



Institute of Development & Labour Law

**ANNUAL REPORT
2007**

UCT Faculty of Law



Contents

Message from the Acting Director	1
History of the Institute	3
Mission and Goals of the Institute	3
Activities in the Region	4
Advisory Board 2007	4
Staff and Associates 2007	5
Doctoral Graduations 2007	7
PROGRAMMES OF THE INSTITUTE	8
1. RESEARCH AND RESEARCH RELATED ACTIVITIES	8
1.1 Labour Market Regulation in South Africa and the SADC Region	8
1.1.1 SADC labour market regulation	8
1.1.2 Labour law reform in Lesotho and Malawi	8
1.1.3 SADC Core Group	8
1.2 ILO related activities	8
1.3 Sports Law	9
1.4 Social Security	9
1.5 Development	9
2. RESEARCH CONDUCTED BY THE LABOUR AND ENTERPRISE POLICY RESEARCH GROUP (LEP) (FORMERLY THE LABOUR AND ENTERPRISE PROJECT)	10
2.1 Joint project with NALEDI on Decent Work	10
2.2 Collective Bargaining	11
2.3 Paper at Labour Research Service (LRS) Collective Bargaining Workshop	11
2.4 A Book on Collective Bargaining	12
2.5 Costing Labour Regulation: The World Bank's Doing Business Survey	12
2.6 Sectoral Studies for Human Sciences Research Council (HSRC)	12
2.7 Cooperatives	13
2.8 Temporary Employment Agencies	13
2.9 International Institute for Labour Studies (IILS)	13
2.10 Nordic-Africa Institute Conference on Informalisation	13
2.11 DITSELA Workshop	14
3. POST-DOCTORAL DEVELOPMENT	14

4.	PUBLICATIONS (Research Output)	15
4.1	Monographs and Occasional Papers published by the Institute	15
4.2	Articles in peer reviewed journals	15
4.3	Books	16
4.4	Chapters in Books	16
4.5	Peer Reviewed Published Conference Proceedings	17
4.6	Non Peer Reviewed Published Conference Proceedings	17
4.7	PhD/LLM/Post Graduate Diploma Dissertations Passed for Higher Degrees	17
	4.7.1 PhD	17
	4.7.2 LLM and Post Graduate Diploma Dissertations	17
4.8	Unrefereed Works of a Popular Nature and Policy Documents	18
4.9	International Conferences and Workshops Attended	18
4.10	National Conferences, Seminars and Workshops	19
5.	MISCELLANEOUS ACTIVITIES	19
5.1	An address by Professor Clive Thompson	19
6.	SOCIAL RESPONSIVENESS AND CONSULTATION SERVICES	20
6.1	Institute Conferences, Seminars and Workshops	20
	6.1.1 20 th Annual Labour Law Conference	20
6.2	Social responsiveness of IDLL Staff and Associates	20
	6.2.1 Benjamin, Paul	20
	6.2.2 Cheadle, Halton	20
	6.2.3 Christie, Sarah	21
	6.2.4 Collier, Debbie	21
	6.2.5 Godfrey, Shane	22
	6.2.6 Kalula, Evance	22
	6.2.7 Le Roux, Rochelle	22
	6.2.8 Theron, Jan	23
	6.2.9 Visser, Margaret	23
7.	TEACHING	24
7.1.	General	24
7.2	Postgraduate Courses (School for Advanced Legal Studies)	24
7.3	Undergraduate Teaching	25
7.4	Labour Law Certificate Courses	25
7.5	Curriculum development and review in SADC region	25

9.	FUNDING AND FINANCES	27
10.	HOW TO CONTACT US	27

MESSAGE FROM THE ACTING DIRECTOR

In 2007 the Institute was handed to me, as caretaker, in order that the Director, Professor Evance Kalula, and the Deputy Director, Associate Professor Rochelle Le Roux, could pursue their respective research interests during a period of sabbatical. Both continued to be productive during the period under review and, as usual, the Annual Report reflects a busy year.

The research and research related activities of members and associates of the Institute continued on a number of fronts reflecting the Institute's relevance and involvement in law reform and policy at all levels within the South African context; in the SADC region; and at International Labour Organisation (ILO) level.

Two auspicious events were hosted by the Institute during 2007, organised by Professor Kalula. The first, the *Decent work and the South African labour market* workshop, was sponsored by the International Institute for Labour Studies (IILS) of Geneva and took place in April. This was followed, in September, by the *South African social welfare state* colloquium, sponsored by Oxford University. Both events stimulated intense debate that will advance the cause of labour in, and beyond, the South African context.

The LEP remains a key research arm of the Institute. In recent years LEP has come to be regarded as one of the leading bodies shaping the national debate on non-standard work and informalisation, and in the year under review, LEP was commissioned to undertake research by, among others, the Department of Labour on the state of collective bargaining in South Africa and by the HSRC to assist in developing an appropriate response to skills shortages in the metal and legal sectors.

