AFRIKAN PEER GROWTH NETWORK

'EMPOWERING THE NEXT GENERATION OF AFRIKAN RESEARCHERS'

INAUGURAL ANNUAL APGroN SYMPOSIUM ON CORPORATE, FINANCIAL SERVICES, INTERNATIONAL INVESTMENT, COMPETITION & SOCIO-ECONOMIC RIGHTS LAW

Towards Afrikan-centred participatory knowledge production

29 September – 30 September 2021

Protea Hotel by Marriott

Durbanville, Cape Town, South Africa

BOOK OF ABSTRACTS

(AND CONFERENCE PROGRAMME)

Edited by

Angelo Dube, Brighton Mupangavanhu and Lindelwa Mhlongo on behalf of the Afrikan Peer Growth Network

Afrikan Peer Growth Network (APGroN) Book of Abstracts

Inaugural Annual APGroN Symposium (September 2021)

Durbanville, Cape Town

South Africa

Published by APGroN

Conceptualization, Layout and Design:

The Research Platform

www.theresearchplatform.co.za

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Supported by:

The Centre for Legal Integration in Africa (CLIA).

Made possible with funding from the Office of the DVC Research, University of the Western Cape.

About APGRON

APGRON is an ubuntu-driven initiative to train, develop, and mentor the next generation of Afrikan knowledge producers. It is a space where young and emerging Afrikan scholars can meet, share ideas, learn from their forerunners and contribute towards bridging the South-North divide in knowledge production.

It is estimated that Afrika currently produces less than 1 per cent of all global research outputs. This means that of all the things that are said or written about Afrika, less than one per cent flows from Afrikan researchers. Needless to say, this trend has significant negative effects on the growth and development of the continent and its people. APGRON seeks to close that gap, by empowering Afrikans to do research on issues of relevance to them, and proffer solutions that are home grown and suitable for Afrikan contexts.

At APGRON, we connect emerging scholars/researchers with like-minded individuals and with relevant mentors who add value to the career trajectory of our members. All APGRON mentors undertake this continental duty on a voluntary basis, as part of their community engagement obligations, and in true fidelity to the ancient Afrikan value expression of *'indlela ibuzwa kwaba phambili'* (your forebears/pioneers are best placed to show you the way). In XiTsonga a similar value expression is worded as follows - *'ndlela yivutisiwa ka varhangi vale mahlweni*; while in KiSwahili this value finds resonance in *'haba na haba hujaza kibaba'* (little by little fills the pot - indicating that a long journey starts with the first step. The APGRON way consists of creating that enabling environment for emerging Afrikan researchers to safely take that first step, and supporting them throughout the lifetime of their research career. Indeed, for the step to be made and bear fruit, there must be willingness on the part of the mentee to trust the process, and yield to the guidance and counsel of the mentor. As the Yoruba value expression dictates *'omo to ba sin apa ni iya re n gbe'* (the mother will only carry a child whose arms are spread wide). All these Afrikan beliefs and values underlie our autochthonous approach to mentorship, growth and personal development; and they colour our organisational ethos and culture.

Acknowledgement and thanks are given to the Programme and Evaluation Committee

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Angelo Dube
How to develop a Masters and Doctoral research proposal for law students

The process of developing a research proposal can be quite daunting for the ordinary postgraduate student. To a large extent, this can be blamed on the South African undergraduate curriculum, which fails to sufficiently prepare students for postgraduate research. A large majority of students zip through their undergraduate degrees without having been taught or tested on research skills. The modules that purport to train students on research methodology are outdated, not in tune with the needs of Masters and Doctoral students, and fail to impart much needed skills to enable a seamless transition from undergraduate to postgraduate research. The designers of undergraduate assignment exercises also contribute to this challenge, by continuously designing assignment tasks that do not allow students to develop their research skills. Such tasks are not pegged at the requisite NQF level, and as such do not equip students to enquire, develop a framework for their enquiry, search for pertinent information from various sources, synthesize that information and formulate their own position in relation to the information they have accessed. The absence of a compulsory research paper or dissertation in most South African institutions of higher learning also exacerbates this problem. Needless to say, this dire academic situation leads to many students either dropping out of postgraduate studies or opting to not undertake such studies at all. This paper therefore seeks to address pertinent questions around how a research proposal for Masters and Doctoral research ought to be designed. The paper unpacks the process of developing a research proposal from a law perspective, delves into the key constituent elements that it must contain, and highlights the most common pitfalls that students need to actively look out for and to avoid.

Keywords: research proposal, research questions, methodology, legal research

About the author:

Angelo Dube (a co-founder of APGroN) is a Full Professor of International Law at the University of South Africa. He holds, amongst others, an LLD degree from the University of the Western Cape (with a focus on universal jurisdiction); and has trained for a Master of Business Leadership from the School of Business Leadership (UNISA). He also holds an LLM, LLB and a BA (Law). Angelo is a qualified pilot (fixed wing). His research interests include leadership, international criminal law, comparative constitutionalism, the African criminal court, the law of war, aviation law, universal jurisdiction and business law. He has published a book entitled *Universal Jurisdiction in Respect of International Crimes: Theory and Practice in Africa* (2016) Galda Verlag, Germany. Angelo has also participated in the United Nations International Law Fellowship Programme at the Peace Palace, the Hague in 2009. In 2008 Angelo served as a law researcher to Justice TH Madala at the Constitutional Court of South Africa, Johannesburg. In the same year he became a Justice Makers Fellow after winning the prestigious global award, administered by the International Bridges to Justice. He has previously worked as a lecturer and a senior lecturer at the University of Swaziland and the University of the Western Cape. He has been trained in the law of war and the law of unmanned aerial systems in the context of war by the GCSP, Geneva Switzerland. Angelo is currently the Editor in Chief of the South African Yearbook of International Law, a DHET accredited journal that resides within the Department of Public Constitutional and International Law (PCILaw) at UNISA. He runs a research focused YouTube Channel aptly named *The Research Platform*, which imparts knowledge on research and writing within the academic space; and a second channel styled *Angelo Dube* (*Flying Jurist*) which focuses on empowering emerging aviators. He is also interested in law and technology and is a member of The Future of Law Network, based in Berlin Germany and a member of the African Network of Constitutional Lawyers. He is also a convener of the quarterly Public Law Roundtable at PCILaw.

