

Citizenship and Accountability: Litigating Customary Law and Traditional Leadership under South Africa's Democratic Constitution

Monday 17th and Tuesday 18th June 2019

Sir Joseph Hotung Auditorium

Bonavero Institute of Human Rights

University of Oxford

It is twenty-five years since the transition to democracy in South Africa. Some of the most enduring challenges to that transition have concerned the role of customary law and traditional leadership in the new democratic state.

In early 2019, Parliament passed the Traditional and Khoi-San Leadership Bill and the Bill now awaits presidential assent. In addition, a series of important decisions concerning customary law and the role of traditional leaders under South Africa's democratic Constitution was delivered (*Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* (CCT265/17) [2018] ZACC 41; *Rahube v Rahube and Others* (CCT319/17) [2018] ZACC 42 (30 October 2018) and *Balení and Others v Minister of Mineral Resources and Others* (73768/2016) [2018] ZAGPPHC 829 (22 November 2018) and *Gongqose and others v Minister of Agriculture, Forestry and Others* (1340/17, 287/17) [2018] ZASCA 87 (1 June 2018)).

Given these developments, it is an opportune moment to hold a round-table symposium to discuss the questions that citizenship and accountability under customary law and traditional leadership pose for South Africa's new democratic order, and in particular, the manner in which these issues are being litigated in South African courts.

The symposium will draw together scholars, practitioners and judges. It will form part of the Bonavero Institute of Human Rights' Emerging Scholars programme that seeks to draw together emerging scholars, particularly from the global South, and senior scholars. It will be co-hosted by the Programme for the Foundations of Law and Governance and Constitutional Government in Oxford, and the Land and Accountability Research Centre at the University of Cape Town.

Programme

Monday 17th June 2019

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|---------------|---|
| 9.30 – 11.00 | Where we are now? The Constitution, Traditional Leaders and Customary Law
Chair: Kate O'Regan

Customary law and traditional leadership within the constitutional framework: (TBC)

Historical overview: Peter Delius

The Bills: Aninka Claassens |
| 11.00 – 11.30 | Tea |
| 11.30 – 12.45 | What is Living Customary Law? And how should the Courts identify it and apply it?
Chair: Nick Barber

Professor Thandabantu Nhlapo

Nolundi Luwaya

Kate O'Regan |
| 12.45 – 2.00 | Lunch |
| 2.00 – 3.15 | Mining and Resources: issues arising from recent litigation
Chair: Nolundi Luwaya

IPILRA (Xolobeni and Maledu): Johan Lorenzen

Fishing: Gongqose judgment: Michael Bishop

Wild Coast Sun: William Beinart

A Perspective from Ghana: Cynthia Kwakyewah |
| 3.15 – 3.45 | Tea |
| 3.45 – 5.30 | Traditional Leaders, Money and Accountability
Chair: Jonny Steinberg |

Accountability of chiefs in customary law: John Comaroff
Lessons from the Maluleke/Baloyi Commission: Wilmien Wicomb
D Accounts in North West: Stanley Malindi

Tuesday 18th June 2019

- 9.30 – 11.15 **The Scope of Chiefly Power**
Chair: TBC
Comparative Overview: Janine Ubink
The new legislation and its fit with the constitutional framework: Michael Mbikiwa
Conferral of power to perform state functions on chiefs: Monica De Souza Louw
A perspective from Ghana: Maame Mensa Bonsu
- 11.15 – 11.45 **Tea**
- 11.45 – 1.30 **The History and Nature of Land Rights in Africa**
Chair: Ben Cousins
Thuto Thipe
Mary Jiyani
Michelle Hay
Derick Fay
Dominic Burbidge
- 1.30 – 2.30 **Lunch**
- 2.30 – 4.15 **The Way Forward**
Chair: Thandabantu Nhlapo
Geoff Budlender
Tembeka Ngcukaitobi