

**Institute of Development
and Labour Law**

**University of Cape Town
South Africa**

**ANNUAL REPORT
2005**

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MESSAGE FROM THE DIRECTOR

During 2006 the Institute, like other research entities within the Faculty of Law will be reviewed. Part of the aim of the review is to ensure consistency in respect of nomenclature and it might well be that the Institute undergoes a name change during the course of 2006. However, it is not envisaged that the structure of the Institute or its extremely productive output as reflected by this report would in anyway be affected by this change, should it occur.

Despite the small compliment of permanent staff attached to it, 2005 has once again been an extremely busy and productive year for the Institute. Two books, one consisting of three substantial volumes, were published under the auspices of the Institute. In addition to this, the Institute maintained its extremely high publication rate of peer reviewed journal articles. The Institute furthermore participated in national policy debates, hosted seminars and workshops, continued to be involved with the Annual Labour Law Conference and maintained an involvement in training on labour matters in southern and south eastern Africa.

Without diminishing the value and importance of our other achievements, the Institute 's highlights of 2005 are no doubt the publication of Professor Neville Rubin's (in consultation with Professors Evance Kalula and Bob Hepple's voluminous *Code of International Practice and Jurisprudence* consisting of 2336 pages; work commenced on the NRF supported SADC Labour Market Regulation Project (in collaboration with the University of Melbourne) which aims to develop common approaches towards labour market regulation in Southern Africa; the continued work of the Labour and Enterprise Project on co-operatives, a very important business and labour entity in South Africa; and the involvement of no less than three of our research associates with the Small Business Regulation Project hosted by the Presidency during September 2005. There is every indication that the papers presented as part of this project will influence future amendments to the Labour Relations Act, 1995. We also remain proud of our involvement with the Annual Labour Law Conference, which was hosted for the 18th time during 2005 and attracted a record number of delegates.

In addition to the Institute's core activities, namely research, teaching and socially responsive endeavours, the permanent members of the

Institute continue to carry normal teaching loads in the Faculty of Law in both the LLB and School for Advanced Legal Studies (SALS) programmes. These teaching responsibilities include labour law and social security law at LLB level and labour law, sports law and international economic law at postgraduate level. While the Institute's involvement with teaching remains one of its strengths, it also impacts on dedicated research efforts.

The staff compliment of the Institute remained relatively stable during 2005. The Institute hosted two interns from the School of Law of New York University and as is reflected by this report, also several prominent visitors.

In the immediate future, it is expected that the emphasis of the research activities will be labour standards and labour market regulation in South Africa and the rest of the SADC region. However, we intend to continue our association with sports law and social security and to foster further public awareness of the challenges facing employers and employees.

HISTORY OF THE INSTITUTE

Background

The original component of the Institute started as the Labour Law Unit, set up in 1987 with a grant from the Ford Foundation. Its brief then was to assist emerging democratic forces, in particular the labour movement and other NGO's, with capacity-building and applied research in the area of labour rights and labour market reform. In particular, the Unit contributed to the struggle for labour rights through training (mainly of trade union paralegals), applied research and involvement in litigation on behalf of trade unions.

In 1992, when transition to democracy was clearly underway, a Development Law Unit was established as a Human Sciences Research Council project. Its focus was on development law issues such as land, housing, small and medium enterprise, and other socio-economic issues. In 1996 the two Units merged to form the Institute of Development and Labour Law. Since then the Institute has worked to consolidate research, training and education projects in both these areas of work: in labour law and labour rights, and in the area of development law.

In later years the Institute, as a result of the need to re-stimulate academic debate on labour issues and labour market regulation, has taken a leading role in setting up a fora for such debate.

MISSION AND GOALS OF THE INSTITUTE

The Institute is a policy research, training and extension services centre situated in the Faculty of Law of the University of Cape Town. Its broad mission is to assist with capacity building to enhance democratic governance through applied policy research, training, and extension services in South Africa and other parts of the SADC region. It focuses on development, labour law and social policy issues. As part of this mission, it provides educational and advisory services, produces and disseminates publications, convenes conferences, seminars and workshops. It also fosters links and networks, thus providing a reference point for policy and scholarship. Its work is driven by public interest and human rights considerations. It adopts a 'law-in-context' approach, which reflects the interdisciplinary nature of its work.

Although the Institute is a constituent part of the Faculty of Law at the University of Cape Town, it operates autonomously with its own advisory board but is ultimately accountable to the Faculty's Research and Social Responsiveness Committee. It is also a research entity of the University Research Council.

Activities in the Region

In 1992, the Labour Law Unit's work was extended to most of what is now the Southern African Development Community (SADC) region. Apart from trade union capacity-building work, the scope of its work was expanded to include intervention in social policy issues, in particular to help develop social partnership (of government agencies, trade unions and employer interests) in the formulation of social policy. Since then the Institute has been involved in tripartite training and labour law reform to promote democratic governance in the context of regional integration.

Since the two units merged, and particularly in the last few years, the Institute has become more active in regional activities. We have strengthened our relationship with SADC countries and structures, especially with the then SADC's Employment and Labour Sector (ELS), through research and educational activities in the region. Funding received from the National Research Foundation (NRF) contributed to our research activities on regional labour market regulation, harmonisation of labour laws and social security policy. In addition, the establishment of a regional postgraduate diploma course in conciliation and arbitration has strengthened our education and training activities in Southern Africa. These projects and other work have allowed us to develop stronger links with other universities, research centres, NGOs, and unions in the region. We plan to continue this work in 2006 strengthening both our regional focus and activities.

