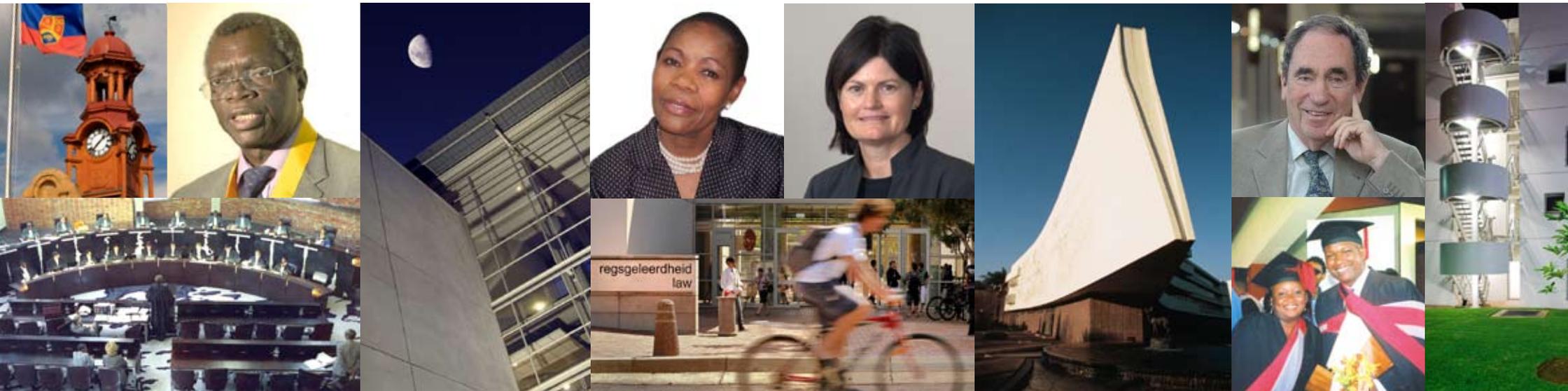


Prestige Lesingreeks · Prestige Lecture Series · Molokoloko wa Dithuto tše di ikgethilego

9 November 2009 · 9 Dibatsela 2009



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Faculty of Law

Welkom

Die Prestige Lesingreeks van die Fakulteit Regsgeleerdheid is in 2008, die Universiteit van Pretoria se eeufeesjaar, ingestel. Daar is een prestige geleentheid per semester.

As 'n Regsfakulteit wat verbind is tot die bevordering van die regstaat en die rol van die reg in ons land en vasteland, wil ons besprekings en nadenke oor ons regstelsel en die rol daarvan in die ontwikkeling en oorgang van ons samelewing aanwakker. Danksy die sprekers wat tot dusver deelgeneem het, het die reeks een van die uitstaande geleenthede op die regs kalender geword.

Die rol van die Konstitusionele Hof staan sentraal tot ons demokratiese projek. Waar die termynne van vier van die Hof se stigterslede tot 'n einde kom, is ons bevoorreg om hulle as gaste te ontvang vir 'n aand van betragting oor die rol van hierdie instelling en die mense daaragter.

As 'n Fakulteit wil ons ook graag die geleentheid gebruik om die regters te bedank en hulle betrokkenheid te vier in die lewe van die Fakulteit oor baie jare heen, soos uitgebeeld in sommige van die fotos wat in hierdie brosjure gedruk is.

Welkom en dankie dat u hier is.

(Prof) Christof Heyns
Dekaan: Fakulteit Regsgeleerdheid

Welcome

The Prestige Lecture Series of the Faculty of Law was initiated during 2008, when the University of Pretoria celebrated its centenary. There is one prestige event per semester.

As a Faculty of Law committed to fostering the rule and the role of law in our country and continent, we want to stimulate discussions and reflection upon our legal system and its role in the development and transition of our society. Thanks to the speakers who have participated thus far, the series has become an outstanding event on the legal calendar.

