa, Uganda and Rwanda. Obviously, the contributions in this volume do not provide the final outcome of the debate. Rather, they are part of it.

## Research Groupings

associated with this theme

### ■ Centre of Criminology

The Centre of Criminology (previously the Institute of Criminology), founded in 1977, aims to initiate, co-ordinate and develop research in the broad field of criminology, and to promote public interest in all aspects of criminology. The centre's research programme focuses primarily on state policing, plural policing, crime prevention, and environmental security. Teaching support to the criminology focus falls within the Department of Public Law and research support is provided by the centre's Multi-Media Electronic Resource Library.

*Director: Professor C Shearing*

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### ■ Intellectual Property and Policy Research Unit

The Intellectual Property (IP) and Policy Research Unit assists in developing IP law and policy in Southern Africa and aims to contribute to the manner in which this topic is treated in the emerging and developing countries throughout the world. The unit is in a position to become an influential leader within Southern Africa for research and scholarship in intellectual property law and policy. It seeks to explore many issues facing the changing world of IP and relate these to the needs of society, IP holders and consumers. The unit is leading research projects in areas such as IP rights and innovation, development, copyright and creative commons, nanotechnology and new technologies.

*Director: Professor J Kinderlerer*

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*Web: <http://www.privatelaw.uct.ac.za/research/units/>*

### ■ Institute of Development and Labour Law

The Institute of Development and Labour Law was established in 1996 through the merger of the Labour Law Unit and the Institute of Development Law. The institute plays a leading role in development and labour law teaching and research. It is involved with training courses in South Africa and other countries in Southern Africa. It also regularly contributes to the training programmes of other organisations, and collaborates closely with other leading university centres and NGOs.

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## DST/NRF SARCHI Chair

associated with this theme

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*Professor Clifford Shearing*

### ■ Security and Justice

Professor Clifford Shearing holds the South African Research Chair in Security and Justice at UCT and is also Chair of Criminology and director of the Centre of Criminology. Previously he held positions at the Australian National University (2001–2006) and the University of Toronto (1975–2001).

He obtained a PhD in sociology at the University of Toronto in 1977. He is an A1-rated NRF scholar. Professor Shearing's research and writing has focused on the governance of security and he has sought, through his policy work and practical engagements, to enhance the quality of security and justice. A particular focus of his work has been contributing to the development of institutions and processes that enhance the ability of poor communities to both direct and contribute to their safety. His current research focuses on developments in international private security and the emerging issue of environmental security.



*UCT's Dr Waheeda Amien (left), Professor Nazeem Goolam (Rhodes University) and Professor Chuma Himonga (UCT), pictured at the CCLA Methodology Workshop held in 2012.*

### ■ Customary Law

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