ADVISORY BOARD

Prof HM Corder (Chair)
Prof ER Kalula (Director)
Ms R le Roux (Deputy Director)
Prof S Burman
Prof Judge D Davis
Prof JE Hare
Mr D Horner
Prof JGB Maree
Mr L Mbabane

Ms S Myrdal
Ms T Orleyn-Sekete
Dr M Sienaert
Mr J Theron
Mr R van Voore
Prof DP Visser

STAFF AND ASSOCIATES

Teaching Staff:

Professor Evance Kalula:

Director of the Institute (since 1996)
International and comparative labour law; labour market regulation;
social security

Rochelle Le Roux

Senior Lecturer, and Deputy Director of the Institute (since 2002)
employment discrimination; sports law

Professor Neville Rubin

Honorary Professor, Faculty of Law
international labour standards; law and development

Professor Clive Thompson:

Founding director of the Labour Law Unit 1987 (resigned in 2002,
now adjunct professor in the Faculty)
collective bargaining; international labour law

Professor Danie Visser:

Founding Director, Institute of Development Law, 1992
Unjustified enrichment; legal history; structure of legal systems

Faculty of Law Academic Staff Associated with the Institute:

Debbie Collier (Department of Commercial Law, lectures on the LLB,
PGDip programmes and Certificate Courses)

Randall van Voore (Department of Commercial Law, lectures on the LLB,
PGDip programmes and Certificate Courses)

Professor Halton Cheadle (Department of Public Law)

Research Staff:

Shane Godfrey:

Senior researcher, Labour and Enterprise Project
Bargaining councils; industrial sociology

Jan Theron:

Co-ordinator of the Labour and Enterprise Project
labour rights; small and medium enterprise

Administrative Staff:

Mishinga Seyuba

Programme Assistant January - May 2005

Sue Wright

Administrator

Honorary Professor

Sir Bob Hepple, Master Emeritus, Clare College, Cambridge

Honorary Research Associate

Professor Neville Rubin

International labour standards; law and development

Adjunct Professors

Paul Benjamin

Health and safety; minimum labour standards; regulatory framework

Charles Nupen

Dispute resolution; social dialogue

Thandi Orleyn

Dispute resolution

Clive Thompson

Collective bargaining; international labour law

Honorary Staff

Professor Danie Visser

Unjustified enrichment; legal history; structure of legal systems

Associates of the Institute are:

Mr C Bosch

Ms SH Christie

Ms M Clarke

Dr K Dingake

Ms S Hayter

Prof CN Himonga

Dr TR Roux

Dr B Thaver

Prof D du Toit

Mr D Woolfrey

Research Students are:

Tulia Ackson

Mpfariseni Budeli

Mudiwa Gwisai

Kananelo Everrit Mosito

Emmanuel M Ntuny

Ada O Okoye

Anne Scheithauer

PROGRAMMES OF THE INSTITUTE

1. RESEARCH AND RESEARCH RELATED ACTIVITIES

1.1 Labour Market Regulation in South Africa and the SADC Region

1.1.1 Indicators for Conditions of Work project

The project is in collaboration with Hagen Resource International which was awarded funding by the US Department of Labor. The main objective is the development of indicators to measure progress in compliance with ILO and other labour standards relating to conditions of work in three main areas: minimum wages;

occupational health and safety and working time. The project covers four countries: South Africa, Botswana, Lesotho and Namibia.

1.1.2 SADC labour market regulation

This project which is NRF supported, is concerned with legal and other aspects of labour market regulation in the various countries of the SADC region, including South Africa. The research focuses on such aspects as labour law reform and the prospects of developing common approaches towards labour market regulation in the framework of SADC regional integration. The project seeks to derive comparative lessons from similar developments in South East Asia. The project is being conducted in collaboration with the Centre of Employment and Labour Relations Law at the University of Melbourne, Australia.

1.1.3 Labour law reform in Lesotho and Malawi

The Institute, through Professor Evance Kalula, is currently advising the ILO/ILSSA project with labour law review in the Kingdom of Lesotho and Malawi. A preliminary report analysing these countries' labour legislation in relation to the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and other ILO standards which Lesotho has ratified was completed in 2005. This report will be followed up with other activities, including further research in the course of 2006. This project is likely to extend to other SADC countries in due course.

1.1.4 HSRC project: Understanding Law and Labour Market Regulation

This project, which is driven by Prof Paul Benjamin, aims to set the ground work for themes, debates and issues relating specifically to South African law and market regulation. A report analysing current trends and discussing possible approaches has been submitted.

1.1.5 SADC Core Group

Professor Kalula serves on the SADC Core Group on Social Security whose objectives include research and policy development in social security and social protection. Activities of the group include research, training and advising different governments and institutions in SADC. As part of that work, Professor Kalula and Olivier of the University of Johannesburg, undertook a mission to Madagascar from 30 November to 2 December to advise the Government and institutions concerning social security policy development and implementation.

1.2 Miscellaneous

1.2.1 Small Business Regulation Project

In a project commissioned by the Presidency via UCT's DPRU, Professors Halton Cheadle, Paul Benjamin and Jan Theron produced a report on "Regulated flexibility and small business - revisiting the LRA and the BCEA" and "The regulatory efficiency of the CCMA: A statistical analysis" respectively.

1.2.2 Sports Law Association of South Africa

The Institute, through Rochelle le Roux, remains instrumental in the management of the Sports Law Association of South Africa (SLASA). Rochelle le Roux is also the editor of the newsletter published by SLASA.