Pivotal to our democratic project is the role of the Constitutional Court. As the terms of four of its founding members come to an end, we are privileged to host them for an evening of reflection upon the role of this institution and the people behind it.

As a Faculty we would also like to use the opportunity to thank all four justices for – and celebrate – their involvement in the life of the Faculty over many years, as captured in some of the pictures reprinted here.

Welcome and thank you for being here.

(Prof) Christof Heyns
Dean: Faculty of Law

Le amogetšwe

Molokoloko wa Dipolelothuto wa Lefapha la Molao o thomile ka 2008, ge Yunibesithi ya Pretoria e keteka ngwagakgolo wa yona. Go na le dipolelothuto e tee ka semestara.

Bjalo ka Lefapha la Molao le le ikemišeditšego go tšwetša pele molao le tema ye e kgathwago ke molao mo nageng le kontinenteng ya rena, re rata go ba le dipoledišano le go lekodišiša tšhepetšo ya molao mo nageng ya rena tema ya wona mo go hlabolleng setšhaba sa rena. Re leboga diboledi tše di šetšego di kgathile tema go fihla gabjale, molokoloko wa dipolelothuto o fetogile tiragalo ya maemo a godimo mo mererong ya molao.

Se se bopago kgwegwago ya protšeke ya rena ya demokrasi ke tema ye e kgathwago ke Kgorotshoko ya Molaotheo. Nakong ya ge maloko a mane ao, e lego bathomi ba kgorotshoko yeo, a rola mošomo, re ikwa re kgethegile go ba monggae wa bona mantšiboeng a ka maikemišetšo a go lekola morago malebana le tema ye e kgathilwego ke institšušene ye le batho bao ba e šomelago.

Bjalo ka Lefapha re rata go leboga yo mongwe le yo mongwe wa baahlodi ba bane ba malebana le – mmogo le go keteka – tema ye ba e kgathilego mo bophelong bja Lefapha le mo mengwageng ye mentši, bjalo ka ge go hlalošwa ke tše dingwe tša diswantšho tše di gatišitšwego mo.

Le amogetšwe ka moka, gomme re leboga go ba ga lena mo.

(Prof) Christof Heyns
Hlogo ya Lefapha: Lefapha la Molao



Prestige lecture by Justice Johann van der Westhuizen, Constitutional Court: 'Reflections on the role of courts, government, the legal profession, universities, the media and civil society in a constitutional democracy', 17 September 2008



Prestige lecture by Judge Lex Mpati, President of the Supreme Court of Appeal: 'Is the judiciary in crisis?', 29 October 2008



Prestige lecture by the then Minister of Justice and Constitutional Development, Mr Mohamed Enver Surty: 'The separation of powers and judicial independence', 17 March 2009



Chief Justice Pius Langa



Highlights of involvement with the Faculty:

- Member of the Steering Committee that organised the first African Human Rights Moot Court Competition in Harare in 1992
- Member of the Editorial Board of the *African Human Rights Law Journal*
- Guest speaker at the Faculty Ball to celebrate the centenary of the University of Pretoria 2008

'Judicial action, truth-telling, reparations and institutional reform are each inadequate on their own to apprehend the past, and too narrow to advance the goals of the future. Used in intelligent unison, they may achieve the delicate balance needed to afford solace to those who have suffered, whilst simultaneously strengthening peace, democracy and justice for the future.'

'Dignity and identity are inseparably linked as one's sense of self-worth is defined by one's identity. Cultural identity is one of the most important parts of a person's identity precisely because it flows from belonging to a community and not from personal choice or achievement.'

- *MEC for Education Kwazulu-Natal: Thulani Cele School Liaison Officer v Navaneethum Pillay* 2008 (2) BCLR 99 (CC) at para 53, p 115 - 116

The conscious decision by the legislature was that amnesty would allow people not to be trapped in the painful past, but to be given a pardoned freedom to go forth and contribute to society. Amnesty may forgive the past, but in South Africa it is intended to have the inherently prospective effect of national reconciliation and nation-building, for the past can never be undone. Only the future may be forged as desired.'