Lindelwa Mhlongo
Pitfalls and prospects of publishing from a Masters and Doctoral thesis: A personal experience

Africa produces less than one per cent of the total global research outputs. This is despite the fact that African institutions have been producing new knowledge for millennia. The centres of learning of Alexandria in Egypt, the ancient universities of Timbuktu and the monasteries run by Christian organisations in the third century BC are some of the notable instances of research and knowledge production on the African continent. Fast forward to today, Africa is lagging behind in knowledge production, including knowledge about Africa and Africans themselves. As a response, African universities, particularly in South Africa, have adopted strategies to increase knowledge production. Amongst the approaches taken is the growing trend to demand co-authorship between supervisors and their supervisees, ensuring that portions of the postgraduate Masters or Doctoral research eventually features as a journal article or as a book chapter. The other approach has been for some universities to demand that the student must publish two chapters or one chapter from their thesis before they are permitted to graduate. Whilst both these approaches are commendable, the fact remains that universities are not doing enough to equip these emerging researchers to transition from a mere student to a published author in a peer reviewed accredited journal. This paper interrogates the challenges and prospects brought about by this academic demand, the causes of some of these challenges, and how students can successfully navigate around these barriers. The paper draws from the author's personal experience in converting her Masters and Doctoral chapters into published journal articles.

Keywords: peer review, African research, co-authorship, thesis conversion, legal research

About the author:

Adv. Lindelwa Mhlongo lectures International Investment Law and International Economic Law at the Department of Public, Constitutional and International Law, University of South Africa (UNISA) and is an admitted advocate of the High Court of South Africa. She holds an LLB degree, and a LLM in International Investment Law. She is a registered LLD candidate in International Investment Law. Adv. Mhlongo completed a United National International Law Fellowship Programme in 2019, and was awarded a certificate in Public International Law. She holds a further Public International Law certificate from The Hague Academy of International Law, Netherlands. Since joining UNISA in 2014, Lindelwa has co-presented at various international conferences including the 2019 conference convened by the Journal of the History of International Law in Germany. She has published several journal articles in the field of International Investment Law, International Economic Law and Constitutional Law. She has recently co-published a book chapter in the in the volume Politics and the Histories of International Law: The Quest for Knowledge and Justice (Brill 2021). Lindelwa is an editor of the South African Yearbook of International Law. She is a member of various international/continental organisations which include but not limited to the African International Economic Law Network and the South African Branch of the International Law Association.

Brighton Mupangavanhu

Directors' duty to exercise independent judgment – a proposition for South Africa in view of English law experiences

The directors' core duties such as the duty of utmost good faith inclusive of the duty to avoid conflicts of interest, an obligation to promote the success or best interests of the company and the duty to exercise due care, are critical for the office of a director, including during decision-making processes. To discharge these obligations effectively and to contribute to the making of quality decisions, a company is entitled to expect from its director his/her best independent judgment. Thus the duty to exercise independent judgment is very important to corporate governance. The law requires a director to exercise an unfettered discretion and this is important and very relevant especially in the context of the collective functioning of the board, during decision-making processes. Situations such as outside board influences (in the case of nominee directors) and influence of domineering figures are possible in the collective functioning of the board and in some instances they are even rampant. For this reason, the law considers it a breach of duty for a director to allow himself to be dominated, bamboozled or manipulated by a dominant fellow director. Were this to happen, a director will not give the company the benefit of his independent judgment. South Africa has experienced a number of corporate crises such as the African Bank, Steinhoff and VBS crises, just to mention a few recent ones. A closer look at the causes of these crises can reveal poor decision-making as a major cause, mainly because a domineering figure dominated decision-making leading to crises. This article considers relevant English law experiences before the Companies Act 2006, the codification of the duty to exercise independent judgment in s173 of the Companies Act 2006 and the evolving jurisprudence and legal principles post this Act. From the analysis of English law and developments therefrom, the article draws lessons and makes a solid case for the expression of the duty to exercise independent judgment in statute in South Africa.

Keywords:

About the Author

Dr. Brighton Murisa Mupangavanhu, a Co-Founder of APGroN, is a Corporate Law specialist, who obtained his PhD: Commercial Law degree from the University of Cape Town, his LL.M from the then University of Natal (now UKZN) and an LL.B degree from University of Fort Hare. Dr. Mupangavanhu is currently an academic in the Mercantile & Labour Law Department, Faculty of Law at the University of the Western Cape (Cape Town). He lectures at LLB level, researches and supervises and has graduated Masters and Doctoral students in the areas of Corporate law and Financial Services Law or Commercial Transactions Law (Law of Payments). Dr. Mupangavanhu recently founded and pioneered the development of a full LLM program in Corporate Law for the Faculty of Law, UWC – a Master of Laws program that offers a maximum of four postgraduate modules specialising in corporate law. He has also been invited to serve as a Review Panelist for the review of a PhD in Law in the College of Law at UNISA, as recently as in November 2020. Dr. Mupangavanhu was recently appointed to provide peer-mentorship to emerging PhD supervising colleagues at the University of South Africa (UNISA). Between January and August 2020, Dr. Mupangavanhu was a Visiting Beaufort Colenso Scholar at the Cambridge University's St John's College in the UK for the Lent and Easter terms where he spent time researching and making publications in reputable international journals. He is now a Fellow of the St John's College, Cambridge University. Dr. Mupangavanhu has organisational leadership experience, having served for a number of years (between 2004 and 2008), first as Research & Development Coordinator before assuming the central leadership role as national Secretary General of the National Association of Student Development Practitioners (NASDEV). Dr. Mupangavanhu is also a commercial law/corporate law consultant with experience in providing on-boarding training to boards of directors, having been recently invited to do so by companies in Sandton and Cape Town, South Africa. Dr. Mupangavanhu is a visionary, has creative abilities and provides thought leadership, consulting and training in his area of expertise.

