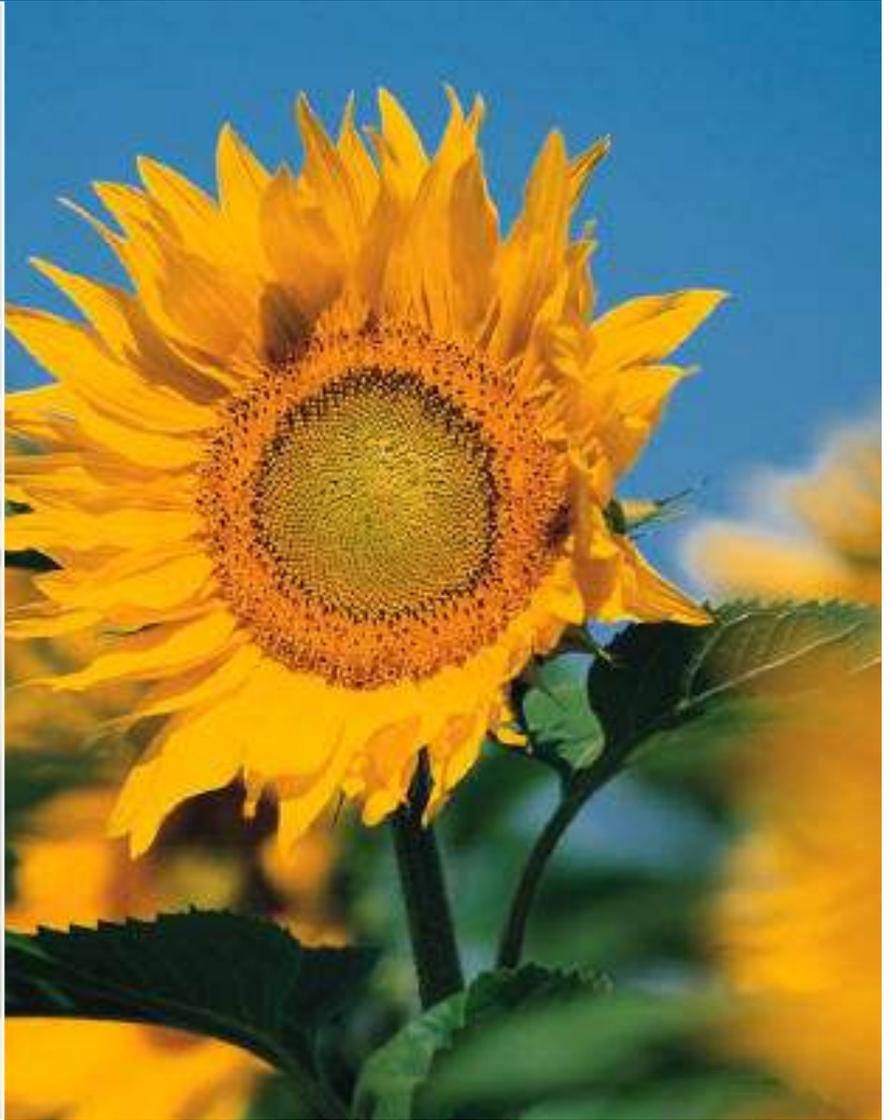


**Projects: Research Unit :Development in
the South African Constitutional State**

Faculty of Law

2011



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The vision and strategic aim of the research unit is to utilise juridical science and the law to find innovative solutions for legal challenges and solve developmental problems in South Africa as a constitutional state and to receive national and international recognition for the research efforts of the unit.

