EDITORIAL

Special Centenary Conference Issue of *Speculum Juris*: Celebrating 100 Years of the University of Fort Hare

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It is now well known, at least in South Africa, that the iconic University of Fort Hare turned a hundred years old in 2016. The institution's celebration of that milestone was multifaceted and spread across the entire centenary year even spilling over into the first quarter of 2017. For its part, the academic domain of the university chose to make the holding of a major international multidisciplinary conference the flagship of its centenary celebrations. That conference took place in early July 2016 under the broad theme: "Transformation through higher education and leadership: Looking back at a century of intellectual and scholarly commitment". Each of the five faculties of the University (at the time) was required to develop and provide a sub-theme against which papers belonging or allied to particular disciplines will be invited. For that purpose, the Nelson R Mandela School of Law (the University's Law Faculty) chose the sub-theme: "The Constitution, the Bill of Rights and the challenge of transforming society" which became "Sub-Theme 1" in the conference call for papers that went out around November 2015. The seven articles published in this special centenary issue of *Speculum Juris* are revised versions of papers presented by the authors at the centenary conference. The Editorial Committee of the journal hopes that the issue will be a fitting and enduring academic memorial to the University of Fort Hare at its centenary. We gratefully acknowledge the collegial support and courtesy of the anonymous peer reviewers of the article manuscripts without whom publication of this special issue would have been impossible. Following below is a brief summary of the articles.

The lead article in this special centenary issue explores the extent to which the constitutional right to basic education is being realised in post-apartheid South Africa, and, more importantly, attempts to identify the most critical barriers to the attainment of that outcome. Following a brief discussion of the nature and content of the right, Mbuzeni Mathenjwa identifies and focuses on lack of political will which entails a mis-match between rhetoric and action on the part of politicians and senior public servants, and manifests in the repeat failures to properly deliver textbooks to public schools, the stubborn omission to make appointments into vacant essential posts and the lack of infrastructure, insecurity, and corruption in public schools. The author argues that given the uniqueness of the right to basic education as a socio-economic right that is immediately realisable, its enjoyment by citizens ought to be prioritised by the government. He concludes that full realisation of the right will only become a reality after the government develops the requisite political will.

Writing against the backdrop of the indispensability of mining to South Africa's socio-economic well-being and the factual reality that mining produces irreparable environmental damage with severe negative impacts on the lives and livelihoods of host communities, Linda Muswaka's article undertakes an assessment of South Africa's legislative framework regulating the mining industry through the lenses of the principle and ethos of 'sustainable development'. After engaging the contextual background of global and South African acceptance of 'sustainable development' as an imperative for the mining industry and its various regulators and exploring the constitutional framework focusing on the right to a healthy environment, the author places the Mineral and Petroleum Resources Development Act (MPRDA), National Environmental Management Act (NEMA) and National Water Act (NWA) under microscopic scrutiny. The article suggests, *inter alia*, that in spite of the political and industry commitment to sustainable mining unequivocally reflected in the applicable legislative instruments, a wide gulf exists in reality between theory and practice.

The third paper in this issue engages the vexed question of child marriages in Africa seeking to contribute to the debate by exploring the inter-connections between the African Children's Charter and the African Women's Protocol as well as the challenges to the effective implementation by the state signatories of their obligations in terms of the two instruments. As part of their endeavour to deliver on the paper's main objective, Adebola Olaborede and Cephas Lumina also discuss the complementarity of the lead institutional mechanisms foisted with the critical role of monitoring the state parties' compliance with the said obligations. The authors posit the view that aside from normative complementarity between the Children's Charter and the Women's Protocol, there also exists functional complementarity between the roles assigned to the African Chidren's Rights Committee and the African Commission as the lead compliance monitoring mechanisms under both the Charter and the Protocol.

In their paper, Amos Saurombe and Lonias Ndlovu confront the issue of how best to manage the tension between citizens' rights as patients and the patent rights of pharmaceuticals' manufacturers. As would be expected, the authors discuss the legislative changes that have occurred in the treaty law of the World Trade Organisation (WTO) with a view to paving the way for developing countries and least-developed countries to freely resort to the mechanism of compulsory licensing in order to guarantee their citizens' sustainable access to essential medicines and related equipment. Having demonstrated the clear theoretical possibilities and presented a number of examples of countries (like India) which have utilised the now-famous 'TRIPS flexibilities', the authors clearly articulate the law reform changes which South Africa needs to make in order to resolve its citizens' access to medicines' challenges in a sustainable and TRIPS-compliant manner. This article should be of great interest to law and policy makers in Africa (and the developing world) who are serious about finding credible solutions to the challenges of managing the continent's public health problems for the benefit of its peoples.

Writing from human rights and comparative perspectives, Bronwyn Batchelor and Nasholan Chetty engage the challenges or hardships faced by foreign parents of children who are South African by birth. After pointing out that a citizen child possesses the rights to family life, family care and nationality, the authors interrogate the provisions of section 27 of the Immigration Act in specific relation to the foreign national seeking permanent residence in South Africa on the

basis that she or he is a parent of a citizen child. They also engage the interpretations as well as practices adopted by the Department of Home Affairs (DoHA) in the implementation of these Immigration Act provisions. Questioning the constitutionality and rationality of the said statutory provisions and related DoHA implementation practices, the authors conclude that the practical effects may be increased frustration on the part of foreign parents which may in turn lead to an increase in fraudulent application activity coupled with the risk of violations of the related rights of both the child citizens and their foreign parents. The authors also proffer what they regard as necessary amendments to the extant immigration legislation and related DoHA practice.

Lutho Dzedze's paper joins the intense, ongoing, and divisive debate regarding the fitness of the four-year undergraduate Bachelor of Laws (LLB) degree for its purpose, namely, whether it is producing the much desired socio-economic transformative impact by making the legal profession more accessible to South Africa's historically disadvantaged population groups. This contribution is timely given the increasing cacophony of voices proposing a return to the pre-1998 *status quo* when the LLB was only offered as part of a five or six year postgraduate degree programme. The author tackles the precise meaning of 'transformation' within the unique context of the legal profession in post-apartheid South Africa and clearly identifies a minimum of two challenges facing the four-year undergraduate LLB in terms of the prospects of accomplishing its historic mission. Contending that a number of erroneous assumptions were made at the points of conception and design of the said LLB, the author concludes that the current failures of the degree in delivering the desired transformative impact cannot be blamed on the degree and urges a cautionary, research-based, approach in the ongoing stakeholders' review of the degree.

The authors of the final article published in this special centenary issue interrogate the tenor and practical implications of the Zimbabwean Constitutional Court judgment in *Madzimbamuto v Registrar General* for children of mixed parentage born outside Zimbabwe. The pursuit of that endeavour inevitably leads them to exposition and critical analysis of the pertinent provisions of Zimbabwe's 2013 Constitution, including the Declaration of Rights contained therein. Highlighting the patently unfair and potentially prejudicial effects of the discrimination between citizens by birth and citizens by descent, the authors argue for the adoption of a purposive interpretation of sections 36(2) and 42 of the 2013 Constitution which, in their view, permit the treatment of Zimbabwean children of mixed parentage as citizens by birth, irrespective of their place of birth. They also proffer a recommendation that the above-mentioned sections of the Constitution be appropriately amended.