Titilayo Akande
Customary law adoption in Botswana

Although Botswana has signed several international and regional treaties that place emphasis on children's rights, research has shown that huge demarcations continue to exist between the dictates of the United Nations Convention on the Rights of the Child and the real experiences of children in Botswana. This is because what the children experience is far different from what the Convention mandates the signatories to deliver on the rights of children. Many children also do not know their rights and many parents do not believe that children have rights. The aim of this paper is to highlight the above issues with an examination of child adoption under African customary law. It probes how Botswana's legal framework provides for child adoption under customary law in the light of its international and regional treaty obligations. In so doing, it examines the strengths and weaknesses inherent in Botswana's legal framework and the different types of child adoptions under customary law. It finds that customary law in Botswana is always changing and there are no written rules or procedures to be followed for the adoption of children in terms of customary law. It concludes that child adoption under customary law is an unfamiliar subject in Botswana, with the result that very little information is available for researchers.
Keywords: children's rights, Botswana, African customary law, child adoption

About the author:

Titilayo Akande is a solicitor and advocate of Nigeria's Supreme Court, a graduate lecturing assistant at the University of the Western Cape (UWC), a Bible teacher, and a motivational speaker. She has worked in law firms in Nigeria and also in many churches and non-profit organisations in Nigeria, Sierra Leone, Gabon, Guinea Conakry, Congo DRC and South Africa. She was a member of the legal team that sourced 530 acres of land for Covenant University, Nigeria, where she also worked as a Senior Assistant Registrar under the Endowment Programme and the Department of Student Affairs. Currently, she is tutoring the Law of Succession and Basics Skills for Law in the Faculty of Law at UWC.

Ebi Okeng
Comparative analysis of the judicial approach to socio-economic rights in South Africa

In modern democracies, the constitution defines the parameters of power and sets out the rights and responsibilities of both the government and the governed. In South Africa, the Constitution is the supreme law of the Republic. Any law or conduct that is inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. In this context, this chapter examines the extent to which South African judges enforce socio-economic rights. It argues that the judiciary should interpret the socio-economic rights in the Constitution with the spirit of a social contract between citizens and the government. The judiciary does not only act as a check and balance to protect the excesses of the executive and legislature. Rather, the judiciary has an obligation under the social contract theory to ensure that basic services are accessible to the people. The chapter finds that the Constitutional Court has consistently refused to adopt the minimum core. Instead, it pays undue adherence to the separation of powers doctrine. The Court regards the minimum core as indeterminate, beyond the scope of judicial review, and a matter of policy assessment that is best left for the political branches to resolve. Rather than use the minimum core, it prefers a reasonableness approach, which it regards as more democratic because it leaves room for dialogue with the political branches of government. Its jurisprudence is in stark contrast with the attitude of courts in Latin America, which use the minimum core concept to enforce socio-economic rights for underprivileged people. For example, Colombian judges have granted numerous individual remedies under a constitutional complaint mechanism known as the tutela. The tutela system is notable for its minimal administrative hurdles and its fast dispensation of justice. The chapter urges

South African judges to recognise that civil and political rights, whose enforceability is unrestrained in the 1996 Constitution, are inseparably connected to socio-economic rights.

Keywords: judicial approach, minimum core, social contract, remedies

About the author:

Ebi holds the degrees LLB (LAW) Unisa, LLM Unisa, and is a LLD candidate (UWC), Certified Election Observer LASSA, Pract. Management LASSA. Ebi is an admitted Attorney of the High Court of South Africa. He is also the director and Principal of Ebi Okeng Attorneys Inc. located operating out of Table View, Cape Town. The firm employs ten legal practitioners, made up of mostly women. He started his professional career as CEO of Linda Immigration Practitioners, later joined Lindsay and Waters Attorneys as a candidate attorney and completed his articles at Colin Geoffrey's Inc Attorneys. At the same time, he was operating TRU LEGAL MEDIA PTY LTD (Chairman of the Board), a publishing company and an online magazine. He is a published author of Illusions of Grandeur and The Street Professor. Ebi's LLM thesis was titled 'Enforcing the Right of Access to Healthcare Services in South Africa'.

Tendani Musekwa
Thandolwakhe Mokotedi
Interrogating South Africa's international obligations vis-a-vis racist and hurtful expression in the workplace – lessons from *SACSAAWU obo Letselebe v Otraco Southern Africa Pty Ltd*

This matter involved an appeal brought by the applicant Mr Letselebe, who challenged the validity of his dismissal following a workplace disciplinary hearing on the basis that the process was substantively unfair. Mr Letselebe was found guilty and subsequently dismissed for falsely accusing a supervisor of addressing him as a kaffir, an offensive term that refers to an uncivilised, coarse and uncouth person. Pursuant to the unfavourable outcome of the workplace disciplinary process, the applicant approached the Dispute Resolution Centre (DRC) for conciliation of this matter. However, the DRC also could not return a favourable outcome. The applicant appealed this decision further before the Commission for Conciliation, Mediation and Arbitration (CCMA) through arbitration in terms of section 191(5)(a) of the Labour Relations Act. The CCMA came to the conclusion that his dismissal was substantively fair, thereby upholding the initial verdict of the workplace disciplinary process. This matter is very topical in the South African context where both the Constitution and subsidiary legislation frown upon hate speech and other forms of hurtful conduct. The legacy of colonialism and apartheid, which unleashed large scale denigration of persons of colour also makes a discussion around this decision timely and relevant. However, much of the available literature focuses on cases of hate speech when expressed in the normal course of racist conduct – where the person of colour is a victim. This case provides an opportunity to interrogate the concerns around and the effects of fake claims in relation to hate speech. In other words, this article traces what the current South African law is in cases where an individual falsely claims hate speech was directed at them.

Keywords: hate speech, racism, equality, labour relations, apartheid

About the authors:

Tendani Rikho Musekwa is a student activist who is currently doing the 3rd year of his LLB degree at the University of South Africa. In 2021 Tendani was selected to form part of the African Human Rights Moot Court Team representing UNISA at the continent-wide competition. Tendani has since held stints in leading the Black Lawyers Association Student Chapter, Unisa Law Students Association (ULSA) and is

current a member of the Afrikan Peer Growth Network (APGroN). His research interests include international law and comparative constitutionalism.