As the report reflects, social responsiveness is high on the Institute's agenda which is evident from, among other things, the curriculum development and review undertaken on the African continent by Professor Kalula. Also reflecting social responsiveness is the Institute's continued key involvement as an organising partner of the Annual Labour Law Conference. In 2007 the 20th conference, titled *Transformation: Expectations and Constraint*, was hosted at the Sandton Convention Centre in July, attracting more than 800 delegates.

On the teaching front, the Institute was extremely pleased to welcome Professor Paul Benjamin to the Institute's teaching staff on a more permanent basis. Professor Benjamin has assumed responsibility for teaching collective bargaining and strike law at post-graduate level. In 2007 the Institute was also pleased that Professors Halton Cheadle and Clive Thompson could fill the breach in teaching international and comparative labour law during Professor Kalula's sabbatical period.

In so far as the administration of the Institute's office is concerned, in 2007 the Institute welcomed Ms Faldielah Khan to the position of Administrative Assistant, and wished Ms Sue Wright well with her new appointment within the Faculty. Ms Wright, through her role as administrator for LEP, remains linked to the Institute.

Other moments of mention in the year under review include the increased output of the Institute's monograph series; and, on a more sombre note, the tragic and senseless death of Professor Mike Larkin, the Head of the Institute's home, the Commercial Law Department, in November 2007. Professor Larkin was a keen supporter and promoter of the Institute and will be sorely missed.

In so far as the immediate future is concerned, and in line with the outcomes of the recent external review of the Institute, the strategy of the Institute will be to reinforce existing linkages and to seek new linkages in order to strengthen the Institute's research, development and capacity-building profile. We look forward to reporting on the Institute's progress in this regard in the near future.

Debbie Collier
ACTING DIRECTOR (2007)

HISTORY OF THE INSTITUTE

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.

In 2006 the Institute along with other research entities within the Faculty of Law underwent a process of external review under the auspices of the University Research Committee (URC). The report of the external reviewers reflected positively on the work of the Institute and the Institute was extremely encouraged by the outcome.

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 research, training, and extension services in South Africa and the broader 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, and 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 Committee.

ACTIVITIES IN THE REGION

In 1992, the Labour Law Unit's work 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. These projects and other work have allowed us to develop stronger links with other universities, research centres, NGOs, and unions in the region. The most recent work in the region is set out below under *Research and Research Related activities*.

ADVISORY BOARD 2007

Prof HM Corder (Chair)
Ms D Collier (Acting Director)
Prof ER Kalula
A/Prof R le Roux
Prof Judge D Davis
Prof Darcy du Toit
Mr Naleen Jeram
Dr Taki Madima
Prof JGB Maree
Ms T Orleyn-Sekete
Ms Sahra Rykklief
Dr M Sienaert
Mr J Theron
Prof DP Visser

STAFF AND ASSOCIATES 2007

Teaching Staff 2007:

Professor Evance Kalula:

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

Associate Professor Rochelle Le Roux:

Associate Professor and Deputy Director of the Institute (2002 –
2008)
employment discrimination; sports law

Debbie Collier:

Acting Director of the Institute (2007)
workplace privacy; agricultural policy

Professor Paul Benjamin:

Collective bargaining and strike law; health and safety; minimum
labour standards; regulatory framework

Professor Halton Cheadle (Department of Public Law):

Constitutional law, labour law and legal writing

Professor Clive Thompson:

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

Randall van Voore:

LLB, LL.M and PGDip programmes and Certificate Courses;
employment equity

Faculty of Law Academic Staff Associated with the Institute:

Professor Danie Visser:

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

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

Ms Margareet Visser:
Researcher (from September 2006)

Administrative Staff:

Ms Sue Wright:
Administrator (Until April 2007; currently Labour and Enterprise
Project)

Mr Mongezi Mbebe:
Programme Assistant April – August 2007

Ms Faldielah Khan:
Administrative Assistant from September 2007

Honorary Research Associate:

Dr Neville Rubin:
International labour standards; law and development

Adjunct Professors:

Charles Nupen:
Dispute resolution; social dialogue

Thandi Orleyn:
Dispute resolution

Clive Thompson:
Collective bargaining; international labour law

Associates of the Institute:

Ms Rachel Banda
Mr Craig Bosch
Mr Andrew Breetzke
Ms Sarah Christie
Dr Marlea Clarke
Prof Darcy du Toit
Mr Colin Fenwick
Dr Simona Gallo
Mr Graham Giles
Mr Henry Hagen
Ms Isabel Manley
Ms Mothepa Ndumo
Prof Bonaventure Rutinwa
Mr David Woolfrey

Research Students:

Ms Tulia Ackson

Ms Mpfariseni Budeli

Mr Knowledge Chirenje

Mr Mudiwa Gwisai

Mr Kananelo Everrit Mosito

Ms Yondela Ndema [co supervised by Prof Kalula]

Mr Emmanuel M Ntummy

Ms Anne Scheithauer

DOCTORAL GRADUATIONS 2007

Ms Tulia Ackson

Ms Mpfariseni Budeli

Ms Yondela Ndema

Ms 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 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.