1.2.3 NUSAS Project

This project, driven by Professor Neville Rubin and funded partially by the Ernest Oppenheimer Trust is researching the history of NUSAS, recounting the salient events connected with its development. It involves a critical examination of the varied phases of its activity against the background of the social and political contexts in which it operated over a period of some seventy years. In doing so, it will open to view the internal policy debates which produced the shifts in emphasis that enabled (or, at times, disabled) its effectiveness as a force for change - in itself and through the opportunities it provided for leadership among those

who came to play distinctive roles in shaping the stages of South Africa's emergence as a democratic state, to take its rightful place in Africa and the wider world in the twenty-first century.

The outcome of the work undertaken is intended to be a book, provisionally entitled *Bleeding liberals, breeding radicals*.

1.3 Sports Law

The 'professionalisation' and commercialisation of sport have changed the nature of sport. This poses challenges of a different nature - often of a legal nature - to both administrators and athletes. The Institute's work in this area, spearheaded by Rochelle le Roux, includes the distillation of legal aspects that can truly be regarded as sports law and the production of publication to fill the current lacuna in this area.

No major project was hosted in this area but the Institute is instrumental in the running of the Sports Law Association of South Africa and the Newsletter published by it. The Institute is also compiling a database on sports law and related matters.

1.4 Social Security

This project is a joint one with a number of SADC universities and agencies. The Institute, jointly with the Centre for Comparative and International Labour Law and Social Security (CICLASS) (University of Johannesburg) and the Graduate School of Public and Development Management (University of the Witwatersrand) spearhead the project and its activities.

This project was launched the aim to help develop and research and social security in South Africa and other countries in the Southern African Development Community (SADC). This has culminated in the submission of a draft Code to the Integrated Committee of Ministers for consideration. Other activities under this project include research workshops and publications.

2. THE LABOUR AND ENTERPRISE PROJECT (LEP)

The focus areas of LEP are:

- New trends in employment and the organisation of work.
- Organisational / institutional challenges and regulatory responses to these trends.
- Trade, industrial and labour market policy.
- Workplace restructuring.
- Skills development in small enterprises and the informal economy.
- 'Empowerment' and co-operation.

2.1 LEP Objectives

The objectives of LEP are to undertake legal, socio-legal and social scientific research regarding policy, legislation and the regulatory framework applicable to labour relations, employment, the organisation of work, and small enterprises in South and Southern Africa. Areas of focus have been identified, namely the following: labour standards; labour market regulation; social security; labour reform and regulated flexibility.

2.2 Teaching

Teaching or training is not regarded as a core activity of the Project. The Project has nevertheless undertaken to do certain teaching, both in the Law Faculty and in the Sociology Department.

The teaching in the Sociology Department has comprised an Honours and Master's seminar course on 'Regulated Flexibility' devised by Shane Godfrey. Through these courses, the Project is also able to feed its research output back into the academic curriculum.

2.3 Core Activities

2.3.1 New trends in employment and the organisation of work

The main activity this year has been writing up, in publishable form, work undertaken in 2003 and 2004.

The outcome has been two monographs, on homework and labour broking, and one journal article on labour broking.

We had also hoped to produce a journal article on homework (preferably in an international journal, with Shane as the lead author) and on a theoretical conception of the changing nature of work (with Jan as lead author, possibly in conjunction with Andries Bezuidenhout at SWOP). However time has not allowed this.

2.3.2 Organisational/Institutional challenges and regulatory responses

a) Project on bargaining councils

Partly based on our ongoing research and partly based on new data collected specifically for this purpose, the project has produced a report (commissioned via DPRU) for the Presidency on bargaining councils and questions related to the extension of collective agreements.

Shane Godfrey is currently working on a draft of a lengthier publication bringing together all our work in this area, which could be published as a monograph or in book form.

b) Membership-based organisations

Jan Theron has produced a shortened version of the paper presented at the international conference on membership-based organisations of the poor ("MBOP") held in Ahmedabad, India, in January this year, under the auspices of WIEGO ("Women in Informal Employment Globalising and Organising"), the Self-Employed Womens' Association ("SEWA") of India and the University of Cornell. The paper is to be published in book form by Routledges.

The possibility of the project becoming more involved in research on trade unions has been canvassed. However no practical steps have been taken to do so. There is also a close relationship between work in this era and on micro-finance.

c) Trade, industrial and labour market policy

It would appear the initiative by the National Treasury to evaluate how the legislation and policy adopted since 1994 has addressed or failed to address key issues in the labour market appears now to have been taken over by the Presidency, and is still very much part of the national debate.

d) Workplace restructuring

The activities outlined above did not leave us time to engage in any new activities under this heading, other than work on a journal article concerning workplace-restructuring in the fishing sector, which has been submitted to the journal *Transformation*.

2.3.3 Skills development

Drawing on work undertaken in 2004 for the Human Sciences Research Council (HSRC) on industry and higher education partnerships/networks, Shane has written an article for the journal 'Industry and Higher Education.'

2.3.4 Empowerment and cooperation

a) Micro-finance

With assistance from the University Research Committee Debbie has produced an occasional paper on micro-finance.

b) Co-operatives

Jan published an article on co-operatives in the April/May edition the SA Labour Bulletin, under the title "Trade unions and the co-operative alternative." He was also commissioned by the International Labour Office and the International Co-operative Alliance to produce two papers on co-operatives in South Africa, as part of a broader regional study on co-operatives in Africa. The first paper, on the co-operative tradition in South Africa and Namibia, was submitted and approved. The second paper to be presented at a workshop in March 2006.

3. PUBLICATIONS

3.1 Journal Articles

Benjamin, P. A matter of ongoing concern: judicial interpretation and misinterpretation of section 197 of the Labour Relations Act, *Law Democracy and Development* 9(2) 169-180.

Benjamin, P. Getting regulation just right. *South African Labour Bulletin* 29(4) 28-33.