- *Du Toit v Minister for Safety and Security and Another* (CCT91/09) [2009] ZACC 22 (18 August 2009)



Chief Justice Langa presides over the final round of the African Human Rights Moot Court Competition in the Constitutional Court in 2005

Justice Yvonne Mokgoro



'With the entrenchment of a Bill of Fundamental Rights and Freedoms in a supreme Constitution, however, the interpretive task frequently involves making constitutional choices by balancing competing fundamental rights and freedoms. This can often only be done by reference to a system of values extraneous to the constitutional text itself, where these principles constitute the historical context in which the text was adopted and which help to explain the meaning of the text.'

- *S v Makwanyane* 1995 (6) BCLR 665 (CC) at para 302, p 769

Highlights of involvement with the Faculty:

- Taught Comparative Law in the Faculty in 1994
- Member of the Boards of the Centre for Human Rights and of the Centre for Child Law
- Recipient of the Faculty of Law's 'Women in Law' award in 2001
- LLD (*honoris causa*) 2008 and Extraordinary Professor in the Faculty

'Generally, *ubuntu* translates as *humaneness*. In its most fundamental sense it translates as *personhood* and *morality*. Metaphorically, it expresses itself in *umuntu ngumuntu ngabantu*, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation.'

- *S v Makwanyane* 1995 (6) BCLR 665 (CC) at para 308, p 771-772



Justice Mokgoro serving as a judge in the African Human Rights Moot Court Competition in Addis Ababa in 2006

Justice Kate O'Regan



Highlights of involvement with the Faculty:

- Member of the Editorial Board of the *African Human Rights Law Journal* and *De Jure*
- Guest speaker at the welcoming of the LLM students, 2008

'To build the resilient democracy envisaged by the Constitution, we need to establish a culture of participation in the political process, as well as tolerance of different political views and a recognition that democracy can be a unifying force even where political goals may be diverse. The responsibility for building such a democracy is placed, in part, on the Legislature, Executive and the [Electoral] Commission. One of the important ways that those institutions meet that responsibility is in providing for and regulating regular, free and fair elections. The responsibility, however, is shared too by other organs of State, as well as political parties and, of course, citizens.'

- *Minority judgment in New National Party v Government of the RSA 1999 (5) BCLR 489 (CC) at para 121, p 532*

'What will constitute a reasonable decision will depend on the circumstances of each case, much as what will constitute a fair procedure will depend on the circumstances of each case.'

- *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism 2004 (4) SA 490 CC at para 45, p 513*



Justice Kate O'Regan with the 32 students at the opening ceremony for the 2008 Master's of Law degree in Human Rights and Democratisation in Africa
Picture: Damaris Helwig, Pretoria News

Justice Albie Sachs



Highlights of involvement with the Faculty:

- Lecturer in the Master's programmes of the Faculty
- Guest speaker of the first African Human Rights Moot Court Competition in Harare, 1992
- Speaker at conferences

'Indeed, rights by their nature will atrophy if they are frozen. As the conditions of humanity alter and as the ideas of justice and equity evolve, so do concepts of rights take on new texture and meaning. The horizon of rights is as limitless as the hopes and expectations of humanity. What was regarded by the law as just yesterday is condemned as unjust today.'

- *Minister of Home Affairs and Another v Fourie and Another* 2006 (3) BCLR 355 (CC) at para 102, p 394

'[I]ndeterminacy of outcome is not a weakness. A truly principled ... approach requires a close and individualised examination of the precise real-life situation of the particular [person] involved. To apply a predetermined formula for the sake of certainty, irrespective of the circumstances, would in fact be contrary to the best interests of the [person] concerned.'

- *S v M (Centre for Child Law as amicus curiae)* 2008 (3) SA 232 CC at para 24, pp 248 - 249

'Respect for human rights requires the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour or extolling one form as supreme, and another as inferior, but an acknowledgment and acceptance of difference. At the very least, it affirms that difference should not be the basis for exclusion, marginalisation and stigma. At best it celebrates the vitality that difference brings to any society.'