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1. Project: LOCAL GOVERNMENT AND ENVIRONMENT

Project leader: Prof Anél du Plessis

Participants: Prof Anél du Plessis (Project leader and primary researcher); Mr Oliver Fuo (LLD student researcher); Ms Germarie Viljoen (LLD student); Ms Wanda Hofmeyr (LLM student); Ms Allison Geduld (LLM student researcher); other LLM and LLD students
Mr Benjamin Jansen van Rensburg (LLB student assistant)

This project investigates the realisation of environmental rights (both substantive and procedural) within the local sphere of the government of South Africa. The project focuses on the legally entrenched ways and mechanisms by means of which municipalities within the context of 'local governance' across South Africa can contribute to realisation of constitutional rights such as the right to an environment not detrimental to health or well-being and the right of access to sufficient water. The project falls within the field of 'developmental local government' as a post-apartheid notion and subject field. The project originated from a successful NRF Thuthuka project application in 2007 focusing on capacity building among young researchers. The project itself focuses since its establishment on the following kinds of research outputs:

- Delivering of LLM and LLD students;
- Publication of journal articles in accredited scholarly journals;
- Delivering of conference papers at international and national conferences and workshops; and
- Sharing of research results by means of active participation in environmental law training for local government officials and councillors.

For further information please send an e-mail to: Anel.duPlessis@nwu.ac.za

2. Project: MODERN DAY IMPACT OF CULTURAL DIVERSITY IN SOUTH AFRICA

Project leader / Projekleier: Prof Christa Rautenbach

Participants: Prof C Rautenbach (project leader); Mr JM Matthee (LLD student); Mr F Pelsler (LLM student); Mr T Pheto (LLD student); Ms L van Vuuren (LLM student) ; Proff W du Plessis (researcher); A du Plessis (researcher); N Goolam (researcher; RU)

The research entails an analysis of cultural diversity issues in a legal context. Contemporary issues include the meaning and scope of culture in a legal context, cultural governance, cultural sustainability and cultural (and religious) legal systems in a legal pluralistic context. One of the main aims of the project is to publish a book entitled: "Global Features of Cultural Diversity: Perspectives from the South."

For further information please send an e-mail to Christa.Rautenbach@nwu.ac.za

3. Project: STUDIES IN GLOBAL COMPARATIVE LAW

Project leader: Prof F Venter

Participants and discussants; Proff F Venter (Project leader); A du Plessis; C Rautenbach; E van der Schyff; F Schutte; G Pienaar; LJ Kotzé and Dr P du Toit

The point of departure for the project is the conviction that particularly useful outputs may be produced through the cooperation of a group of experts over a wide spectrum of legal disciplines if approached from the point of view of legal comparison as a common theme. This is the ideal framework for the convergence of individual (though coordinated) contributions (typically of legal scholarship) to produce a coherent joint product despite the variety of disciplines concerned. The "products" that may be anticipated are conference papers, a series of articles and eventually possibly also the publication of a book or books.

For further information please send an e-mail to Francois.Venter@nwu.ac.za

4. Project: TRADE AND DEVELOPMENT

Project leaders: Proff AL Stander en S de la Harpe

Participants Proff AL Stander (project leader), S de la Harpe (project leader); APS van der Merwe (researcher); H Crous (researcher); Ms M De Oliveira (LLM student); Ms A Vorster (researcher and LLM student); Mr H Kloppers (researcher); Mr W Erlank (researcher) and Mr A Samuels (researcher).

This project focuses on directed research regarding contemporary developments in the field of trade and business. This includes research on the promotion of trade and business through the effective development of the legal principles concerning, *inter alia*, international contracts, international instruments of payment, international arbitration, insurance cross-border insolvency, public procurement, business entities, tax as well as directed research regarding the effect of technology on trade and development

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5. Project: A RIGHTS BASED APPROACH IN ADDRESSING POVERTY

Project leader: Prof Linda Stewart

Participants: Prof L Stewart (project leader); Ms D Horsten (researcher & LLD student); Mr O Fuo (researcher & LLD student); Ms Chantelle Feldhaus (researcher); Ms Michelle de Oliveira (researcher); Ms Rene Koraan (researcher); LLM and LLD students