Benjamin, P. Labour law - future challenges. *South African Labour Bulletin* 29(4) 34-38.

Bezuidenhout, A; Theron, JP and Godfrey, SD. Casualisation - can we meet it and beat it? *South African Labour Bulletin* 29(1) 39-43.

Collier, D. Freedom of expression in Cyberspace: real limits in a virtual domain. *Stellenbosch Law Review* 16(1) 21-44.

Collier D. Producing computer print-outs in court: evidently not so simple. *Juta Business Law* 13(1) 6-9.

Collier, D. The right to legal representation at the Commission for Conciliation Mediation and Arbitration and at disciplinary enquiries. *Industrial Law Journal* 26 (January) 1-16.

Fenwick, C and Kalula, ER. Law and labour market regulation in East Asia and Southern Africa: comparative perspectives. *International Journal of Comparative Labour Law and Industrial Relations* 21(2) 193-226.

Godfrey, SD. Power and knowledge: the role of industry partners in knowledge-intensive networks in new materials development technology. *Industry and Higher Education* 19(2) 189-197.

Hepple, B. Rivonia: the story of Accused No 11. *Social Dynamics* 30(1) 193-217.

Hepple, B. The Labour Relations Act and global competitiveness. *Law, Democracy and Development* 9(2) 137-145.

Ntumy, EKB. Emerging trends in labour law conceptualization: implications for SADC trade unions in the context of globalization. *Lesotho Law Journal* 13 (1&2) 2004 (only released in 2005).

Ntumy, EKB. The State, labour and labour policy in Southern Africa: a historical perspective. *Lesotho Law Journal* 14(2) 2001-2004 (published in 2005)

Ntumy, EKB. Statism, labour and labour policy in Southern Africa: A comparative study of Botswana and Swaziland 1984-2004. *Lesotho Law Journal* 15(1) 2005.

Okoye, A.O. Giving statutory effect to legislative intention: a study of social security legislation in Nigeria. *Nigerian Bar Journal* 2(2) 2004 157-172 (published in 2005).

Orleyn, T. Women taking back the workplace. *South African Labour Bulletin* 29(4) 45-47.

Theron, JP. Intermediary or Employer? Labour brokers and the triangular employment relationship. *Industrial Law Journal* 26 (April) 618-649.

Theron, JP. Review. All My Life All my Strength by Ray Alexander. *Transformation* Vol 58 97-105.

Theron, JP. Unions and the co-operative alternative. *South African Labour Bulletin* 29(2) 60-63.

Thompson, CR. Collective bargaining and retrenchments and restructuring. *Current Labour Law* Vol 1 53-80.

3.2 Books

Hepple, B. Labour Laws and Global Trade. Hart Publishing, Oxford, UK 1-302.

Le Roux, R; Rycroft, A and Orleyn, T. Sexual Harassment in the Workplace - Law, Policies and Processes. LexisNexis Butterworths, Durban South Africa 1-177.

Rubin, N (IN CONSULTATION WITH Kalula, ER and Hepple, R) Code of International Labour Law - Practice and Jurisprudence (2 Vols 3 books). Cambridge University Press, Cambridge, 1-2336.

3.3 Chapters in Books

Maree, JGB and Godfrey, SD. If you can't measure it, you can't manage it - reorganisation of work and performance at two fish processing firms. Beyond the Apartheid Workplace Webster, E and Von Holdt, K (eds), University of KwaZulu-Natal Press, Scottsville 125-147.

Le Roux, R. Employment law issues in sport. *Introduction to Sports Law in South Africa*, LexisNexis Butterworths, Durban South Africa 67-93

Olivier, M, Kalula, ER and Carolus, D. Social protection and poverty alleviation in the SADC region: prospects for developing a co-ordinated social security paradigm. Law and Contemporary South African Society, New Africa Books, Claremont, South Africa, 235-264.

Theron, JP. Employment is not what it used be. Beyond the Apartheid Workplace Webster, E and Von Holdt, K (eds), University of KwaZulu-Natal Press, Scottsville 293-316.

3.4 Non Peer Reviewed Published Conference Proceedings

Ackson, T. Effectiveness of labour law: a brief comparative analysis between the South African and Tanzanian labour law systems. Proceedings of *Effectiveness of Labour Law: Under what Conditions?* 4-15 July 2005, Universite Montesquieu, Bordeaux IV, France.

Benjamin, P. Beyond boundaries: redrawing the scope of and the unfinished business of labour law in South Africa and the SADC region. Proceedings of *The Scope of Labour Law*, 23-27 May, 2005 Bellagio, Italy.

Christie, S. No bread better than half a loaf: *Mazista Tiles v NUM* and the LAC's response to employer to force change to conditions of work. Proceedings of *18th Annual Labour Law Conference* 30 June - 2 July 2005, Sandton Convention Centre, Johannesburg. CD Rom.

Cohrssen, R and Gallo, S. Indicators for Conditions of work: Namibian country paper. Proceedings of *Developing Indicators for the Monitoring of Labour Standards Southern African Regional Workshop* Jan 20-21, Cape Town. Hagen Resources International and the US Department of Labour. CD Rom.

Godfrey, S. The rise of labour brokering and the challenges for labour law. Proceedings of *18th Annual Labour Law Conference* 30 June - 2 July 2005, Sandton Convention Centre, Johannesburg. CD Rom.

Kalula, ER and Ackson, and T. Chirwa, DM; Labour Administration and Regional Integration in NEPAD. Proceedings of *Third Follow Up Annual Conference on Labour Administration, Regional Integration and NEPAD* 17-21 October, Mahe, Seychelles.

