

# **PhD Colloquium Presentation: LAW'S ARCHIVE AND THE DEVELOPMENT OF A POST-APARTHEID JURISPRUDENCE**

Date and time:  
Mon, 2015-11-23 12:00

Location / Venue:

Prof. H.W.O Okoth-Ogendo Boardroom

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## **ABSTRACT:**

Relying on the metaphor of the archive, I argue that during the transition from apartheid to democratic rule in South Africa, key contributions (narratives) were excluded from the dominant narrative of institutional transformative processes, such as the TRC and the constitution making process. The result of this exclusion is that there is a gap in our (legal) knowledge which in turn affects how we theorise, enact and enforce the law. I thus investigate the link between memory and archives and the extent to which the law and institutional processes are truly reflective of the democratic vision of equality, freedom and dignity, in South Africa. I consider further the potential of reconstructing law's archive as a site of justice in a post-apartheid, post-authoritarian context. I then test the archives as justice approach by considering how access to urban land in a post-apartheid context, has been constructed and discussed in the past and how this regime would benefit from a greater consideration of the influence of memory and the archive.

To this end I question in the first instance, the relationship between law's archive, and transformation in post-apartheid South Africa. Can we speak of a legal archive and what would this mean? In the second instance I consider, the extent to which the law and institutional processes such as the TRC and constitution making, in post-apartheid South Africa, are reflective of collective memory and the archive as relates to transformation. What do these processes contribute to the development of legal discourse if at all? To what extent would the (re)construction of archives as sites for justice contribute to bridging the gap between law and the lived reality of majority who remain excluded from accessing law's promises? Finally, through the lens of forced removals, I consider the potential benefits of a reconstruction of archives as justice for urban dwellers previously excluded from land ownership.

Drawing on critical theorists I consider the becoming of a post-apartheid state with respect to the transformative role of memory (and its related concepts) and the archive as a construct through which I investigate law's link to memory. I critically consider the (in) efficiency of law due to its failure to interact with the glaring silences in our knowledge/history/archive.