



South African Institute for Advanced Constitutional, Public, Human Rights & International Law



Sculpture on the South side of the Constitutional Court.

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Prof Jonathan Klaaren and Prof Theunis Roux at the Zuma v. NDPP seminar



Jackson Hlongwane sculpture at the entrance to the Great African Stairs

NEWSLETTER *December 2008*

1. RESEARCH SABBATICAL PROGRAMME FOR JUDGES & ACADEMICS

Jonathan Klaaren, a Professor of Law at the University of the Witwatersrand, completed a three-month research Sabbatical at SAIFAC at the end of September 2008. During his time at SAIFAC Prof. Klaaren worked on a book project on open democracy and also actively participated in SAIFAC's research seminars. Prof. Klaaren's sabbatical has been extended for a further three months.

Dr Elizabeth Fortin, an Economic and Social Research Council post-doctoral Research Fellow at the Institute for Development Policy and Management at the University of Manchester joined SAIFAC on a two-month research sabbatical in September. On 21 October she presented a seminar on 'The Communal Land Rights Act 2004 - a betrayal of law's legitimacy?' During her stay at SAIFAC, Dr Fortin travelled around the country making presentations on her research, and also attended the hearing of the constitutional challenge to this Communal Land Rights Act in the Pretoria High Court.

Ms Adenike Aiyedun, a doctoral candidate at the University of Cape Town, joined SAIFAC in October on a two-month fellowship researching towards her PhD on 'Application of the International Rights of Access to Justice and Fair Trial in an African Context: The Role of Traditional Courts.' At the end of her stay she presented a seminar on the draft second chapter of her PhD dealing with the 'International Human Rights Regime on the Right to a Fair Trial and the Rule of Law in Africa'

2. SEMINAR ON ZUMA V. NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

On 19 September 2008 SAIFAC hosted a 'snap' seminar on Nicholson J's controversial judgment in *Zuma v. NDPP* (dealing with the requirement in section 179(5)(d) of the Constitution that an accused person be given an opportunity to make representations before a decision to review a decision to prosecute or not to prosecute is taken). The seminar attracted a pleasing audience of about 50 attorneys, advocates, law students, university academics and government officials from around Gauteng.

During the seminar, Prof. Jonathan Klaaren presented an overview of the legal aspects of the decision, after which SAIFAC Director, Prof. Theunis Roux, addressed the question of whether the judgment could properly be described as activist, and if so, whether it was activist in a negative or positive sense. The enthusiastic turnout and active participation by the audience showed that there is a substantial interest in the Johannesburg legal community for seminars devoted to the technical aspects of high-profile judgments like this one and their implications for the strengthening and proper functioning of South Africa's constitutional democracy.

3. CONFERENCE ON BUSINESS AND HUMAN RIGHTS

On 3 November 2008, SAIFAC organized a highly successful one-day conference on 'Business and Fundamental Rights: The State Duty to Protect and Domestic Reform'. The conference marked the launch of a SAIFAC Research Report on Business and Human Rights written by Dr David Bilchitz. The report and conference were funded by Shell South Africa Energy (Pty) Ltd. The conference drew participants from South Africa, the United Kingdom and Australia. The conference included an address by special visiting keynote speaker Prof David Kinley of the University of Sydney on 'Civilising Globalisation' and a presentation via DVD by Professor John Ruggie, Special Representative to the United Nations on Business and Human Rights on 'The Ruggie Framework: A More in-depth look at the State duty to Protect'. The speakers as well as participants came from a broad range of backgrounds including academics, policymakers, and business representatives. The conference was extremely well attended with 80 people participating throughout the day.

On 4 November 2008, a seminar on business and human rights was held at SAIFAC for a smaller group of conference delegates. Around 25 people attended this seminar. Dr David Bilchitz presented a paper on 'The Ruggie Framework on Business and Human Rights: Consensus over Principle?' and Professor David Kinley of the University of Sydney a paper on 'Global Economy and Human Rights in Aid, Trade and Commerce'. The seminar ended with a discussion as to a possible African agenda on business and human rights. SAIFAC hopes to take its business and human rights work forward in the coming year with an expansion of its existing programme and a focus on some of the key areas needing further research.

4. SAIFAC STAFF AND VISITING ACADEMIC SEMINARS

Over the last three months the following seminars have been presented by SAIFAC staff and visiting academics:

- Limor Yehuda (guest speaker): 'Occupational Dilemmas: The Legal Framework of Israel's Prolonged Occupation of the West Bank, and Some Thoughts about What a Human Rights Lawyer Should or Shouldn't do When Facing It' (September 2008)
- Sebastian Seedorf (Senior Researcher): 'The South African Electoral System - Some Comparative Observations' (October 2008)
- David Bilchitz (Senior Researcher): 'Moving Beyond Arbitrariness in our Constitutional Order: Recognising the Dignity and Personhood of Non-human Animals' (October 2008)
- Ngwako Raboshakga (LLM Student): 'Towards Participatory Democracy - Or Not? The Reasonableness Approach' (November 2008)

Copies of these seminar papers may be obtained from the authors concerned on request. See e-mail addresses at the side of this newsletter or inquire at info@saifac.org.za.