Kalula, ER. Rapporteur's Report, Track 3. Beyond formal labour relations: the challenge of the informal economy. Proceedings of the 4th IIRA African Regional Congress. *A New Vision of Industrial Relations for Africa: Harmonising Social and Economic Strategies in a Globalising World*, Mauritius, 28-30 November 2005. CD Rom.

Ntumy, EKB. Botswana Country Paper. Proceedings of *Developing Indicators for the Monitoring of Labour Standards Southern African Regional Workshop* Jan 20-21, Caep Town. Hagen Resources International and the US Department of Labour. CD Rom

Okoye, A. Defining the role of trade unions in the Charter of Fundamental Social Rights in SADC. Proceedings of *SATUCC Seminar on Charter of Fundamental Social Rights in SADC*, Braamfontein, Johannesburg

Okoye, A. Employment in the non-profit sector: comparative issues from Nigeria and South Africa. Proceedings of the 4th IIRA African Regional Congress. *A New Vision of Industrial Relations for Africa: Harmonising social and economic strategies in a Globalising World*, Mauritius, 28-30 November 2005. CD Rom.

Olivier, M and Kalula, ER. The future of social security in SADC: some critical elements. Proceedings of 2005 IRASA National Conference. *Employment Relations: Building the Future*, Spier, Stellenbosch, October 2005.

Olivier, M and Kalula, ER. Track 2 - towards the development of an integrated policy framework for informal sector social security in the SADC region. Proceedings of *Second Global Labour Forum*, Institute for Human Development in association with Indian Society of Labour Economics and Indian Industrial Relations Society, New Delhi, 13-14 December 2005.

Orleyn, T. The new code on sexual harassment in the workplace: a practical perspective. Proceedings of *18th Annual Labour Law Conference* 30 June - 2 July 2005, Sandton Convention Centre, Johannesburg. CD Rom.

Theron, JP. Membership based organisations of the poor: the South African experience. ("MBOP") held in Ahmedabad, India, in December 2005, under the auspices of WIEGO ("Women in Informal Employment Globalising and Organising"), the Self-Employed Womens' Association ("SEWA") of India and the University of Cornell.

Theron, JP. Worker co-operatives: a bridge to the formal economy? Proceeding of *18th Annual Labour Law Conference* 30 June - 2 July 2005, Sandton Convention Centre, Johannesburg. CD Rom.

Van Voore, R. Case update: collective labour law. Proceeding of *18th Annual Labour Law Conference* 30 June - 2 July 2005, Sandton Convention Centre, Johannesburg. CD Rom.

3.5 Published Conference Abstracts

Kalula, ER. Track 3. Rapporteur's Report. Beyond formal labor relations: the challenge of the informal economy. 4th IIRA African Regional Congress. *A New Vision of Industrial Relations for Africa: Harmonising social and economic strategies in a Globalising World*, Mauritius, 28-30 November 2005, 68-80.

Okoye, A. Employment in the non-profit sector: comparative issues from Nigeria and South Africa. 4th IIRA African Regional Congress. *A New Vision of Industrial Relations for Africa: Harmonising social and economic strategies in a Globalising World*, Mauritius, 28-30 November 2005, 81-82.

Okoye, A. Summary of proceedings of the 4th IIRA African Regional Congress. A new vision of industrial relations for Africa: harmonising social and economic strategies in a globalising world. IIRA Bulletin No 70, published by the International Labour Office, December 2005, 10-12.

3.6 Theses and Dissertations Passed for Higher Degrees

Bahati, 2005. A critical analysis of international legal regulations of child labour: A case study of Tanzania: 1-64. LLM, University of Cape Town.

Fung, S.C. 2005. Emerging South African Immigration Policy in a Comparative Global Perspective: 1-89. LLM, University of Cape Town.

Furness, 2005. The appropriate role of judicial intervention in labour dispute arbitration awards: 1-57. LLM, University of Cape Town.

Langenhoven, R. 2005. An employee's right to legal representation: 1-40. PG Diploma in Employment Law and Social Security, University of Cape Town.

Marumo, B. 2005. HIV/AIDS and employment: An assessment of legislation and jurisprudence of Botswana and a brief comparison with the South African position: 1-70. LLM, University of Cape Town.

Ndabahaganye, L. 2005. International human rights, constitutional rights and employment law with special relevance to HIV/AIDS in the workplace: SADC and South Africa perspectives. : 1-53. PG Diploma in Employment Law, University of Cape Town.

Ndumo, E. 2005. The duty to bargain and collective bargaining in South Africa, Lesotho and Canada: Comparative perspectives: 1-63. LLM, University of Cape Town.

Nefdt, L. 2005. Flexible working arrangements: to what degree are casualised and externalised labour protected by labour legislation? 1-54. PG Diploma in Employment Law and Social Security, University of Cape Town.

Olotu, T. 2005. A comparative study of dispute settlement and resolution in South Africa and Tanzania: 1-98. LLM, University of Cape Town.

Sefah-Akyeampong, 2005. Legislative and policy framework of skills development strategy: A comparative review of South Africa and Germany: 1-62. LLM, University of Cape Town.

Thorp, R. 2005. Business restructuring and labour law with specific reference to sections 188, 189 and 197 of the Labour Relations Act 66 of 1995 as amended : 1-54. PG Diploma in Employment Law, University of Cape Town.

Woerz, 2005. Collective bargaining in South Africa and Germany - a comparative study: 1-58. LLM, University of Cape Town.

Yodakien, M. 2005. The parent plan manager as an alternative dispute resolution mechanism facilitating children's rights : 1-53. PG Diploma in Conciliation and Arbitration, University of Cape Town.

