

Introduction

2010 is a year of milestones for South Africa. It has been 50 years since the Sharpeville massacre demonstrated such a stark illustration of the brutality and injustice of the apartheid system; 20 years since the release of Nelson Mandela brought tangible hope for change; and 15 years since the opening of the Constitutional Court. 2010, of course, also sees World Cup football coming to Africa for the first time, with South Africa hosting the tournament and being at the heart of the hope and excitement of this event.

The Constitution is central to South Africa's post-apartheid dispensation, and is renowned as one of the most progressive in the world. The role of the Constitutional Court is crucial to the success of South Africa's constitutional democracy.

However, this depends not just on the strength of the law on paper, but also on people identifying and engaging actively with the Constitution. The milestones of 2010 provide an opportunity to reflect back on the impact of the Constitution and the legacy of the work that the Court in its first 15 years has had, as well as to look towards its role for the future. We hope this event will inspire robust and healthy debate and stimulate fresh enthusiasm for the Constitution and its role in developing South African society.

Prof Richard Calland

Director, Democratic Governance and Rights Unit

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Foreword

Welcome to Constitution Week!

I can only guess at what memories 1994 and then 1995 hold for those of you who are students. You will recently have seen that familiar footage of Mandela's release and may remember the excitement and the exhilaration of those early days of our democratic order.

The memories of this faculty, however, go back much further. Whilst students were fighting for basic rights in 1980s, staff were faced with riot police in the lecture halls. Prof Reinhard Zimmermann's invitation to avail themselves of 'a few seats at the back' lives on in legend. By 1989 several academics were meeting with the ANC in Harare to talk about post-apartheid law.

In 1993, Hugh Corder was actively involved in the Multi-Party Negotiations which produced the Interim Constitution, and Christina Murray served on the Panel of Experts advising the Constitutional Assembly from 1994. Two of our lecturers, Kate O'Regan and Belinda van Heerden, were appointed judges and are amongst the best we have. Halton Cheadle was part of the committee drafting the Bill of Rights in the final Constitution. Dennis Davis has of course become a distinguished (though controversial) judge, whilst staying on as a dedicated teacher of law in the faculty.

Law graduate Susannah Cowen says 'I was from that auspicious year, 1994, where we



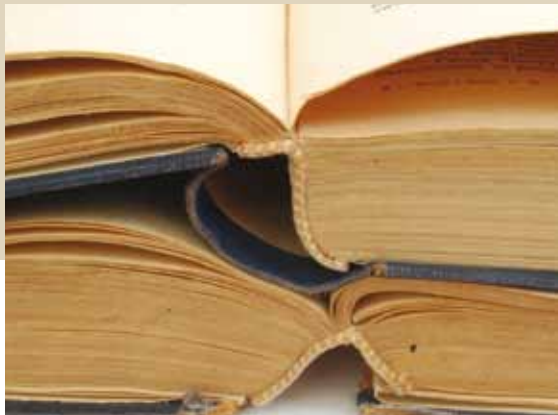
had to learn constitutional law as it was in the pre-93 dispensation, the interim and then the final Constitution.' She recalls Joel Baepi as President of the Black Law Students Forum, set up not as an alternative to the LSC but to complement it.

After almost a ten year period, there has been a resurgence in student engagement with the wider society. In 2007 the Student Seminar for Law and Social Justice had its first weekend and now it is an annual national event. LAWCO burst onto the scene in 2008 and now the faculty is involved in the week that focuses on our Constitution.

My thanks go to Professor Richard Calland and to the Democratic Governance and Rights Unit for putting together such a stimulating and relevant programme.

Prof PJ Schwikkard

Dean, Faculty of Law



**CONSTITUTION
WEEK**

**22-25 FEB 2010
FACULTY OF LAW**

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UNIVERSITY OF CAPE TOWN



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DAY 1

22 Feb 2010

15h30

Registration

15h45

Welcome by the Dean of Law

16h00

Introduction and welcome to Constitution week – Prof Richard Calland

16h15-19h00

Roundtable with retired Constitutional Court Judges Chaskalson, Mokgoro, and Sachs.