- *Minister of Home Affairs and Another v Fourie and Another* 2006 (3) BCLR 355 (CC) at para 60, p 379



Harare, 1992. Mr Kempton Makamure, Dean of the Faculty of Law, University of Zimbabwe, Prof Albie Sachs, guest speaker at the Moot dinner and Prof Christof Heyns.

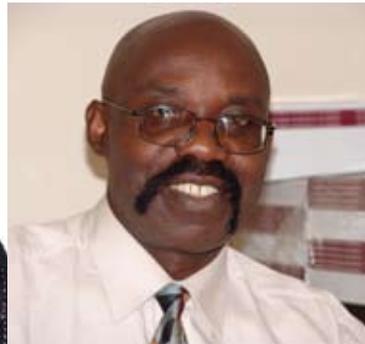
The Faculty of Law congratulates and welcomes:



Cheryl de la Rey
Vice-Chancellor and Principal



Yvonne Mokgoro
Extraordinary Professor, Centre for Human Rights



Charles Fombad
Professor and Head of the Department of Public Law



Jody Kollapen
Research Fellow,
Centre for Human Rights



Steve Cornelius
Professor in the Department of Private Law



Thino Bekker
Senior Lecturer in the Department of Procedural Law



Mark Christian
Lecturer in the Department of Procedural Law



Wim Trengove
Recipient of TuksAlumni Laureate Award

Judges 'must resist meddling'

The judiciary carries a huge responsibility to value, assert and protect its own independence, writes CARMEL RICKARD

ABUSE of power is the most serious challenge to the rule of law. It is the duty of the judiciary to ensure that the system is not abused and that the rule of law is maintained. The judiciary carries a huge responsibility to value, assert and protect its own independence, writes CARMEL RICKARD

'Judicial committee should be set up to discipline judges guilty of misconduct'

PRETORIA: Judges should have to answer to a conduct committee when cases of misconduct and incompetence arose, Justice and Constitutional Development Minister Enver Surty said yesterday.

Surty, in a lecture to the Faculty of Law of the University of Pretoria, said it was critical to ensure that the administration of the courts by the executive did not impinge on the independent and impartial dispensation of justice.

"It stands to reason that a weak, unprincipled judiciary will be powerless to stem a tide of human rights violations and to keep state power in check," he said.

"But what constitutes misconduct and gross misconduct? What standards are expected of the judiciary? And who should do the disciplining of judges in matters that do not justify impeachment? The proposed answer to these questions, which I believe is the proper balance between accounta-

bility and independence, is a conduct committee of the Judicial Service Commission made up of judges and a code of conduct against which individual judge's conduct can be measured."

'SA se regbank verkeer nog nie in 'n krisis nie'

Fanie van Rooyen

Suid-Afrika se regbank is nog nie in 'n krisis nie, maar die regering het wel daarin misluk om te keer dat "ongestaafde gerugte" en stellings in die media die regbank se integriteit skade doen.

So het regter Lex Mpati, president van die appèlhof, eergisteraand in 'n spesiale lesing in die regsgebou op die Universiteit van Pretoria (UP) se hoofkampus in Hatfield, Pretoria, gesê.

Die lesing was getiteld: "Is die regbank in krisis?"

"Die onafhanklikheid van die regbank is van kardinale belang in enige demokrasie," het Mpati gesê.

"Nadat die nasionale vervolgingsgesag (NVG) besluit het om iemand te vervolg, behoort die regbank algehele vryheid en ruimte gegun te word om die beskuldigde se saak aan te hoor en om dan 'n besluit oor die uitkoms van die saak te neem – sonder dat enigiemand, insluitend die staat, die media, die publiek of politieke leiers, enigsins by dié proses sal inmeng."