3.7 Unrefereed Works of a Popular Nature and Policy Documents

Avery, M. 2005. Book review "Sexual harassment catalogue". Without Prejudice 5 (7): 45

Collier, D. 2005. The Internet: Rules of the Game. Newsletter 3 - Sports Law Association of South Africa.

Collier, D. and Bamu, P.H. 2005. Reforming the microcredit industry in South Africa: will the proposed National Credit Bill address existing problems and developmental concerns? Development and Labour Monograph Series Occasional Paper 1 (0799222909): 1-52

Godfrey, S.D., Theron, J.P. and Clarke, M. 2005. On the outskirts but still in fashion: homeworking in the South African clothing industry: the challenge to organisation and regulation. Development and Labour Monograph Series 0799222895 (2): 1-48

Kalula, E.R. 2005. Placing the problems in perspective - external challenges to labour movement leadership in the SADC region. SATULA - Report 2004 0 (0): 2005

Theron, J.P., Godfrey, S.D. and Lewis, P. 2005. The rise of labour broking and its policy implications. Development and Labour Monograph Series 1 (0799222909): 1-52

3.8 Online Works

Thompson, C.R. 2005. "Un-Australian" October 2005
http://workers.labor.net.au/features/200510/b_tradeunion_thompson.html.
http://workers.labor.net.au/features/200510/b_trad.

3.9 International Conferences and Workshops Attended

Tulila Ackson (PhD Student). International Seminar on Comparative Labour Law, Industrial Relations and Social Security entitled "Effectiveness of Labour Law: Under What Conditions?" hosted by the ILO/COMPTRASEC, Universite Montesquieu - Bordeaux IV, France., 4-15 July. Attended by PhD Student Ms Tulia Ackson who presented a short paper entitled "Effectiveness of labour law: a brief comparative analysis between the South African and Tanzanian labour law systems". Visit funded by USHEPiA.

Debbie Collier. Conference on Law and the Life Sciences: frontiers in Health, Environmental Protection, and Biological Innovation. University of Minnesota, Minneapolis, Minnesota, USA May 20, 2005. Ms Collier presented a paper on "regulation and Control of Genetically Modified Crops in Sub-Saharan Africa: Food for thought?" The aim of the conference was to discuss the intersection of law, ethics and the life sciences. There were approximately 200 attendees and 30 papers presented.

Evance Kalula. Conference "The Scope of Labour Law" hosted by the Rockefeller Foundation, Bellagio, Italy 23-27 May 2005. Prof Kalula, funded by a NRF grant for Labour Market Regulation project & URC conference grant, presented a paper with Prof Paul Benjamin entitled "Beyond boundaries: redrawing the scope of and the unfinished business of labour law in South Africa and the SADC region". This was a high level academic debate focusing on critical issues concerning scope of labour law in the context of globalisation, 23 participants. High powered exchange of cutting edge views on labour law from leading scholars and experts in labour law.

Kalula, Evance, Rapporteur, 4th IIRA African Regional Congress "A New vision of Industrial Relations for Africa: Harmonising Social and Economic Strategies in a Globalising World", Mauritius, 28-30 November 2005.

Kalula, Evance, Tulia Ackson and Danwood Chirwa, 'Labour Administration and Regional Integration in NEPAD' Third Follow-Up Annual Conference on Labour Administration, Regional Integration and NEPAD, Arlac, 17-21 October, 2005, Mahe Seychelles

3.10 National Conference, Seminars and Workshops

Kalula, Evance and Olivier, Marius. The future of social security in SADC: some critical elements. IRASA Annual Conference, Spier, Stellenbosch, 4-6 October, 2005.

Kalula, Evance; Carolus, Desmoreen and Seyuba, Mishinga, 'The Normative Framework; Norway/ RSA Comparative Social Security Project, Workshop, University of Johannesburg, May 2005.

CICLASS Core Group Meeting & Workshop, University of Johannesburg, 5-6 December 2005.

Paper delivered by Mishinga - Norway/SA project?

4. MISCELLANEOUS ACTIVITIES

4.1 Interns

Ahmed Ghappour and Waleed Nassar, law students from NYU undertook a ten week internship with the Institute from May to August 2005.

4.2 Book Launch - *Sexual Harassment in the Workplace - Law, policies and processes*

On Thursday 30th June 2005 the book launch of *Sexual Harassment in the Workplace: Law, Policies and Processes*, of which Rochelle le Roux is a co-author, was held at the offices of Routledge Modise Moss Morris Attorneys in Sandton.

Co-authored by Alan Rycroft, Thandi Orleyn and Rochelle le Roux and published by LexisNexis Butterworths, *Sexual Harassment in the Workplace: Law, Policies and Processes*, is the only South African book to focus specifically on sexual harassment in the workplace. The book follows in the wake of a number of groundbreaking judgments from both the civil and labour courts which confirm the liability of employers for

sexual harassment in the workplace, both in terms of the common law and the Employment Equity Act. The book is well-timed and deals with the upcoming Code of Good Practice on the Handling of Sexual Harassment Cases which is to be published by NEDLAC during July 2005.

Recognising that sexual harassment is of legal concern, but also a practical problem, the authors have structured the book, not only to deal with the legal issues in defining sexual harassment, vicarious liability and the interpretation of statute, but also to offer practical guidance on good workplace practices and procedures. As a result the book examines the complex legal issues around sexual harassment in the workplace in a manner that will appeal not only to legal practitioners but also to human resource managers, industrial relations managers and employment equity officers who are often the first to deal with employees' claims of sexual harassment in the workplace.

