

Note from the editor

There is a measure of irony or is it perhaps fortuity that *SA Publikreg/SA Public Law* sang its swansong with the publication of a number of conference papers under the over-arching title of 'States of statelessness: Politicide and constitution in the African postcolony' in volume 24. Now entitled *Southern African Public Law* the *SA Public Law* of old enters its 25th year of publication in a new guise and it is to be hoped, revealing the dawn of a new era. And once again the edition is assembled around the outcomes of a conference.

The *VerLoren van Themaat Centre for Public Law Studies* at UNISA – the centre under whose auspices this accredited journal *Southern African Public Law* (the successor to *SA Publikreg/SA Public Law*) is published – has been presenting a series of retrospectives on key developments in South African constitutional law since 2005. The first retrospective took the form of a two day seminar on the 10th anniversary of the first decision of the then newly established Constitutional Court in *S v Makwanyane* 1995 6 BCLR 665; 1995 3 SA (CC) and its legacy. Some of the seminar papers were subsequently published in *SA Publikreg/Public Law* (see (2005) 20 *SAPR/PL*). The 2006 retrospective interrogated the jurisprudence of *Azanian Peoples Organisation (AZAPO) v President of RSA* 1996 8 BCLR 1015, 1996 4 SA 672 (CC). The retrospective resulted in the publication of a collection of essays (Le Roux and Van Marle (eds) *Law, memory and the legacy of apartheid* (2007) Pretoria University Law Press (PULP) Pretoria). The 2007 retrospective marked the 10th anniversary of *Soobramoney v Minister of Health, KwaZulu-Natal* 1997 12 BCLR 1696, 1998 1 SA (CC) (socio-economic rights). 2008 though saw a hiatus in the presentation of retrospectives but in 2009 the retrospective came to pass once again.

2009's retrospective covered a longer period – 15 years – and cast the spotlight on the term of Justice Albie Sachs on the Constitutional Court (1995-2009). Towards the end of 2009, the last members of the original (1995) bench of the Constitutional Court vacated their positions on the Court after the lapse of the prescribed two terms on the bench. Among these members was Justice Albie Sachs who vacated his position at the end of September 2009. The retrospective in the format of a two-day seminar took place on 9 and 10 October 2009 on Unisa's Sunnyside Campus, Pretoria. At the seminar the jurisprudence of Justice Sachs was deliberated upon and his general jurisprudence analysed.

Justice Sachs has generally been an outspoken critic of legalistic formalism who has championed contextualised judging. The archetypical African concept of

ubuntu also features in his jurisprudence, both in his early and later judgments. The republican ideal of participatory (or deliberative) democracy forms a key theme in many of his judgments. In fact, when Justice Sachs's contribution to the jurisprudence of the Constitutional Court during his 15 years on the bench is interrogated it transpires that his input was huge. Not only (or even primarily) by the number of judgments that he wrote (just over 60), but also in the 'creative and at times unconventional lines of reasoning that he found worth exploring'.

His judgments in *Fourie v Minister of Home Affairs* 2006 3 BCLR 355, 2006 1 SA 524 (CC) (gay and lesbian marriages); *Port Elizabeth Municipality v Various Occupiers* 2004 12 BCLR 1268 (CC) (eviction and the right to housing); *August v Electoral Commission* 1999 4 BCLR 363, 1999 3 SA 1 (CC) (voting rights of prisoners); *Daniels v Campbell* 2004 7 BCLR 735, 2004 5 SA 331 (CC) (Muslim marriages) and *AD v DW* 2008 4 BCLR 359 (CC) (international adoptions) count among the most important that he wrote on behalf of (the majority of) the Court. On more than 30 occasions Justice Sachs wrote important separate but concurring judgments, such as those in *S v Mhlungu* 1995 7 BCLR 793, 1995 3 SA 867 (CC) (retrospectivity of the Constitution); *Walker v Pretoria City Council* 1998 3 257, 1998 2 SA 363 (CC) (unfair discrimination), *August* (voting rights) and *SA Broadcasting Corporation (SABC) v National Director of Public Prosecutions* 2007 2 BCLR 167, 2007 1 523 (CC) (open court).

Over the years, however, Justice Sachs also wrote a number of powerful dissents, including those in *Prince v President of the Law Society of the Cape of Good Hope* 2002 3 BCLR 231, 2002 2 SA 794 (CC) (Rastafarian religion), *S v Jordan* 2002 11 BCLR 1117, 2002 SA 642 (CC) (sex workers); *Dikoko v Mokhatla* 2007 1 BCLR, 2006 6 235 (CC) (defamation) and *Volks v Robinson* 2005 5 BCLT 466 (CC) (heterosexual life partners).

The papers presented at the seminar and dealing with the multi-faceted jurisprudence of Justice Sachs were reworked into an edited and peer reviewed collection of essays on his contribution to South African constitutional jurisprudence. This 'first' edition of the *Southern African Public Law* consisting of a selection of the reworked essays based on the papers delivered at the seminar entitled the *Constitutional jurisprudence of Albie Sachs: A retrospective* represents a tribute and homage to the constitutional jurisprudence of Judge Sachs, during his term as member of the first bench of eleven constitutional court judges. With the publication of this tribute the hope is expressed that these essays will stimulate debate and reflection through the pages of *Southern African Public Law* on the ongoing process of realising the ideal of true participatory democracy in South Africa in particular and in Southern Africa in general.

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