The project's research focuses on:

fundamental and human rights that are concerned with the material dimensions of social welfare (and especially those rights placing budgetary obligations on government) and the utilisation thereof to alleviate poverty. The research is particularly directed at analysing the construction, interpretation and limitation of socio-economic rights in national, regional and international instruments, focussing on vulnerable members of society such as children and the urban and rural poor. The project can be divided in the following subgroups, namely social protection rights; children's socio-economic rights, transformative constitutionalism and the right to water. These so-called subgroups are interrelated and the division thereof is purely a method to describe certain problematic issues the project envisages to address. It is furthermore not limited to these subgroups. The research on social protection rights focuses on traditional and new approaches to social protection in the context of a rights based approach. The research pertaining to children's rights reflects from a theoretical basis on children's rights in terms of the Constitution (especially section 28); the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. These documents present the primary point of departure for addressing problems in the interpretation and implementation of the Children's Act 38 of 2005. Although the research will mainly focus on the so-called socio-economic rights (including educational rights of children) it includes all obligations on government which requires budgetary measures for the realisation thereof such as the right of a child to legal representation. The research on transformative constitutionalism entails an inquiry on how socio-economic rights are perceived and adjudicated in South Africa case law. It focuses on the criticism by leading academics/scholars directed towards the content of these judgments. Special focus is placed on the reluctance of the Constitutional Court to provide normative content to specific socio-economic rights. The research on scarce socio-economic rights addresses the right to water and other scarce resource rights and the role of sustainability as a possible constitutional goal or limitation in the interpretation and implementation of these rights.

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6. Project: ENVIRONMENTAL LAW: DEVELOPMENT, CHANGE AND GOVERNANCE

Project leaders: Proff Anèl du Plessis, Louis Kotzé and Leonie Stander

Participants: Proff A du Plessis (project leader; also of local government sub-project); LJ Kotzé (project leader); Leonie Stander (project leader (trade and environment)); Willemien du Plessis; Elmarie van der Schyff; Dr Clara Bocchino (post doctoral fellow); Dr Katinka Jesse (post-doctoral fellow); Mr Niel Lubbe (researcher and LLD student); Ms Tharien van der Walt (researcher); Ms M Barnard (researcher); Mr Oliver Fuo (researcher & LLD student); Ms Germarie Viljoen (researcher); LLD and LLM students.

The broad aim of this project is to critically investigate local environmental law and governance focusing on change and development.

The **objectives** are to:

- Evaluate existing legal theoretical foundations of environmental governance in Southern Africa in order to develop new theories addressing critical environmental governance issues;
- Evaluate and critically assess the role of South African constitutional law in strengthening the relationship between environmental, socio-economic and cultural concerns and environmental governance in South Africa;
- Conduct environmental law and governance (including cooperative governance) research necessitated by the semi-federal construction (national, provincial and local) of the South African state;
- Conduct comparative research among African countries and other foreign jurisdictions in order to distil mutual lessons to be learned in the context of environmental law and governance in the domestic and regional context;
- Conduct cross-border environmental governance research in the Southern African region;
- Be involved with multi-disciplinary research on different dimensions of environmental law, governance and management in South Africa;
- Contribute from a South African law perspective to rising and fast-growing strands of academic discourse in the fields of, *inter alia*:
 - climate mitigation and adaptation;
 - energy and mining law;
 - the public trust doctrine, water and mining rights;
 - integrated pollution control;
 - biodiversity and transfrontier biodiversity conservation areas;
 - water conservation and water services provision;
 - environmental impact assessment and integrated planning;
 - technology transfer and alternatives in environmental governance;
 - environmental justice;
 - occupational health and safety; and
 - sustainable livelihoods.
- Explore and critically comment on the meaning of culture, religion and customary law in interpreting and implementing the rules and principles of environmental law;

- Evaluate, critically analyse and compare substantive (e.g. environmental rights, water rights) and procedural environmental rights (including the rights of access to environmental information, just administrative action and the right to participate in environmental decision-making) as well as labour related rights entrenched in international, regional and domestic rights instruments;
- Critically explore ways in which to balance the sustainability interests of different role players in development in South Africa and on the African continent.
- Contribute to the academic discourse on the link between trade and environment, namely
 - To explore the multi-disciplinary dimensions of trade and environmental law;
 - To analyze the influence of insolvency and banking practices on environmental law;
 - To contribute to the discussion of the promotion of effective regional trade in line with the principles of sustainable development as underwritten by the AU and SADC,
 - To critically explore the link between investment, banking, trade, credit provision and environmental law; and to
 - Explore corporate social responsibility as a civil-based tool for environmental protection.