5. OTHER PRESENTATIONS BY SAIFAC STAFF

In addition to these internal seminars, SAIFAC researchers and postgraduate students have made a number of seminar, workshop and conference presentations outside of SAIFAC. These include the following:

- Mmatsie Mooki (Doctoral Fellow) presented a lecture on 'Abortion and Human Rights in SADC' as a guest lecturer in the LLM class on Human Rights and Democratization in Africa at the Centre for Human Rights, University of Pretoria (July 2008)



Sculpture on paving leading to the Constitutional Court



Watchtower on the rampart of the Old Fort



Menu at Old Fort Coffee Shop, a neighbour to SAIFAC

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view through the windscreen
on the way home

- Sebastian Seedorf gave a talk on 'German Constitutional Culture' at the Wits School of Modern Languages, co-hosted by the German Academic Exchange Service (July 2008)
- David Bilchitz presented a submission to the Parliamentary Portfolio Committee on Trade and Industry titled 'Making Corporations Accountable for Human Rights: The Implications of the Constitution for Corporate Law Reform' and proposed law reforms to the Companies Bill
- Theunis Roux presented a paper on 'Transformative Constitutionalism and the Best Interpretation of the South African Constitution: Distinction without a Difference?' at the University of Stellenbosch Conference on *Transformative Constitutionalism after 10 Years*, Stellenbosch (August 2008)
- Mmatsie Mooki (Doctoral Fellow) presented a paper entitled 'Evaluation of Relevant Local, Regional and International Cases Protecting the Right to Fair Trial' at the Zimbabwe Manicaland Justice Symposium (September 2008)
- Theunis Roux gave a presentation on 'The Strategic Pursuit of Principle' at the University of the Witwatersrand *Symposium in Honour of Edwin Cameron: Judges in the World*, Johannesburg (October 2008)

Copies of these papers/presentations may be obtained from the authors concerned on request. See e-mail addresses at the side of this newsletter.

6. OTHER DEVELOPMENTS

- Professor Theunis Roux, SAIFAC's founding Director, will leave SAIFAC at the end of December 2008 to assume a position as Professor of Law at the University of New South Wales in Sydney. SAIFAC greatly appreciates the immense contribution that Prof Roux has made to the organisation, steering it from small beginnings to the centre for research excellence in constitutional, public, human rights and international law that it is today. He will be greatly missed. SAIFAC wishes him and his family all the best as he assumes his new responsibilities.
- Dr David Bilchitz has been appointed Director of SAIFAC as from January 2009. Dr Bilchitz hopes to continue the excellent work begun by his predecessor Prof Roux so as to continue developing SAIFAC into a leading institute in the field of research on Constitutional, Public, Human Rights and International Law.
- Dr Sebastian Seedorf, Senior Researcher, concluded his one-year research stint with SAIFAC and returned to Germany on 31 October 2008. During his stay at SAIFAC, Dr Seedorf made a significant contribution towards SAIFAC's research work. Among other things, he drafted a chapter on 'Jurisdiction' and co-authored a second chapter on 'Separation of Powers' in Stu Woolman et al (eds) *Constitutional Law of South Africa*. Together with Dr Mia Swart of the Wits Law School, Dr Seedorf has been pioneering SAIFAC's research project on Counter-terrorism and Human Rights in Africa, and will return to South Africa in January 2009 to participate in the launch conference for this project. SAIFAC appreciates his contribution to the institute and wishes him well in his future endeavours.
- George Mukundi Wachira successfully defended his LLD Thesis at the University of Pretoria on 25 November 2008. He will graduate on 10 December 2008. George is the first SAIFAC Doctoral Fellow to successfully complete his doctoral studies. SAIFAC is proud of his achievement and extends him our warm congratulations. George has assumed responsibilities as Programmes Co-ordinator at the Forced Migration Studies Programme at the University of the Witwatersrand.
- Two other Doctoral Fellows, Godfrey Musila and Solomon Dersso have submitted their doctoral theses to the University of the Witwatersrand for examination. Meanwhile, both have assumed responsibilities at the Institute for Security Studies (ISS) in Pretoria as Senior Researchers.

- Redson Kapindu successfully defended his PhD Proposal entitled 'Towards the Full Realisation of Socio-economic Rights for Refugees: Prospects and Challenges for Southern Africa' at the University of the Witwatersrand on 19 September 2008.
- Redson Kapindu attended an International Colloquium on Refugee Law held in Cuenca, Spain (September 2008)
- SAIFAC Doctoral Fellow Mmatise Mooki and others' research proposal on 'The right to health: An enquiry focusing on the right of women living with HIV to control their fertility in SADC' was selected by a Panel of Experts for inclusion in the Swiss initiative to commemorate the 60th anniversary of the Universal Declaration on Human Rights (October 2008).
- An anthology of papers delivered at the IACL World Congress workshop on socio-economic rights in June 2007, co-edited by Theunis Roux and Julia Iliopoulos-Strangas, will be published in December 2008 under the title *National and International Perspectives on Social Rights*.

7. UPCOMING CONFERENCES

On 30 January 2009 SAIFAC will host a conference on *Counter-terrorism and the Right to Security in Africa*. The conference will investigate whether there is, or should be, a coordinated African response to terrorism. It will consider the efforts of SADC and the AU, as well as the domestic legislation of African states, and look at how this legislation interacts with these states' constitutional and international legal obligations.

For further information contact: **Dr Mia Swart** (mia.swart@wits.ac.za)



Staff and colleagues at the emotional farewell for Theunis held on the 5th of December at the Old Fort Coffee Shop.

BACK: Godfrey Musila, David Bilchitz, Ngwako Raboshakga, Dolores Joseph, Solomon Dersso **FRONT:** Redson Kapindu, Adenike Aiyedun, Mmatsie Mooki, Theunis Roux, Vusi Ncube