1.1.2 Labour law reform in Lesotho and Malawi

The Institute, through Professor Evance Kalula and David Woolfrey, are currently advising the ILO/ILSSA project on labour law review in Malawi. Professors Paul Benjamin and Evance Kalula also undertook review of and drafting of labour legislation in the Kingdom of Lesotho. Proposed new bills to reform labour legislation in both countries are nearing completion.

1.1.3 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.

1.2 ILO related activities

Professors Kalula, Cheadle and Benjamin are involved in research for the purposes of their engagement in numerous ILO related activities. Professor Cheadle is a member of the committee of experts appointed to review government reports on ratified conventions. In 2007 Professor Benjamin served as the ILO resource person in a workshop on the Labour Contracts Act and the draft Mediation and Arbitration of Labour Disputes Act in Beijing and as a member of the Experts Group on Employment Relationship, appointed to prepare the Guide to ILO Employment Relationship Recommendation 198 of 2006 (2006 / 2007).

In 2007, Professor Kalula and David Woolfrey, an associate of the Institute, were commissioned by the ILO to draft an initial policy which

would form the basis of the proposed new ILO Recommendation on HIV and AIDS. The draft was duly completed and submitted in January, 2008.

Professor Kalula is also a member the reference group which developing a programme on Employment and Labour Studies commissioned by the African Regional Labour Administration Centre (ARLAC), a policy and training agency of the ILO for English speaking African countries. The programme is a postgraduate and masters' degree course for labour officials in the twenty ARLAC countries.

1.3 Sports Law

The Institute maintains an interest in Sports Law through the Sports Law Certificate Course offered by the Law Faculty's Law@work: Professional Development Project and through publication of relevant articles by Rochelle le Roux.

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 aims to develop and research 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.

1.5 Development

Debbie Collier is increasingly becoming involved in research, under the banner of development, in the agricultural sector and is seeking to make strategic links in this regard. The research goes beyond employment issues looking more broadly at the impact of law and policy on agriculture with a focus on property rights and property rights in plant genetic resources.

2. RESEARCH CONDUCTED BY THE LABOUR AND ENTERPRISE POLICY RESEARCH GROUP (LEP) (FORMERLY THE LABOUR AND ENTERPRISE PROJECT)

Although located in the Institute of Development and Labour Law at the University of Cape Town ('the University'), LEP operates to a large degree autonomously. The University does not contribute directly to the income of LEP, although it does contribute indirectly in a number of ways: by means of an incentive for publications published by LEP in accredited journals; waiver of research levies; by means of research grants for specific LEP research projects; and by means of a subsidy toward the salary of an additional researcher. It also provides LEP with an office and access to telephone and the internet, for which, however, LEP indirectly pays.

Since its inception LEP has defined itself, and been funded, as a project. Over this time it has built up, and is now associated with, a body of knowledge that is and should remain an important resource for trade unions, trade unions support organization, government departments, and the NGO community, as well as the academic community. Believing that it is important to maintain and give institutional form to this resource, LEP has decided to adopt the title research group rather than project, while retaining the acronym LEP. Accordingly LEP now stands for the Labour and Enterprise Policy Research Group.

LEPs work, reflected below, is an integral part of the University of Cape Town's commitment to addressing the challenges facing our society.

LEP has now established a reputation as one of the leading institutions doing research on non-standard work and informalisation, and concepts developed by LEP have shaped and continue to shape the national debate.

It is particularly encouraging that LEP's research is now receiving the attention of organised labour. This suggests that work initiated years ago is to bear fruit.

2.1 Joint project with NALEDI on Decent Work

One indication that organized labour is willing to engage with the issues raised by LEP's research has been the joint project undertaken with Naledi on decent work. In 2007, Naledi, the research arm of COSATU, invited LEP to submit a joint research proposal to the Employment Promotion Programme (EPP). EPP is composed of representatives of organised labour, organised business and government (through the office of the Presidency).

The proposal, which was in large part conceptualised by LEP, was to do case studies of six sectors of the economy in which jobs had supposedly

been created: call-centres, cleaning, security, retail, construction and food manufacturing. The aim of the case studies was to assess to what extent decent work standards had been complied with. A further component involved the analysis of labour market survey data to measure how much of the growth in employment comprised informal jobs.

The first draft report indicates that there is a significant decent work deficit in South African workplaces, and corroborates earlier work done by LEP on the rise of labour broking (agency work) and the prevalence of externalisation. It also indicates that notwithstanding South Africa's labour legislation and the presence of trade unions, informalisation from above is far advanced. Consequently there are serious inequities in formal workplaces. There are workers employed by agencies, for example, doing equivalent work to unionised workers but earning less than half the wage.

Hopefully this report will galvanise trade unions into addressing the issues identified as well as influencing policy reforms.

2.2 Collective Bargaining

In 2007 LEP was commissioned to undertake five studies for the Department of Labour, one of which was on the state of collective bargaining in South Africa.

This research has since been submitted and has now been published as a working paper of the University's Development Policy Research Unit (DPRU), which was responsible for managing the research undertaken for the Department.