Thandolwake Mokotedi is a fourth year LLB student at the University of South Africa. In 2021 She participated in the African Human Rights Moot Court Competition forming part of Team UNISA. Her future aspirations include pursuing doctoral studies and becoming an academic.

Thabang Kgwete
Audit Committees in South Africa in Terms of the Companies Act 2008: Policy Rationale, Role and Contribution Towards Financial Reporting

In recent times, the world of business has been overwhelmed by a surge of serious corporate governance and financial reporting scandals both in the private and public sectors. These governance collapses happened, despite the fact that the majority of these companies had audit committees. This article critically examines the provisions of the Companies Act 71 of 2008 relating to the establishment and maintenance of audit committees. The focus is particularly on the policy rationale, the role and the contribution of audit committees towards financial reporting in South Africa. The purpose is to demonstrate that audit committees play a key role in the production of dependable financial statements and reports for the benefit of the company's stakeholder community. This article highlights the relationship between the effectiveness of the audit committee and good corporate governance, as well accurate financial reporting and good corporate governance. In other words, where there is a more effective audit committee, there is a high likelihood of accurate and dependable financial statements and other financial reports.

Keywords: Audit Committee, Board of Directors, Companies Act 71 of 2008, financial reporting, independence, shareholders

About the author:

Thabang Kgwete is a postgraduate student at the University of the Western Cape.

Sindi Jonas
Directors' decision-making: the requirement to disclose personal financial interests

One of the decisions that a director of a company has to make include transactions that involve a company such as a contract that a company can enter into where a possibility of conflict of interest or self-dealing for a director arises. Directors can potentially abuse their positions in such situations or in situations where they conclude contracts with their companies. *Aberdeen Railway Co v Blaikie Bros* (1854) 1 Macq 461, for example, confirms that the common law has always required that directors avoid placing themselves in situations where their personal interests may conflict or possibly conflict with their duties to the company as fiduciaries. A very easy situation where a director could be tempted to do what the law preclude him/her from doing, arises where a director has a material interest in a contract entered into by his/her company. Even the old Companies Act 61 of 1973 made provision for disclosure by directors of their interest in a contract or a proposed contract entered into by their company, and sections 234 to 241 even criminalised non-compliance with the law. The purpose of this paper is to analyse the requirement for disclosure of material personal financial interests in terms of s75 of the Companies Act 71 of 2008. The paper analyses the policy rationale for this provision and what the legislature intended to achieve in law. The paper considers relevant matters arising from the meaning assigned to key terms in the section, considers the scope of application of the section, and

characterises the duty as a decision-making principle. It proffers suggestions for improvement of the law where the law requires clarity and more effectiveness.

Keywords: directors' duties, Companies Act 71 of 2008, fiduciaries, criminal non-compliance, personal interests

About the author:

Sindi Jonas is a holder of an LLM degree in Mercantile Law with a special focus on Corporate Law from the University of the Western Cape. She completed the writing of her thesis under Dr. Mupangavanhu's supervision. Sindi also holds an LLB degree, and works for Sasol as a Contracts Manager.

Vendjihonga Katjaimo
Bridging the Trade Finance Gap for SMEs in Namibia through Legislation: Lessons from abroad

Namibia has had the challenge of poor access to foreign markets for goods produced locally. For example, among the 190 countries ranked in the World Bank's Doing Business 2019 Report, Namibia ranked 104th in terms of trading across its borders. For a country that has a small market for goods produced locally, and a country which should therefore be dependent on international trade, Namibia's poor performance in terms of trading across the borders is considered problematic by this paper. The research problem which this paper identifies is two-fold. First, is the challenge of poor access to trade finance and lack of export credit facilities especially for Small and Medium-sized Enterprises (SMEs) in Namibia. The second part of the problem is that of trade deficit and the lack of an enabling environment that takes advantage of Namibia's international trade potential through diversification of trading partners. Now, more than ever, Namibia needs to find a solution to this double-edged problem. The country should take advantage of the window of opportunity created by the recently launched African Continental Free Trade Agreement (AfCFTA), and begin to exploit the potential of trading with more African traders created by the AfCFTA. It is not only trade with African countries that needs to be improved, the same goes for the need to increase trade volume with non-African trading partners. It is axiomatic that export promotion is key for boosting a country's domestic economic growth through for example, creating jobs in the economy and improving the quality of life in a country. Export promotion is key too for global economic development. This paper interrogates the question how Namibia can enhance trade or export promotion and improve the global competitiveness of SMEs by means of bridging the trade finance, facilitated through developing relevant legislation geared towards establishing effective Export Credit Agencies (ECAs). The paper will examine the experiences of two selected international best practice jurisdictions with establishment and operations of ECAs and gauge whether relevant lessons can be drawn by Namibia from these best practice jurisdictions.

Keywords: Trade finance, Export Credit Agency (ECA), SMEs, export promotion, international trade, Namibia, international best practices, domestic economic growth

About the author:

Vendjihonga Katjaimo is a postgraduate student at the University of the Western Cape. She comes from Namibia (dubbed the Land of the Brave). She currently serves as a full time missionary with Campus Crusade for Christ where she works with athletes. Her research interests include the law of financial regulation.

Timothy Nel
A critical examination of the content of the director's duty to act in the best interest of the company in South Africa

In terms of section 76(3)(b) of the Companies Act 71 of 2008, directors are required to discharge their duties in 'the best interests of the company'. The phrase 'the best interests of the company' has been interpreted, traditionally and at common law, to focus mainly on the interests of the shareholders as a whole. Directors are, however, confronted with several competing interests of other stakeholders, including but not limited to society, creditors, employees, and the environment. It has been difficult to establish what exactly the term 'company' means. Similarly, it has been difficult to give meaning to the phrase 'best interest of the company'. Currently, the efforts to provide answers are represented by at least three theories, namely (i) the shareholder value approach, (ii) the pluralist/stakeholder approach and (iii) the enlightened shareholder value (ESV) approach. While some authors may be convinced that South Africa has adopted the ESV approach under the Companies Act 71 of 2008 (the Act), the phrase 'best interests of the company' requires further unpacking to determine its exact meaning which will mirror the developments in law, including the spirit, objects, and purposes of the Act. At present the statutory duty to act in the best interests of the company under the Act does not provide much details to guide interpretation of the key phrase. This is to be contrasted with practices elsewhere, for example in the UK, where a similar provision in s172 of Companies Act 45 of 2006 provides better guidance for decoding meaning of the phrase the 'best interests of the company'. This study will highlight the lack of clarity regarding the exact approach adopted by the Act and will point in the direction of what may need to be done to make the position clearer.