Mpati het gesê daar is en was al verskeie regbanke wat hulself in 'n krisis bevind het, maar dat Suid-Afrika "gelukkig" nog nie so geklassifiseer kan word nie.

other, Western Cape High Court Judge President John Hlophe was alleged to have interfered with Constitutional Court judges in the corruption case of Jacob Zuma.

Surty said the core principle of ensured that a moved for gross misconduct only



Regter Lex Mpati
Foto: HERMAN VERWEY

steeds in 'n krisis. Ons eie regbank verkeer dus nog nie in 'n krisis nie, maar tensy die staat besluit om die onafhanklikheid van die regbank aktief te begin beskerm en verdedig, kan dit dalk so word."

Die land se regering was volgens hom die afgelope tyd "baie stil" oor die "genadelose aanslag" onder die publiek en in die media teen die regbank.

"Regters is onder meer deur ander regters, die media en die publiek daarvan aangekla dat hulle vatbaar is vir inmenging deur die staat; dat hulle swig onder politieke druk; dat hulle 'n 'anti-revolusionêre agenda' voorhou; en selfs dat hulle sake onder die invloed van drank aanhoor.

SA regters kry kode vir gedrag, sê minister

Sarel van der Walt

Suid-Afrika sal wel binnekort 'n gedragskode vir regters hê, het mnr. Enver Surty, minister van justisie, in Pretoria gesê.

Hy het by 'n prestige-lesing die regsfaal van die versiteit van Pretoria gesê. Regterlike Dienskommissie (K) sal 'n gedragskode instel.

Die komitee sal uit die gelede- an die regters self saamge- word.

Die gedragskode sal onder ir reëls oor geld insluit. arty het gesê hy en hoofreg- Plus Langa werk te nouste in en die gedragskode is byna 001.

oewel daar regters is wat so 'n kode gekant is, het se houding daarvoor veran- iná voorvalle in die onlangse lede waarby regters betrokke

Die minister het nie voorbeel- noem nie.

irty het gesê regters kan nie onder aktiwiteite buiten rege- le aktiwiteite betrokke raak

Die uitsondering is wanneer e boeke skryf en tot die regs- gep bydra.

irty het gesê dat bepaal moet id wanneer 'n regter hom aan gedrag skuldig maak en inoer gedrag as "grootwe gedrag" beskou kan word.

Die balans moet ook gevind id tussen die onafhanklikheid die regsprekende gesag en spreeklikheid vir gedrag wat oms die norme in die ge- skode as wangedrag beskou id.

Ar moet ook bepaal word

Minister: 'Who will judge the judges?'

PRETORIA — Judges should have to answer to a conduct committee when cases of misconduct and incompetence arise. Justice and Constitutional Development Minister Enver Surty said yesterday.

Surty, in a lecture to the Faculty of Law of the University of Pretoria, said it is critical to ensure that the administration of the courts by the executive does not impinge on the independent and impartial dispensation of justice. "It stands to reason that a weak, unprincipled judiciary will be powerless to stem a tide of human rights violations and to keep state power in check," he said.

"But what constitutes misconduct and gross misconduct? What standards are expected of the judiciary?"

Defending human rights and democracy their duty



Constitutional court Justice Kate O'Regan with the 32 students at the opening ceremony for the 2008 Master of Laws degree in Human Rights and Democratisation in Africa. PICTURE: DAMARIS HEWES

Constitutional court Justice Kate O'Regan has welcomed 32 new students from 21 countries to the University of Pretoria's LL.M degree in Human Rights and Democratisation in Africa.

Guests included Professor John Dugard, ad hoc judge in the International Court of Justice in The Hague and special rapporteur for the UN Human Rights Council on the occupied Palestinian Territory, former constitutional court judge Johann Kriegler and Zonke Majodina of the SA Human Rights Commission.

In the past nine years, 227 students from 32 countries in Africa have completed the degree, which is presented by the Centre for Human Rights at the law faculty.

This year for the first time, students from Somaliland, Nigeria and the US joined the programme.

O'Regan stressed that the opportunity to study international human rights law carried with it a responsibility to use this knowledge to improve the lives of people in Africa.



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