VENUE: Quad

Dennis Davis, as chair, will ask each of the judges to speak for two to three minutes on what they consider the court's success and failures to have been, reflecting specifically on whether the court has met expectations in light of its mandate.

Faculty members will then probe jurisprudential and ideological links between different areas of law, and act as interlocutors engaging critically with the judges on core themes of the court's jurisprudence.

Faculty members include:
Labour law – Halton Cheadle
Customary law – Aninka Claasen
Criminal Law – Jonathan Burchell
Marginalised groups (Refugees – Fatima Khan, GLBT – Pierre de Vos)
Property rights – Hanri Mostert
Private Law – Jaco Barnard
Admin Law – Hugh Corder

CHAIR: Judge Dennis Davis

23 Feb 2010

17h30-19h00

Panel Discussion
Are the courts able to hold public officials to account?

VENUE: Lecture Theatre 3

Prof Pierre De Vos, Judge Chaskalson, Patricia De Lille Advocate Menzi Simelane will discuss whether high-profile cases involving public officials (Yengeni, Selebi, Motata, Zuma) can be seen to deliver justice and discuss the role that public perception plays in terms of how ordinary citizens view these cases.

CHAIR: Associate Prof Richard Calland

DAY 2

24 Feb 2010

14h00-16h00

Presentation
The public service in the constitutional era: What has changed and how do we know?

VENUE: Moot Court

An expert presentation looking at the annual report of the Public Service Commission (PSC) on the requirements in the Constitution for the post apartheid public service, by Mr Indran Naidoo (DDG Monitoring and evaluation, PSC), with comment by Dr Bongani Ngqulunga (Office of the Presidency), Prof Robert Cameron and Dr Vino Naidoo of UCT's Politics Department.

The PSC is constitutionally mandated to monitor and evaluate public administration in South Africa, and it has done this systematically through the nine principles of public admin laid out in chapter 10 of the Constitution. Each year the PSC publishes a 'State of the Public Service' report, which is structured on the lines of the nine principles, and which specifically analyses how public admin has performed on each principle. This report will form the basis of the presentation.

CHAIR: Dr Kristina Bently

DAY 3

25 Feb 2010

13h00 – 16h00

Colloquium - Civil society mobilisation to advance human rights using constitutional litigation: An advocacy agenda for the next 15 years.

VENUE: Quad

Civil society has played a key role in bringing landmark cases before the Constitutional Court over the last 15 years. As part of the Constitution Week activities, a day has been allocated to reflect on the six key cases that had the potential to impact a wider SA population - Bhe, Fourie, Makwanyane, Grootboom, TAC, Mazibuko and Subromoney. The organisations and civil society actors that were involved in litigating these cases have been invited to share their experiences and reflect on the lessons learned.

Some of the questions will include:
Whether they have achieved their intended outcome, whether there has been a practical change in the lives of ordinary South Africans as a result of these cases, is litigation a viable option moving forward, should we use a multi-strategy approach rather than relying on litigation, and what other strategies are there to supplement litigation?

Civil society organisations invited include: the Women's Legal Centre, the Centre for Applied Legal Studies, Treatment Action Campaign and the Gay and Lesbian Equality Project.

Social justice activists such as Raenette Taljaard, Patrick Bond, and Ashwin Desai will be invited to act as respondents to analyse the work of these civil society organisations over the last 15 years, and make recommendations for the way forward. We will invite a government representative, such as Jeff Radebe, to share what government has done to implement the decisions of the court with regard to socio-economic rights. This then raises questions of whether the government has done enough to ensure 'progressive realisation' of socio-economic rights and whether the government has been able to enforce socio-economic rights through concrete policies.

CONVENOR AND DISCUSSION LEADER:
DGRU Advocacy Manager, Mr Abongile Sipondo.

DAY 4



CONSTITUTION WEEK

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