Keywords: Best interests of the company, directors, fiduciary duties, enlightened shareholder value approach, Companies Act 71 of 2008

About the author:

Mr Timothy Nel is a postgraduate student at the University of the Western Cape. He has worked in the financial services industry, and is currently part of a mentorship program at the Office of the Ombudsman for Long-term Insurance.

Katlego Arnold Mashego
Examining the link between economic development and the enforcement of socio-economic rights in South Africa

Economic development is a major issue in South Africa, with the country experiencing high levels of poverty which are connected to the enforcement of socio-economic rights. There have always been calls for Africa to unite for it to prosper. Intra-African trade is a call that Africa must trade more with itself towards its prosperity. It is further said that intra-African trade will enhance sustainable development and economic growth and it is important. This presentation argues that there is a link between economic development and the enforcement of socio-economic rights. Further, this article argues that there is an urgent need for economic development in South Africa to improve the enforcement of socio-economic rights. This article argues that trade is the main factor of economic development and further that South Africa must focus on intra-African trade, which will accelerate sustainable economic development and consequently the enforcement of socio-economic rights, which will in turn reduce poverty and better the lives of millions of South Africans who are in dire need

of socio-economic rights to be enforced due to the living conditions they are in. The South African Constitution is examined, and it is noted that it fully protects socio-economic rights as it has socio-economic rights in its Bill of Rights. However, it is acknowledged that there are other factors that affect the enforcement of socio-economic rights, corruption and separation of powers are identified.

Keywords: constitution, economic development, human rights obligations, intra-African trade, policy making, poverty, socio-economic rights, South Africa

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Katlego Arnold Mashego is a Part-time Lecturer in the Department of Law, Tshwane University of Technology (TUT). He holds a National Diploma: Legal Assistance (TUT), a Certificate in International Management from Osnabruck University of Applied Sciences, Germany. He also holds a Bachelor of Laws degree (LLB) from the University of South Africa, a B Tech: Business Administration (TUT), and a Master of Laws from the University of the Western Cape. He is currently working on a proposal to submit in consideration for the Doctor of Laws (LLD) degree at the University of the Western Cape.

Chad-Lee Bedeker
South Africa's implementation of the Twin-Peaks System: A Comparative Analysis with Australia and the UK

The 2007-2008 global financial crisis formed the basis for countries to reconsider a model of financial regulation that functions as a preventative measure and was able to protect the financial sector in the wake of a financial crisis. This saw an international trend in financial regulation in which saw many countries adopting the Twin Peaks model of financial regulation such as Australia, the United Kingdom, Netherlands, Belgium and New Zealand. The adoption of Twin Peaks addresses the blurring of boundaries identified by Michael Taylor, experienced in financial sectors of which resulted in inefficient financial regulation between various financial institutions such as banking and non-banking financial institutions. The approach to financial regulation of which Twin Peaks is modelled on concerns two regulators with clear mandates and objectives, however still requiring regulators to work cohesively in achieving their respective regulatory objectives. As South Africa sees its implementation of the Twin Peaks model of financial regulation, it is contended, whether the adoption of this model of financial regulation is suited to South Africa's financial sector. The South African Twin Peaks model is effected in terms of the Financial Sector Regulation Act 9 of 2017 which gives effect to a financial conduct regulator and the prudential regulator. In light of the fact that the Twin Peaks model is still in its infancy and adapting to the unique characteristics of the South African financial sector and broader economy this study aims to comparatively analyse the Australian and United Kingdom implementations of Twin Peaks as a model of financial regulation. This study will look at the legislation and frameworks in place which gives effect to the Twin Peaks model of financial regulation of the jurisdictions of the comparators of choice.

Keywords: Twin Peaks, Financial Sector Regulation Act 9 of 2017, prudential authority, global financial crisis, financial regulation

About the author:

Chad-Lee Bedeker is an alumnus of the University of the Western Cape Faculty of Law. Chad-Lee is currently a commercial law lecturer at Boston City Campus. He is in the process of finalising his LLM which focuses on South Africa's financial regulation. The thesis is entitled

Appraisal of South Africa's legislative adoption of the Twin-Peaks system in light of international experiences.

Ms Hazel Manjengenja

Financial Reporting regulation in South Africa – A critical examination of effectiveness of enforcement of standards

In late 2017 the Steinhoff scandal was exposed, showing that the company had been 'cooking the books' to obscure its losses and create an impression that the company was performing better that it actually was. The Steinhoff debacle was quickly followed by the Tongaat Hullet case which surfaced in 2019 and the VBS bank scandal in 2020 revealing large scale, rampant financial misdealing's and financial misrepresentation. Scandals of this magnitude call for deep soul-searching exercise especially in the light of its far-reaching repercussions for individual and institutional investors such as the Government Employees Pension Fund Scheme. These scandals seem to suggest that there are financial reporting enforcement loopholes allowing companies to get away with financial reporting fraud for extended periods of time despite the existence of internationally comparable regulations prohibiting such behaviour. Due to this finding, this article purports to critically analyse the financial reporting system in SA with the aim of revealing whether there is a gap between legislation and the enforcement of financial reporting in SA. This article scrutinises current enforcement of financial reporting standards, looking into the various regulatory mechanisms currently in place and whether they are effective or not. This will consequently lead to an examination of the enforcement mechanisms in form of the relevant regulators. A comparative analysis will also be conducted between the SA enforcement mechanism and international best practice to measure the effectiveness of SA's enforcement mechanisms.