The report analyses the problems that confront the bargaining council system in South Africa, particularly with the extension of bargaining council agreements, as well as collective bargaining taking place outside the bargaining council system. It proposed a number of far reaching reforms of the system, and specifically that government adopt a more permissive attitude towards thresholds for extending collective bargaining agreements. At the same time it cautions against ill-considered labour market 'reforms' that advocate scrapping the extension of such agreements.

On the whole the research has been welcomed by the trade union movement and bargaining councils, as laying the basis for a more informed debate on the future of collective bargaining.

2.3 Paper at Labour Research Services (LRS) Collective Bargaining Workshop

The LRS is an NGO providing information services to trade unions. A further indication of the relevance of LEP's research to trade unions is

that Shane Godfrey was invited to present a paper on trends in collective bargaining at their April Collective Bargaining Workshop, attended by trade unions from all over the country. This paper was subsequently published in the LRS's *Decent Work for Development: the Expanded Public Works Programme (EPWP) - lessons from five projects in the Western Cape, South Africa* (see publications below for full reference).

2.4 A Book on Collective Bargaining

It has been a long standing aim of LEP to publish a book on collective bargaining, consolidating the work it has done in this area over the years. As a result of efforts made in 2007 three members of LEP (Shane Godfrey, Jan Theron and Johann Maree) together with Professor Darcy Du Toit of University of Western Cape, have now signed a contract with the publisher Juta's to produce such a book. A draft of the book will be finalised in the course of 2008. The rationale for the book is to bring this research more visibly into the public domain and to stimulate debate.

2.5 Costing Labour Regulation: The World Bank's Doing Business Survey

Over recent years it has become increasingly clear that one of the institutional pressures on the South African government to remove what are seen as onerous labour regulations has been the World Bank, through its Doing Business Survey. The Doing Business Survey purports to measure the cost of doing business in the different countries of the globe, by means of an objective methodology.

LEP decided to investigate how this methodology was applied in practice, in the case of South Africa, as well as similar studies that seek to cost labour regulation. A proposal was submitted to the Department of Labour, and Professor Paul Benjamin enlisted as an associate.

The most important findings of this study were that the methodology utilised by the World Bank was fundamentally flawed. Moreover in the case of South Africa the scores arrived at were incorrect. Accordingly, South Africa's ranking in terms of this survey was also incorrect. COSATU has subsequently used this study to make representations at an international level regarding these surveys, with the international trade union centre and at the ILO.

2.6 Sectoral Studies for Human Sciences Research Council (HSRC)

LEP has undertaken two sectoral studies for the HSRC, to identify skills shortages (referred to as scarce skills) and to assist in the development of plans to overcome them.

The first study, undertaken by Johann Maree, Shane Godfrey and a research associate, Paul Lundall, was in the metal sector. A final report

was also submitted to HSRC towards the end of 2007 and is due to be published. It is also intended to present a paper based on this study at the South African Sociological Association Conference in 2008.

The second study, undertaken by Shane Godfrey, concerned the legal sector. A final report was submitted to the HSRC at the end of 2007, and a shorter paper on the report is to be published by HSRC.

2.7 Cooperatives

As discussed in the 2006 annual report, a small grant from the University to do research on case studies on cooperatives in the Western Cape was supplemented by a grant from the DGRV (German Cooperative Federation), to investigate cooperatives in the Eastern Cape.

In April 2007 Jan Theron presented a paper encapsulating certain findings from the Western Cape study at a conference on informalisation in Africa, organized by the Nordic Africa Institute in Uppsala, Sweden.

In May 2007 LEP visited cooperatives in the Eastern Cape. The outcome of this visit was an article published in the *SA Labour Bulletin*.

2.8 Temporary Employment Agencies

The outcome of Jan Theron's collaboration with a German researcher on temporary employment agencies in Germany and South Africa was presented at the European Conference of the International Industrial Relations Association (IIRA) at Manchester in September 2007.

Temporary employment agencies (or temporary employment services, as they are known in South Africa) continue to be an important area for research for LEP. The inappropriate manner in which these agencies are regulated was highlighted in previous research, and is the subject of one of a number of recommendations in a 2004 report drafted by Jan Theron and Shane Godfrey that is still being debated at NEDLAC.

2.9 International Institute for Labour Studies (IILS)

The IILS commissioned Jan Theron and Shane Godfrey to prepare a paper for a workshop in Cape Town in April 2007, under its auspices. The theme of the Workshop was "*A Decent Work Research Agenda for South Africa*". The IILS is to hold similar workshops in Brazil, India and China and possibly a joint workshop for academics and researchers of all these countries.

2.10 Nordic-Africa Institute Conference on Informalisation

Jan Theron was invited to submit a paper to a conference of the Nordic-Africa Institute, in Uppsala, Sweden, on '*Informalising economies and new*

organising strategies in Africa. The University of Cape Town agreed to fund his travel costs to attend the conference which took place in April 2007. The paper he presented is entitled '*Informalisation from above, informalisation from below: the options for organisations*' and incorporates some of the findings from LEP research on cooperatives.