In the key note address, Judge Mahomed Navsa, commented on the dearth of academic material in this regard in South Africa and commended the book as one which all males should in fact read. In the foreword to *Sexual Harassment in the Workplace: Law, Policies and Processes* Justice Yvonne Mokgoro had the following to say:

'A work such as this will become an invaluable resource for enhancing awareness and understanding of sexual harassment law, including its development through the cases; its psycho-social impact on victims in the workplace dynamic; the procedure to follow in response and best practices in managing it. The book will be a valuable tool not only for legal practitioners in the field of labour law. It is equally a guide for line managers and human resources professionals, employees, male and female alike, arbitrators and mediators and presiding officers.'

The sizeable audience were told how a book launch in June would not have been possible but for the role played by Rochelle le Roux. According to her grateful co-authors, Rochelle handled their contributions in an 'efficient' and 'meticulous' way and played the part of 'task-master' in keeping the project on track, so much so that the book went to print way before the anticipated date and was ready for distribution well before the launch date.

A Cape Town launch was held on 1 September 2005 at the Law Faculty, the guest speaker was the Hon. Ms Justice Roseni Allie.

5. SOCIAL RESPONSIVENESS AND CONSULTATION SERVICES

5.1 Institute Conferences, Seminars and Workshops

Southern Africa Conference on the Tripartite Development of Indicators for Conditions of Work. HRI/DOL Cooperative Agreement NI. E-9-K-2-0089. University of Cape Town 20-21 January 2005.

The conference, held in collaboration with the Geneva based Hagen Research International, discussed papers covering four countries. Botswana, Lesotho, Namibia and South Africa. The main aim was to measure compliance with ILO and other labour standards relating to three main areas of conditions of work, namely minimum wages, occupational health and safety and working time.

Seminar with UWC and University of Stellenbosch

Ten Years of the LRA. 31 March - 1 April 2005, Faculty of Law University of Stellenbosch to commemorate the first ten years of the LRA. The conference took place at Stellenbosch Law Faculty's historic "Ou Hoofgebou". It was a prestigious event attended by leading members of the profession from South Africa and internationally. Keynote papers were delivered by participants in the drafting process of the Act followed by responses from experts involved in its subsequent application.

18th Annual Labour Law Conference "Brokering a Fair Deal - Insights from key role players" in conjunction with University of KwaZulu-Natal and Centre of Applied Legal Studies, University of Witwatersrand. Sandton Convention Centre, 29 June - 1 July 2005. Sponsored by LexisNexis Butterworths.

Seminar "Labour Law Update"

Presented by Rochelle le Roux with Professor Halton Cheadle, 27 July 2005 sponsored by the Professional Legal Education. Attended by 20 practitioners.

Seminar on Fry's Metal: What are the implications for organised labour?

Took place on 4 August, presented by Jan Theron and John McRobert.
Over 30 participants.

Seminar on Employment Equity in the International Context

Took place on 12th October, presented by Professor Harish Jain (Donald Gordon Visiting Professor at the Graduate School of Business, University of Cape Town and Professor Emeritus of Human Resources and Labour Relations at the MGD School of Business at McMaster University, Canada). 28 participants.

5.2 Christie, Sarah

- Appointed member of the World Bank Administrative Tribunal. First session in London, May 2003.
- Continues to arbitrate and compile training material for CCMA and bargaining council conciliators and arbitrators.

5.3 Godfrey, Shane

- Member, Editorial Committee, *Law, Democracy & Development Journal*.

5.4 Kalula, Evance

- Chair, South African Employment Conditions Commission.
- Consultant to the ILO/Swiss Project to Advance Social Partnership in Promoting Labour Peace in Southern Africa.
- Member and Chair, Editorial Committee, *Acta Juridica*.
- Member, Editorial Committee, South African Journal of Labour Relations.
- ILO Expert, Zanzibar Labour Law Reform Committee
- Member, SADC Social Security Code Drafting Team
- Member, Editorial Board, Industrial Journal of Discrimination and the Law.
- Member, Editorial Committee, *Law, Democracy & Development Journal*.
- Member, Editorial Committee, *Social Dynamics*.
- Member, Advisory Reference Group, Employment Equity in the Tertiary Education Sector Project, Centre for International and Comparative Labour and Social Security Law, University of Stellenbosch.

- Member, Executive Committee, International Industrial Relations Association.
- NRF Panellist

5.5 Le Roux, Rochelle

- Convenor, Certificate Course in Labour Law
- Secretary, Sports Law Association of South Africa
- Convenor, Annual Labour Law Conference (Butterworths LexisNexis)
- Editorial Board - *International Sports Law Journal*
- Curriculum development
- Workshops on sexual harassment
- Open Democracy Advice Centre - Workshop on "Whistleblowing" in October at Zevenwacht, Stellenbosch. Attended by the Public Protector, labour and other stakeholders. Resulted in interview on SABC 2 news.
- FMR Book Programme. Presentation on essence of book on sexual harassment in the workplace, 20 September Cape Town. Radio audience.
- Retenskup: RSG radio presentation. Debate on sexual harassment 12 October.
- Investigation Report - Weights Gym and Sports Administration, July - October 2005. Organised by the Student Development and Services Department. The activity included a series of interviews and writing of a report in order to establish allegations of malpractices.
- Consulted with Drugfree Institute on amendments to en** legislation.
- Headed a one person commission of enquiry at the request of Student Development and Services Department. It investigated and prepared a report on the alleged use of prohibited substances at Weights Gym, UCT.
- Tasked by the Vice Chancellor to assess and make recommendations on UCT's current sexual harassment policies.

5.6 Theron, Jan.

- Consultant to the Women on Farms Project (Stellenbosch) on labour rights of casual, seasonal and contract workers.
- Consultant to the Department of Trade and Industry on co-operative legislation.