Keywords: financial reporting, misleading financial statements, enforcement, standards, misrepresentation

About the author:

Hazel Manjengenja is an avid researcher, and is currently pursuing a PhD at the University of the Western Cape (UWC) in the Mercantile Law department. Her doctoral thesis is titled 'A critical legal examination of South African standards on director responsibility and liability when approving financial statements in view of evolving global standards.' She enjoys research in Corporate Governance, International Trade Law, Internet Law and dabbles in Human Rights issues; especially issues that affect women and children. She was a Graduate Lecturing Assistant at UWC and has also been engaged as a Research Assistant across many disciplines, including Corporate Law, Human Rights Law and Human Trafficking. She is a strong believer of lifelong education and adding value to the academic body.

Simbarashe Tavuyanago

Competition authorities' response to excessive pricing during Covid-19. A commentary on *Competition Commission v Babelegi Workwear and Industrial Supplies CC CR003Apr20*

At the onset of the Covid-19 pandemic, many businesses capitalized on the panic and bulk buying that resulted from the uncertainty the pandemic brought on. Suppliers ranging from wholesalers to small-scale retailers seized the opportunity and engaged in unfettered 'price-gouging' by charging inflated prices for various necessities including food, cleaning supplies and medical paraphernalia. It was apparent that these price hikes were unsustainable and that such conduct could not go unchecked. However, the key question was how this conduct would be addressed as South Africa does not have specific legislation aimed at 'price-gouging'. The answer to that question was provided on 1 June 2020, when the Competition Tribunal handed down judgment confirming that Babelegi Workwear

and Industrial Supplies CC (Babelegi) had taken advantage of the Covid-19 global pandemic by inflating prices of face masks from R41.00 up to R500.00 per box. Action was brought before the Tribunal under the auspices of the Competition Act 89 of 1998 which amongst other aims, seeks to provide consumers with competitive prices and product choices. The contribution notes that while the competition authorities were swift to act, the question remains whether the action and remedy were swift and appropriate enough to safeguard and protect consumers. The paper discusses the Babelegi case with regard to the application of section 8(1) of the Act which prohibits the charging of excess prices by a dominant firm. It further assesses whether the sanction imposed on Babelegi fit the contravention.

Keywords: Covid-19 pandemic, price inflation, competition tribunal, dominant firm, excessive prices

About the author: Simbarashe Tavuyanago is a postgraduate student at the University of the Western Cape.

Otto Saki

A health pandemic not a data-pandemic: An analysis of Zimbabwe's data protection framework in response to COVID-19

In November 2019, the first case of corona virus disease (COVID-19) was recorded in Wuhan, China. In March 2020, the World Health Organisation (WHO) declared COVID-19 a pandemic triggering coordinated global responses. COVID-19 was declared a global enemy, prompting governments to use militaristic language and tools to contain the pandemic. Measures to enforce physical distancing were introduced as medical evidence established that COVID-19 transmission was through human contact, respiratory fluids, and droplets. The rapid spreading of the virus outpaced human surveillance. Governments adopted medical surveillance practices processing personal health data. Proximity tracing using mobile applications aided contact tracing of suspected and confirmed COVID-19 cases. For purposes of containing and quarantining the infection, the collection of sensitive personal data became essential to the pandemic response. The collection of such data extended to contacts and acquaintances of a suspected case or at-risk individuals, like travellers. Secondary privacy invasion increased beyond the individual concerned. Prior to the pandemic, governments including Zimbabwe processed personal health data through telemedicine or e-health platforms. The communitarian good, justified use of electronic platforms that relied on data processing. The article explores personal health data processing in Zimbabwe and COVID-19 to understand the nature and extend of data collection, and how data was protected. The article explores the adequacy of existing data protection and regulation as it relates to personal health data and COVID-19 in Zimbabwe.

Keywords: Covid-19, personal data, public health

About the author: Otto Saki is a postgraduate student at the University of the Western Cape.

Leon Dzumbira
History and development of investment law in Zimbabwe
(A presentation of Chapter Three, Doctoral Thesis)

Zimbabwe's investment policy has rapidly evolved in the last five years. With the coming in of the second republic, Zimbabwe's investment policy and laws took on a decidedly open approach that is aimed at attracting foreign direct investment. This was a welcomed move away from the protectionist approach used in the past. The most notable change came through policy, legislative and institutional reforms that became investor-centric. The Transitional Stabilisation Programme (TSP), and now the National Development Strategy (NDS 1) were adopted as the guiding documents for the national development agenda. The National Development Strategy 1 (2021 – 2025) (NDS) makes reference to the need for investment, and policy reform to boost investor confidence for almost all sectors. This is also complimented by the Zimbabwe Investment Agency Act (ZIDA) which was promulgated to regularise and make ease in investment facilitation in the country. The Government has also expressed a goal of achieving a US$12 Billion dollar industry by 2023 by attracting FDI. This chapter will provide an overview of the history and development of investment laws and policies in Zimbabwe. It begins by first setting out a brief background on investment frameworks. It focuses on Foreign Direct Investment (FDI) through various laws that were in place in Zimbabwe since 1980 to the current position. It looks at treaties in place throughout Zimbabwe and how they have led to the current investment regime and subsequently the need for the development of an Energy Investment framework. Thereafter, the rationale of the study is provided. The paper will formulate an argument that the research on energy Investment policies in the country can better be understood through the country's biggest investors in the energy and oil and gas sector. Recently the awarding of oil exploration licenses in which the government has placed priority on increased exploration of hydrocarbons (oil and gas) and, the Chinese Global Investment Tracker puts Chinese investments in the energy sector in Zimbabwe over $10 billion. In the advent of the Zimbabwe is open for business policy regime, the number of Chinese investors has gradually increased. These are important considerations because it can be noted that their implementation has not been done through the ZIDA act. Moreover, there is a paucity of research on the subject of energy investment and its consequent link to sustainable development and human rights. This is attributable to the fact that the review of investment legislation and contracts need to be put in perspective and can pave the way for the development of an investment framework in energy.