2.11 DITSELA Workshop

In February 2007, Jan presented a paper, and attended a weekend seminar convened by DITSELA, the institution established for worker training. The participants were shop stewards and trade union officials in the Western Cape, and the paper is entitled '*Who's in and Who's out: labour law and those excluded from its protection*'. The paper is to be published in the journal '*Law Democracy and Development*'.

3. POST-DOCTORAL DEVELOPMENT

In 2007 the Institute appointed a post-doctoral researcher, Dr Ada Ordor Okoye. Dr Okoye's research is in the area of legal regulation of civil society particularly non-governmental organizations. Her post-doctoral work is an extension of her doctoral research which focused on Nigeria and South Africa.

4. PUBLICATIONS

Research Output

4.1 Monographs and Occasional Papers published by the Institute

M'Paradzi, A.S. & Kalula, E.R. 2007. Black Economic Empowerment in South Africa: a critical appraisal. Cape Town: Institute of Development and Labour Law, Development and Labour Monograph Series, 1-2007, 1-99. ISBN 9780799223347.

Scheithauer, A. & Kalula, E.R. 2007. Employee Polygraph Testing in the South African Workplace. Institute of Development and Labour Law, Development and Labour Monograph Series, 2-2007, 1-64. ISBN 9780799223378.

Nkowani, Z, 2007. Occupational Health and Safety in the SADC Region: Exploring an economic approach. Institute of Development and Labour Law, Development and Labour Monograph Series (Occasional Paper 1/2007) ISBN 978 0 7992 2332 3.

4.2 Articles in peer reviewed journals

Benjamin, P. 2007. Friend or foe? The impact of judicial decisions on the operation of the CCMA. Industrial Law Journal Including Industrial Law Reports, 28: 1-42.

Christie, S. 2007. Are sex workers "employees"? Industrial Law Journal Including Industrial Law Reports, 28: 804-812.

Clarke, M. 2007. This just isn't sustainable: precarious employment, stress and workers' health.. International Journal of Law and Psychiatry, 30(4-5): 311-326.

Godfrey, S.D. Bamu, P & Schuckman J. 2007. The National Credit Act: Will it increase access to credit for small and micro enterprises? Law, Democracy and Development, 11: 33-51.

Jeram, N. 2007. Interest payable on the late transfer of withdrawal benefits. Industrial Law Journal Including Industrial Law Reports, 28: 86-90.

Le Roux, R. 2007. The worker: towards labour laws new vocabulary. The South African Law Journal, 124(3): 469-478.

Le Roux, R. 2007. Book Review. Essential Social Security Law. 9(8) Stellenbosch Law Review, 380-381,

Theron, J.P. 2007. Remember me when it goes well for you -what role can South African worker co-ops play? *South African Labour Bulletin*, 31: 13-15.

Theron, J.P. 2007. Who's in and who's out: labour law and those excluded from its protection. *Law, Democracy and Development*, Special Edition (2007): 25-38.

4.3 Books

Benjamin, P. & Theron, J.P. 2007. *Costing, Comparing and Competing: Developing an approach to the benchmarking of labour market regulation*. Cape Town: University of Cape Town. 1-54. ISBN 9781920055578.

M'Paradzi, A.S. & Kalula, E.R. 2007. *Black Economic Empowerment in South Africa: a critical appraisal*. Cape Town: Institute of Development and Labour Law, Development and Labour Monograph Series, 1-2007, 1-99. ISBN 9780799223347.

Scheithauer, A. & Kalula, E.R. 2007. *Employee Polygraph Testing in the South African Workplace*. Institute of Development and Labour Law, Development and Labour Monograph Series, 2-2007, 1-64. ISBN 9780799223378.

4.4 Chapters in Books

Godfrey, S.D. & Theron, J.P. 2007. Decent Work for Development: the Expanded Public Works Programme (EPWP) - lessons from five projects in the Western Cape, South Africa. In Labour Research Services (eds), *Bargaining Indicators 2007 - A collective bargaining omnibus*: 135-170. Vol 11. Cape Town: Labour Research Service. ISBN 1 874893373.

Jeram, N. 2007. 9.15 Disposition of death benefits: Section 37C. In G.L. Marx and K. Hanekom eds), *The Manual on South African Retirement Funds and other Employee Benefits*: 175-225. Durban: LexisNexis Butterworths. ISBN 9780409023350.

Le Roux, R. 2007. Employment. In F. du Bois (eds), *Wille's Principles of South African Law*: 924-940. Cape Town: Juta & Co. ISBN 139780702165511.

Theron, J.P. 2006. Membership based organizations of the poor: the South African tradition. In Martha Chen, Renana Jhabvala et al (eds), *Membership Based Organizations of the Poor*: 240-260, New York: Routledges. ISBN 139780415770736.

Thompson, C.R. 2007. Collective Bargaining. In Cheadle, Thompson, Le Roux & Vaniekerk (eds) Current Labour Law, LexisNexis, Durban, 41-75. ISBN 9780409105339

Thompson, C.R. 2007. Restructuring and Retrenchment. Cheadle, Thompson, Le Roux & Vaniekerk (eds) Current Labour Law, LexisNexis, Durban, 77-112. ISBN 9780409105339.