- Consultant to the National Co-operative Association of SA on co-operative policy and legislation.
- Consultant to the Environmental Monitoring Group, Observatory, on co-operatives for disadvantaged small farmers.
- Consultant to WIEGO, an international research network on labour law and the informal economy.

6. TEACHING

6.1. General

The Institute is responsible for convening and teaching the following courses in 2005:

CML513H - Labour Law (LLB)

CML502X - Research Focus Group. Law, Development, Labour & Social Policy

CML613S - Collective Bargaining and Strike Labour Law

CML616F - International and Comparative Labour Law

CML622S - Social Security

CML631S - Conciliation and Arbitration

CML632F - Labour Economics (not offered in 2005)

CML635S - Sports Law (not offered in 2005)

CML651F - Individual Employment Law

6.2 Curriculum development

Mis Rochelle le Roux convened and hosted a colloquium of lecturers teaching labour law. Teachers came from UKZN, Potchefstroom, Wits and UWC in an attempt to identify and resolve teaching problems at masters level. This activity will continue in 2006.

6.3 Postgraduate Courses

6.3.1 Postgraduate Diploma in Law (Employment Law)

Topics included in this course are: employment law in the changing world of work; labour law under the new Constitution; equality and discrimination in the workplace; collective bargaining; industrial action; dismissals; workplace co-operation and transformation; conciliating and arbitration at the CCMA and skills development.

6.3.2 Postgraduate Diploma in Law (Conciliation and Arbitration)

The course consists of two modules. Although the course was developed concurrently with the regional course (see below), the focus is on dispute resolution rather than broader labour law issues. Each module comprises evening lectures of approximately 3 hours once a week plus a Saturday morning workshop. The modules can also be taken as a course towards the LLM/M.Phil programme. The course has attracted a number of practitioners, including those in ADR, legal practice and human resources and industrial relations.

6.3.3 Postgraduate Diploma in Mediation and Arbitration, Tanzania

The Institute has been involved in setting up a training programme for mediators and arbitrators based on the SADC PG Diploma. Professor Evance Kalula serves as an adviser to the Labour Department in Tanzania and has assisted in devising and teaching of the programme.

6.3.4 Social Security

Professor Kalula taught on two social security programmes offered by the University of Johannesburg. The programmes are the postgraduate diploma on social security which is offered to South African students and those from the SADC region. The second programme is the certificate course on social security offered to the Department of Social Development in all provinces in South Africa.

6.4 Undergraduate Teaching

Staff were involved in teaching undergraduate and graduate courses in labour law and social security.

Rochelle Le Roux, Debbie Collier and Randall van Voore teach the LLB Labour Law (CML513H). Professor Kalula teaches the LLB Research Focus Group course on Development, Labour Law and Policy (CML502X).

6.5 Certificate Courses

6.5.1 Labour Law

This course, initiated in 1999, continues to attract many students: trade unionists, staff from the Department of Labour, and a range of practitioners. The focus is on core labour legislation: the Labour Relations Act, Basic Conditions of Employment Act, Employment Equity Act and the Skills Development Act. The course also covers various aspects of practical labour law application in the workplace, including dismissal, unfair labour practices, collective bargaining, industrial action, CCMA and Labour Court procedures, and drafting an employment equity plan.

This course continues to be popular. In 2005 it was run once (2 April - 4 June) a total number of 22 students registered for the course which took place on Saturday mornings. On-going revision of course structure and teaching materials ensures up-to-date courses are presented.

6.5.2 Sports Law

The Institute, through the efforts of Rochelle le Roux, takes a part in the Certificate Course in Sports Law that is offered by the Law Faculty's Professional Education Project. In 2005 the course was offered during September and participants registered

6. VISITORS TO THE INSTITUTE

The Hon. Ms Justice Roseni Allie

High Court, Cape Town

Professor Harry Arthurs

Professor of Law and President Emeritus of York University,
Toronto, Canada

Mr Colin Fenwick

Director, Centre for Employment Law, Melbourne Law School,
University of Melbourne, Australia.

Professor Bob Hepple

Master, Clare College, Cambridge, UK and Honorary Professor,
Faculty of Law, University of Cape Town.

Professor Klaus Huemmerich

Labour lawyer and Professor at the University of Konstanz,
Germany

Professor Stein Kunnle

Chair, Comparative Politics, University of Bergen, Norway

Ms Isabel Manley

Solicitor, Chairperson Employment Tribunal, UK.

Mr Charles Nupen

Chief Technical Adviser, ILO/Swiss Project, Pretoria.

Professor Marius Olivier

Director, Centre for International and Comparative Labour and
Social Security Law, Rand Afrikaans University.

Professor Harish Jain

Donald Gordon Visiting Professor at the Graduate School of
Business, University of Cape Town and Professor Emeritus of
Human Resources and Labour Relations at the MGD School of
Business at McMaster University, Canada.

7. FUNDING AND FINANCES

The Institute has largely relied on a few key funders over the past two years. Given the more competitive funding environment, and UCT's push to implement cost recovery systems for research institutions, we are trying to develop new funding sources, and develop longer-term clusters of core research projects with multi-year funding. If some new initiatives are successful, we will see the development of new projects and a renewed emphasis on research activities and publications.

We are particularly grateful to the following funders for their support in recent years:

Federatie Nederlandse Vakbeweging (FNV)

Friedrich Ebert Stiftung (FES)

National Research Foundation (NRF)
University Research Committee (UCT)
Department of Trade and Industry (DTI)
Department of Labour
International Labour Organisation (ILO)

Despite the above funding, the Institute remains responsible for raising its own operation capital. In this regard the certificate course in labour law (see above) and the Annual Labour Law Conference (see above) are the major sources.

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