The focus and objectives of the project are complementary to the other projects of the Research Unit:

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7. Project: THE INFLUENCE OF PUBLIC INTERNATIONAL LAW ON THE DEVELOPMENT OF SOUTH AFRICAN MUNICIPAL LAW

Project leader: Prof Werner Scholtz

Participants: Proff W Scholtz (project leader); G Ferreira (researcher) and Dr H Lubbe (researcher), LLM and LLD students

The relationship between international and municipal law has been the focal point of a vast array of scholarly publications. The Constitution of the Republic of South Africa, 1996 includes provisions on the position of international law in the South African legal order. These provisions are also the source of uncertainty in certain instances. Accordingly, this project aims to elucidate the relationship of international and municipal law, with specific reference to the South African legal order.

For further information please send an e-mail to Werner.Scholtz@nwu.ac.za

8. Project: HUMAN SECURITY AND AFRICAN REGIONAL LAW

Project leader: Prof Werner Scholtz

Participants: Proff Werner Scholtz (project leader); Gerrit Ferreira; Adelheid Puttler (Bochum Universiteit, Duitsland); Jonathan Verschuuren (Tilburg Universiteit, Nederland); Anel Ferreira-Snyman (UNISA); Mr Amos Saurombe (UNISA and LLD student); Mr Stephen Ouma (LLD student) and Mr Daniel Pallangyo (LLD student)

The project aims to facilitate research and teaching activities concerning African regional law with the specific focus on the broad rubric of the promotion of African human security. The primary focus of the project relates to regional environmental law. In this regard, regional approaches to address climate change in the context of environmental (human) security constitute an important aspect of the activities of the research project. For more info: www.ralhus.co.za

For further information please send an e-mail to Werner.Scholtz@nwu.ac.za

9 Projects: NEW THINKING IN LAW

Project leader: Dr Pieter du Toit

Participants: Dr P du Toit (project leader); Proff R Robinson (researcher); E van der Schyff (researcher), S de la Harpe (researcher), H Crous (researcher); Ms T van der Walt (researcher); Ms R Roos (researcher), Mr F van den Berg (researcher), Mr W Erlank (researcher), Ms A Botes (researcher); Ms I Booysen (researcher)

The law does not function in a vacuum. For the legal scientific activities to be relevant, effective and accessible, modern social realities must be considered by taking cognisance of developments in other scientific domains. Interdisciplinary research becomes increasingly necessary.

Aims of the project

The project aims from the angle of different legal scientific disciplines and from an interdisciplinary approach to

- identify deficiencies in the South African legal theory and practice and propose possible solutions thereto and
- critically evaluate new developments in South African law.

For further information please send an e-mail to Pieter.dutoit@nwu.ac.za \

10. Project: RETHINKING AND DEVELOPING PROPERTY AND LAND REFORM IN THE CONSTITUTIONAL STATE

Project leader: Prof GJ Pienaar and Ms A Terblanché

Participants: Proff GJ Pienaar (project leader); Ms A Terblanché (project leader); Proff E van der Schyff; W du Plessis; PWJ Schutte; Mr HJ Kloppers; Mr W Erlank; Mr A Samuels; Proff AA du Plessis & LJ Kotzé (APEDIA); LLM and LLD students

Aim

The aim of the project is to rethink and develop property (in its wider sense) and land reform.

"Property defined in its wider sense" refers, for example, to research on:

- The reform of the basic concepts of property law
- Law of neighbours and public nuisance
- Virtual property and virtual property law
- Constitutional property law

Land reform research includes research on:

- Rural development
- Communal land
- Registration of land tenure rights
- Corporate social responsibility and land reform
- Food security and land reform
- Communal property institutions
- Interpretation of constitutional provisions, namely sections 25-27 of the *Constitution of the Republic of South Africa, 1996*

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