Keywords: bilateral investment treaties, foreign direct investment, foreign investment regulation, host countries, international investment regulation, policy space

About the author:

Leon Dzumbira is a Graduate Lecturing Assistant at the University of the Western Cape. He has more than 5 years research and advocacy experience in Constitutional Litigation and Human Rights Law. He is passionate about conflict transformation and democratisation in Sub-Saharan Africa. He has researched the impacts of human rights on a number of fields like, Environmental Justice and Climate Change,and Socio-Economic Justice. He holds a bachelor of law degree (LLB) from the University of Johannesburg and a Master of law degree (LLM) in Constitutional Litigation and Human Rights Law and is currently pursuing a Doctors of law (LLD) in International Investment law at the University of the Western Cape, which focuses on Energy Investment and the impacts it has on human rights and sustainability.

Brighton Mupangavanhu & Etienne Olivier
How to milk a thesis for a journal article publication

Publishing from a doctoral thesis often becomes one of the first steps of producing a peer reviewed article for doctoral students, and Masters students too. It often forms part of the less celebrated story of the mentorship relationship between a Supervisor/Promoter and his supervisee which sets up the supervisee on a journey of self-discovery. In this paper, the authors and presenters touch on the how to and what to do plus what not to do when publishing from a doctoral or even Masters thesis. Journal articles can come from a completed thesis or from a chapter of a thesis. As a dissertation or thesis writer, you are well positioned to produce a scholarly article because you know the current scholarly conversations on your topic intimately and you have figured ways to position yourself, intervene and take part in the conversations, including coming up with a new angle to the scholarly conversation. The paper generally begins by touching on the preliminary question of whether publishing from a thesis can be reduced to a choice between conversion of a thesis into a book or 'milking' a thesis for an article. The exact meaning of 'milking' a thesis or publishing from a thesis is interrogated. Is it an act of extraction or an art of adaptation, or does the distinction matter anyway? The authors will share their experiences with publishing articles from their own thesis during the writing of their respective theses and post the graduation, and will offer more insights into 'milking a thesis for a journal article'.

Keywords: 'milking' a thesis, publication, reputable journal, extraction, adaptation, thesis conversion, mentorship, doctoral thesis

About the authors

The authors are colleagues from the Mercantile and Labour Law Department at the University of the Western Cape, and share the teaching of modules and collaborate in supervision of students. The two have had a Supervisor – Supervisee relationship and Etienne is Dr Mupangavanhu's first doctoral graduate (jointly supervised with a colleague from the department, with Dr Mupangavanhu as the main supervisor, while Prof M Wandrag was co-supervisor). Dr Mupangavanhu has already been introduced above.

Etienne is the first doctoral graduate from the Faculty of Law to graduate with an LLD in Mercantile Law, specializing in Corporate Law. He also holds LLM in Mercantile Law and LLB degrees from UWC. He specializes and researches in Corporate Law, and has written and published a number of articles in reputable DHET-accredited journals. He lectures modules such as Corporate Law and Commercial Transactions Law (currently called Law of Payment Instruments) at LLB level and supervises postgraduate students in Corporate law.

Nikitta Nkosi (UNISA)
The near impossible dissolution of a siSwati customary marriage – a comparative analysis of Eswatini and the Republic of South Africa

African customary law has always been associated with gender inequality and patriarchy, and above all else customary law has always been a grey area for South African courts and judges to interpret and to preside over. This is so as most of South African jurisprudence is heavily westernised, the constitution itself does explicitly give recognition to customary law, although recognition of customary law comes under section 211 there is no direct mention of it. There is also no textual connection in the definition of customary law to the communities recognised under section 31 (1) of the Constitution. The Recognition of Customary Marriages Act only came into effect on 15 November 2000, meaning South Africa's jurisprudence has only fully recognised the legal system of Customary law for over as little as 20 years and that legislation itself has often been critiqued by scholars

and practitioners for lacking vital customary law principles and giving out an impression that there is only one system of customary law for all the various customs/cultures in South Africa. It has been in the past been subject to many amendments and will inevitably be subject to many more in the future. This paper seeks to conduct an anatomization on the application and interpretation of customary law by principally employing the judgement of the controversial of case of N D v M M (18404/2018) [2020] ZAGPJHC 113 (12 MAY 2020).

Keywords:

About the author:

Nikitta Nkosi is a fourth year LLB student at the University of South Africa. He is an avid mooter, having participated in a number of international moot court competitions. These include the Jessup International Law Moot Court Competition, the African Human Rights Moot Court Competition, and the UNISA Inter-Regional Moot Court Competition. Nikitta has previously co-published a blog entry under the African Network of Constitutional Lawyers, titled 'Covid-19 Response: A Slippery Slope for The South African Government' (2020). He has presented at various *fora* on diverse topics, ranging from human rights during a pandemic, to customary law dissolution of marriages.

Bright Mbonderi

Good faith criterion as a surrogate for requirements in business relationships – a few thoughts from commercial law

Good faith is generally acknowledged as an important underlying principle in many commercial relationships under South African law. In *Everfresh Market Virginia v Shoprite Checkers* (2011) ZACC 30, Yacoob J made an important obiter remark in this context when he remarked that good faith is vital for creating a conducive environment in which trade and commerce can thrive. In this case, Yacoob demonstrated his desire to see the decolonization of contract law by calling for the law not to confine itself to a colonial legal tradition. It is my understanding that Yacoob was aware of contract law's preoccupation with concepts such as freedom of contract and the *pacta sunt servanda*, which concepts sometimes militate against the operation of good faith in contracts. Yacoob therefore added that it may well be that the approach of the majority of people in our country (South Africa) places a higher value on negotiating in good faith than would otherwise have been the case before the advent of a transformative Constitution. This paper makes a case for decolonisation of the law regulating commercial relationships, and argues that good faith must be seen as a surrogate for many other requirements and values such as human dignity, fairness, Ubuntu, inter alia. To demonstrate this point, the paper examines relationships of parties in commercial transactions involving payment instruments (in requirements for a holder to qualify as a holder in due course), use of good faith in the relationship between a director and a company as well as the good faith criterion in the application to bring derivative actions.

Keywords: good faith, commercial transactions, law of payments, contracts, decolonisation, transformative constitutionalism, commercial relationships

About the author

Bright Mbonderi is a doctoral (LLD) candidate in the Faculty of Law, department of Mercantile and Labour Law, University of the Western Cape. He researches on good faith in commercial relationships including but not limited to contractual agreements. Bright also holds LLM and LLB degrees from UWC.