4.5 Peer Reviewed Published Conference Proceedings

Fenwick, C, Kalula, E and Landan, I. Labour Law: A Southern African Perspective , International Institute for Labour Studies, Geneva, 2007.

4.6 Non Peer Reviewed Published Conference Proceedings

Kalula, E and M'Paradzi, M. 2007. BEE: Can there be trickle-down benefits for the workers? Proceedings of LexisNexis Butterworths 20th Annual Labour Law Conference, Sandton Convention Centre, DC Rom.

Le Roux, R. 2007. When does a continuing employment relationship become intolerable? Proceedings of LexisNexis Butterworths 20th Annual Labour Law Conference, Sandton Convention Centre, DC Rom.

4.7 PhD / LLM / Post Graduate Diploma Dissertations Passed for Higher Degrees

4.7.1 PhD

Ackson, T. 2007. Social Security law and policy reform in Tanzania with reflections on the South African experience. Supervised by E.R. Kalula.

Budeli, Mpariseni, 2007. Freedom of Association and trade unionism in South Africa: From apartheid to the democratic constitutional order. Supervised by E.R. Kalula & M.C. Okpaluba.

Ndema, Y. 2007. A critical analysis of the law on sexual harassment in the workplace in South Africa in a comparative perspective. Supervised by J. Burchell and E.R. Kalula.

Scheithauer, A. 2007. Polygraph testing in the workplace in South Africa with reflections on the ILO standards, USA and Germany. Supervised by E.R. Kalula.

4.7.2 LLM and Post Graduate Diploma Dissertations

Bakari, Zainab Ally 'Pay Equity: Reassessing gender pay gaps, a comparative analysis of South Africa, India and Tanzania' (2007)

Berkowitz, Ryan 'South African Labour Law: The contrasting Scenarios of the "all or nothing" versus the "win-win" approach' (2007)

Clarence, Carmenita 'Sexual harassment in the workplace (2007)

Davis, Kristofer 'Jurisprudential and Legislative Responses to "Disguised Employment" – an Analysis of the Employee / Independent Contractor Dilemma' (2007)

Mokhethea, Mamaaooa 'Labour dispute settlement: A South African Perspective' (2007)

M'Paradzi, Andrea Sekai 'BEE Basis, Evolution, Evaluation – A Critical Appraisal of Black Economic Empowerment in South Africa' (2007)

Ndiki, Nowethu 'Flexibility in the dispute resolution' (2007)

Nyangane, Thandiwe 'The right to severance pay and employer's obligations: Discussion in light of Irvin & Johnson Ltd v CCM & Others' (2007)

Nyaruhirira, Maurice 'Past Disadvantages of Affirmative Action: Comparative experiences in South Africa, India and Malaysia' (2007)

Prinsloo, Ronel 'Exploring the use of the polygraph test in the workplace and as evidence in labour disputes' (2007)

Setlojoane, Pheta John 'Decent work for all: Its meaning content, social dimensions and SADC policy perspectives' (2007)

4.8 Unrefereed Works of a Popular Nature and Policy Documents

Collier, D. 2007. Access to information: a costly exercise. News & Views. Law Race and Gender Unit, UCT. (to be confirmed)

4.9 International Conferences and Workshops Attended

Professor Evance Kalula was the Forum Activity Facilitator at the conference titled 'World Social Form' which took place from 20 – 25 January 2007. The conference took place in Nairobi, Kenya.

Professor Evance Kalula presented a paper and chaired sessions at the conference titled 'IIRA Asian Regional Congress'. The conference took place from 16 – 18 April 2008 in New Delhi, India.

Debbie Collier presented a paper titled 'Agricultural biotechnology: Exploring Africa's 'traffic-light approach' at the 11th International Conference on Agricultural Biotechnologies: New Frontiers and Products

– Economics, Policies and Science, hosted by the International Consortium on Agricultural Biotechnology Research (ICABR) at Ravello, Italy in July 2007.

Professor Evance Kalula attended the ‘Social Security National Policy Workshop, Madagascar’ as a facilitator of workshop discussion and resource person. The workshop took place from 22 – 24 October 2007 in Antananarivo, Madagascar.

Professor Evance Kalula attended the ‘National Social Security Policy Seminar, Lusaka, Zambia’ as facilitator of seminar discussions and presentations. The seminar took place from 22 – 23 November 2007 in Lusaka, Zambia.

4.10 National Research Conferences, Seminars and Workshops

Professor Evance Kalula organised, chaired and participated in a workshop titled ‘Decent Work and South African Labour Market’ which was sponsored by the International Institute for Labour Studies (IILS), Geneva. The workshop took place from 4-5 April 2007 at the Faculty of Law.

Professor Evance Kalula presented a paper and chaired sessions at a colloquium titled ‘South African Social Welfare State’ which was sponsored by the University of Oxford. The event took place on 18 September 2007 at the Faculty of Law.

Professor Paul Benjamin presented a plenary address titled ‘We can see more clearly now: the emerging picture of the CCMA’ at the SASLAW Annual conference in Cape Town. October 2007.

5. MISCELLANEOUS ACTIVITIES AND EVENTS

5.1 An address by Professor Clive Thompson

During a teaching visit to the Faculty in the first semester of 2007, Professor Clive Thompson agreed to give an address on labour law in the Australian context at an Institute function. The function was extremely well attended and the address by Professor Thompson was well received and sparked much debate among attendees on the role and future of Labour Law.

6. SOCIAL RESPONSIVENESS AND CONSULTATION SERVICES

6.1 Institute Conferences, Seminars and Workshops

6.1.1 20th Annual Labour Law Conference

The conference titled “Transformation: Expectations and Constraints” was hosted by the Institute in conjunction with the University of KwaZulu-Natal and the Centre of Applied Legal Studies, University of Witwatersrand at the Sandton Convention Centre, 4-6 July 2007. LexisNexis Butterworths sponsored the conference. The conference was attended by over 800 delegates and continues to be a popular forum for debating burning labour issues in South Africa. The welcome was rendered by Hon Mr Justice Ray Zondo, Judge President of the Labour Court and the opening address was delivered by The Hon Membathisi Mdladlana, Minister of Labour.

Staff and associates of the Institute that presented papers and participated at the conference include: Evance Kalula (‘BEE: Can there be trickle-down benefits for workers?’); Rochelle le Roux (‘When does a continuing employment relationship become intolerable?’); Randall van Voore (‘Alternative Employment and Right to Severance Pay’) and Ms Sarah Christie who participated on a panel dealing with questions and answers relating to the Basic Conditions of Employment Act.

6.2 Social Responsiveness of IDLL Staff and Associates

6.2.1 Benjamin, Paul

- Extensive ILO activities including membership of Experts Group on the Employment Relationship Recommendation 198/2006 and resource person in several ILO workshops.
- Involved in legislative development and drafting in South Africa including, among others, Basic Conditions of Employment Act and Labour Relations Amendment Act.
- Facilitator: National Economic, Development and Labour Council (NEDLAC): Restructuring of Labour Courts.
- Member of Editorial Board *Industrial Law Journal (ILJ)*.

6.2.2 Cheadle, Halton

- Extensive ILO activities including member of Committee of Experts and technical adviser in the ILO Swiss Project to assist in labour law reform in numerous Southern African countries.

- Involved in legislative development and drafting in South Africa and convenor of the Ministerial Drafting Team to draft the South African Labour Relations Act.
- Member of Editorial Board *Industrial Law Journal (ILJ)*.

6.2.3 Christie, Sarah

- Member of the World Bank Administrative Tribunal. First session in London, (May 2003 to date).
- Consultant (with Chris de Cooker) of the European Space Agency to the European Development Bank for Reconstruction and Development Bank. London, to conduct an assessment of its Grievance and Appeals Process, November 2005 – March 2006.
- Continues to arbitrate and compile training material for CCMA and bargaining council conciliators and arbitrators.
- Tokiso.
- Member of the following bargaining councils
 - Public Service Co-ordinating Bargaining Council.
 - General Public Service Sectoral Bargaining Council.
 - Public Health and Welfare sector Bargaining Council.
 - Safety & Security Sectoral Bargaining Council.
 - Education Labour Relations Council.
 - Motor Industry Bargaining Council.
 - National Bargaining Council for the Road Freight Industry.
 - Statutory Council for the Printing, Newspapers and Packaging Industry.
- Committee member IRASA.
- Trustee Centre for Rural Legal Studies.
- Chair of Board of Directors of Gqwesa, a s21 company trading as Headstart College, Salt River.

6.2.4 Collier, Debbie

- Appointed a member of the South African Law Reform Commission project 25 on statutory law revision of the legislation administered by the Department of Agriculture.
- Associate of the Labour and Enterprise Project
- Co-convenor, Annual Labour Law Conference (LexisNexis Butterworths)
- Editorial board of the IDLL Monograph Series
- Engaged on Project 25 for the purposes of statutory law revision of the legislation administered by the Department of Agriculture.

6.2.5 Godfrey, Shane

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

6.2.6 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, International 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 Chair and Panellist.
- Member, African Regional Labour Administration Centre (ARLAC) Reference Group, Employment and Labour Studies Programme.
- Appointed a member of the South African Law Reform Commission project 25 on statutory law revision of the legislation administered by the Department of Labour.

6.2.7 Le Roux, Rochelle

- Appointed a member of the South African Law Reform Commission project 25 on statutory law revision of the legislation administered by the Department of Labour.
- Convenor, Certificate Course in Labour Law.
- Convenor, Annual Labour Law Conference (LexisNexis Butterworths).
- Editorial Board – *International Sports Law Journal*.
- Curriculum development.
- Involved with research for the purposes of domestic law reform under the auspices of the South African Law Reform Commission, Project 25 on statutory law revision of the legislation administered by the Department of Labour.

6.2.8 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.