INAUGURAL ANNUAL APGroN SYMPOSIUM ON CORPORATE, FINANCIAL SERVICES, INTERNATIONAL INVESTMENT, COMPETITION & SOCIO-ECONOMIC RIGHTS LAW

Theme: 'Towards Afrikan-centred participatory knowledge production'

CONFERENCE PROGRAMME

DAY ONE: Wednesday 29 September 2021

0830 – 0900	**Arrivals and Registration**
	PLENARY SESSION ONE **Programme Director: Dr Etienne Olivier** **Conference Announcement/House Rules: Dr Etienne Olivier (UWC)**
0900 – 0910	**Welcome Address** HOD: Mercantile & Labour Law, UWC
0910 – 0930	**Conference Opening & Introduction of APGroN:** Dr Brighton Mupangavanhu (UWC) & Prof Angelo Dube (UNISA)
0930 – 0950	**Prof Angelo Dube (UNISA)** How to develop a Masters and Doctoral research proposal for law students
0950 – 1010	**Dr Brighton Mupangavanhu / Dr Etienne Olivier (UWC)** How to milk a thesis for a journal article publication
1010 – 1030	**Prof Anthony Diala (UWC)** What journals look for in a manuscript – tips for improving chances of your submission being accepted
DISCUSSION/ENGAGEMENT **1030 – 1100**	
TEA / COFFEE BREAK **1100 – 1130**	
1130 - 1150	**Adv. Lindelwa Mhlongo (UNISA)** Pitfalls and prospects of publishing from a Masters and Doctoral thesis: A personal experience
1150 – 1210	**Dr Tinashe Kondo (UWC)** Insights from experiences with Book Chapter writing and running a Book-writing project
1210 – 1230	**Thabang Kgwete (UWC)** Audit Committees in South Africa in terms of the Companies Act 2008: Policy rationale, role and contribution towards financial reporting
DISCUSSION/ENGAGEMENT **1230 – 1300**	
LUNCH **1300 – 1400**	
1400 – 1420	**Timothy Nel (UWC)** A critical examination of the content of the director's duty to act in the best interest of the company in South Africa
1420 - 1440	**Hazel Manjengenja (UWC)** Financial Reporting regulation in South Africa – A critical examination of effectiveness of enforcement of standards

1440 – 1500	**Simbarashe Tavuyanago (UWC)** Competition authorities' response to excessive pricing during Covid-19. A commentary on *Competition Commission v Babelegi Workwear and Industrial Supplies CC CR003Apr20*
1500 - 1520	**Katlego Arnold Mashego (UWC)** Examining the link between economic development and the enforcement of socio-economic rights in South Africa
1520 - 1540	**Nikitta Nkosi (UNISA)** The near impossible dissolution of a siSwati customary marriage – a comparative analysis of Eswatini and the Republic of South Africa
DISCUSSION/ENGAGEMENT **1540hrs – 1620hrs**	
CLOSING REMARKS **END OF DAY ONE DELIBERATIONS** **1620hrs - 1630hrs**	
ALL PARTICIPANTS **OPEN SESSION / 'WINING DOWN SESSION' / GALA DINNER** **1700HRS - 1900HRS**	
CLOSED SESSION - APGroN INTERIM BOARD ENGAGEMENT **1900HRS**	

DAY TWO: Thursday 30 September 2021

	PRESENTATION OF PAPERS Programme Director: Adv. Lindelwa Mhlongo (UNISA)
0900 - 0920	**Bright Mbonderi (UWC)** Good faith criterion as a surrogate for requirements in business relationships – a few thoughts from commercial law
0920 - 0940	**Pervia Ngwenya (UWC)** Historical background to corporate rescue and protection of stakeholders in Zimbabwean law
0940 - 1000	**Dr Brighton Mupangavanhu (UWC)** Directors' duty to exercise independent judgment – a proposition for South Africa in view of English law experiences
1000 - 1020	**Ebi Okeng (UWC)** Comparative analysis of the judicial approach to socioeconomic rights in South Africa
DISCUSSION/ENGAGEMENT **1020 -1100**	
TEA BREAK **1100 – 1130**	
1130 - 1150	**Chad-Lee Bedeker (UWC)** South Africa's implementation of the Twin-Peaks System: A Comparative Analysis with Australia and the UK
1150 - 1210	**Titilayo Akande (UWC)** Customary law adoption in Botswana
1210 - 1230	**Leon Dzumbira (UWC)**

	History and development of investment law in Zimbabwe (A presentation of Chapter Three, Doctoral Thesis)
1230 - 1250	**Otto Saki (UWC)** A health pandemic not a data-pandemic: An analysis of Zimbabwe's data protection framework in response to COVID-19.
DISCUSSION/ENGAGEMENT **1250 - 1330**	
LUNCH **1330 – 1430**	
Afternoon Session: Program Director – Dr Tinashe Kondo	
1430 - 1450	**Sindi Jonas & Dr Brighton Mupangavanhu (UWC)** Directors' decision-making: the requirement to disclose personal financial interests
1450 - 1510	**Tendani Musekwa (UNISA)** **Thandolwakhe Mokotedi (UNISA)** Interrogating South Africa's international obligations vis-a-vis racist and hurtful expression in the workplace – lessons from *SACSAAWU obo Letselebe v Otraco Southern Africa Pty Ltd*
1510 - 1530	**Kay-Lynn Bailey UWC/CPUT** Recognizing weight based discrimination in South Africa
1530 - 1550	**Vendjihonga Katjaimo (UWC)** Bridging the Trade Finance Gap for SMEs in Namibia Through Legislation: Lessons from abroad
DISCUSSION/ENGAGEMENT **1550 - 1620**	
CLOSING REMARKS AND END OF OPEN SESSION **1620** **END OF CONFERENCE**	
CLOSED SESSION RESUMES **GENERAL DISCUSSION on APGroN – PLANS FOR 2022 AND BEYOND** **1620 - 1800** **WINING DOWN SESSION**	