6.2.9 Visser, Margareet

- Social auditing on fruit and wine farms to verify compliance with standards set by ethical trade initiatives such as Fairtrade International and WIETA (the Wine and Agricultural Ethical Trade Initiative), a local multi-stakeholder organisation. The standards of these bodies are informed by the conventions of the International Labour Organisation, the base code of the Ethical Trade Initiative and country-specific labour, health and safety and environmental legislation.

7. TEACHING

7.1 General

The Institute was responsible for convening and teaching a number of courses in 2007.

Institute courses offered in the LLB programme include:

- CML5013H – Labour Law (LLB)
- CML5002X – Research Focus Group. Law, Development, Labour & Social Policy (not on offer in 2007)
- CML5025X – Research Focus Group. Sports Law (not on offer in 2007)

Institute courses offered by the School for Advanced Legal Studies (SALS) in 2007 include:

- CML6013S – Collective Bargaining and Strike Labour Law
- CML6016F – International and Comparative Labour Law
- CML6022S – Social Security
- CML6031S – Conciliation and Arbitration
- CML6051F – Individual Employment Law

7.2 Postgraduate Courses (School for Advanced Legal Studies)

The Institute is responsible for teaching and administering numerous courses (see § 7.1 above) offered by the School for Advanced Legal Studies as credits toward the Masters in Law, Masters in Philosophy and Postgraduate Diploma in Law. The courses (depending on the combination of courses selected by the candidate) may lead to a degree / diploma without specialisation or to a degree with a specialisation in Labour Law. In addition, the Institute offers the following specialist Diplomas:

- Postgraduate Diploma in Law (Employment Law)
- Postgraduate Diploma in Law (Conciliation and Arbitration)
- Postgraduate Diploma in Law (Dispute resolution) (not on offer in 2007)

The institute intends to ensure the relevance of its postgraduate offerings by engaging in a rigorous internal review process of its courses in the coming year.

7.3 Undergraduate Teaching

Institute staff and associates involved in teaching courses in labour law on the LLB program in 2007 include Debbie Collier, Randall van Voore, Paul Benjamin and Graham Giles.

In addition, Graham Giles was responsible for teaching the Labour Law service course, coded CML 2005F, offered by the Department of Commercial Law to students outside the Faculty of Law.

7.4 Labour Law Certificate Courses

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.

In 2007 a decision was taken to run the certificate course, on a trial basis, in association with the Law Faculty's Law@work: Professional Development Project in order to take advantage of the administrative functions offered by the project. A pilot course titled *Essentials of Employment Law* was successfully co-hosted by the Institute and the Professional Development Project over a 10 week period.

7.5 Curriculum development and review in SADC region

The Institute was involved in the following activities relating to curriculum development and external review:

Curriculum Development Workshop on Social Security for Madagascar, 1 – 3 February 2007, Antananarivo, Madagascar

Professor Evance Kalula was a participant and presenter at the workshop titled 'Curriculum Development Workshop on Social Security for Madagascar'. This workshop falls under the Institute's SADC Social Security Project. Professor Kalula made a presentation on SADC Social Security Trends and was addressed to Government Officials, Academics and Social Partners.

African Regional Labour Administration Centre (ARLAC), 2 – 4 May 2007, Mbabane, Swaziland

Professor Evance Kalula attended the 'Employment and Labour Studies Course Development' meeting as a member of the Course Development

Reference Team. He was involved in the development of the course rules and drafting of course regulations. The aim is the development and labour studies course for ARLAC constituency.

University of Swaziland (UNISWA), 25 – 30 May 2007, Swaziland

Professor Evance Kalula was contracted as External Examiner for the above period during which he moderated the Faculty of Law's examinations.

National University of Lesotho (NUL), 4 – 8 June 2008, Lesotho

Professor Evance Kalula was contracted as External Examiner for the above period during which he moderated the Faculty of Law's examinations.

Midlands State University (MSU), 1 – 6 July 2007, Zimbabwe

Professor Evance Kalula was contracted as External Examiner for the above period during which he moderated the Faculty of Law's examinations.

African Regional Labour Administration Centre (ARLAC) 24 – 27 July 2007, Harare, Zimbabwe

Professor Evance Kalula attended the 'Reference Group Meeting: Employment and Labour Studies Course Development' as a member of the Reference Group.

University of Namibia (UNAM), 3 – 7 December 2007, Windhoek, Namibia

Professor Evance Kalula was contracted as External Examiner for the above period during which he moderated the Faculty of Law's examinations.

8. FUNDING AND FINANCES

We are particularly grateful to the following funders for their support in 2006 and previous 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 operational capital. In this regard the certificate course in labour law (see above) and the Annual Labour Law Conference (see above) are the major sources. An account of IDLL income and expenditure for 2006 and 2007 will be given at the Board Meeting in 2008.

9. HOW TO CONTACT US:

Institute of Development and Labour Law
Kramer Law School, Middle Campus
University of Cape Town
Private Bag X3, Rondebosch
7701

Telephone: (27-21) 650-5634

Fax: (27-21) 650-5660

E-mail: faldielah.khan@uct.ac.za

Website: <http://www.labourlaw.uct.ac.za>
