



Protecting South Africans' personal information starts now

Francois Quintin Cilliers | 01 July 2020

With the remainder of the Protection of Personal Information Act 4 of 2013 (POPIA) coming into effect on 1 July, South Africans are finally getting some much-needed protection when it comes to the selling and unauthorised use of their personal information. The purpose of the Act is to protect people from harm by protecting their personal data, protecting their privacy, and to stop their money and identity from being stolen.

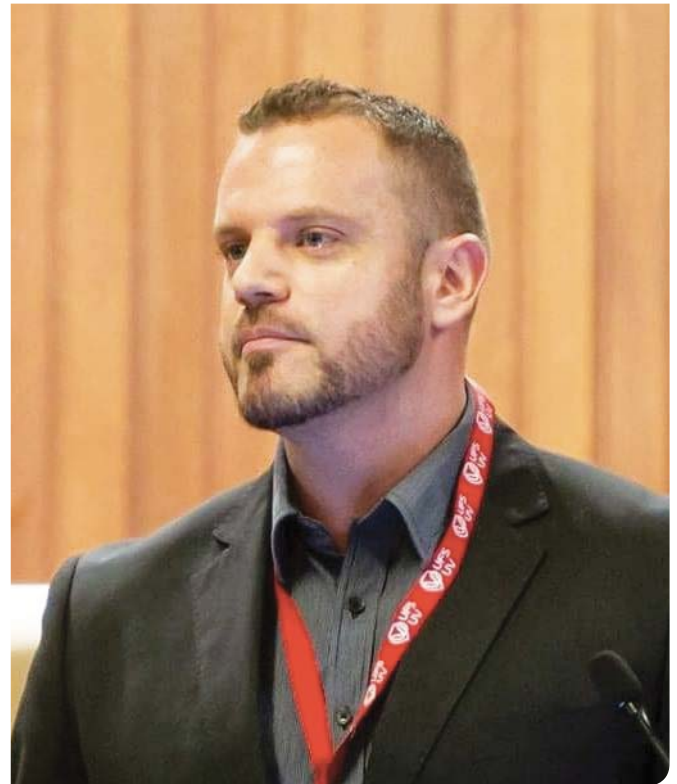
The commencement of the provisions of the Act will affect all South African citizens and must be taken seriously. The Act provides protection to individuals whose personal information is gathered and used in any manner, which essentially includes the vast majority of South African citizens and companies, especially those dealing with the processing and use of personal information, such as banks, medical aids, telecommunication companies, internet service providers, etc.

The objective of the POPIA

POPIA was promulgated in November 2013 after an investigation into privacy and data protection by the South African Law Reform Commission. The objective of the Act is to give effect to the right to privacy, as provided for in section 14 of the Constitution of 1996, and aims to regulate the processing and use of personal information by private and public bodies in line with international standards.

Initially, only certain sections dealing with administrative matters (such as definitions, the establishment of the Information Regulator and the procedure for making regulations, etc.) came into operation in 2014. The commencement date of the remainder of the Act was scheduled for 1 July 2020, and public and private bodies are provided one year from this date to ensure that their practices comply with the provisions of the Act.

Compliance with the Act is extremely important. Less serious offences, such as obstructing an official in the execution of their



Francois Quintin Cilliers

duties, could lead to a fine or imprisonment of up to 12 months or both. More serious offences could lead to a fine of up to R10 million, or 10 years' imprisonment, or a combination of both.

Personal Information

'Personal information' is defined as information that relates to an identifiable, living, natural person and an identifiable existing legal entity. The Act lists eight specific types of information included in this definition, ranging from your name to your

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biometric information to your personal opinions. Just as a clarification, though, any information shared on social media is regarded as a publication and will generally not enjoy protection.

The Act also provides for 'special personal information', which can only be processed with the prior consent of the data subject if necessary by law, if it has already been made public by the data subject or if it is done for historical, statistical or research purposes. Section 34 prohibits the processing of the personal information of a child, unless it is required by law, collected with the consent of a competent person (a parent or legal guardian), if it is in the public interest or used for statistical, historic or research purposes without adversely affecting the privacy of the child.

The Act clarifies the rights of the 'data subject', which is the being to whom the personal information relates. In this regard, we are afforded the following rights: to have access to personal information that is kept or used by any private or public body; to be informed if someone is collecting or has accessed our personal information; to have any incorrect or obsolete information corrected or destroyed; and to object to any unauthorised use (or 'processing') of personal information. The 'responsible party' or 'data controller' is the public or private body that essentially processes personal information. This includes employers who process the personal information of their employees and clients.

The 'processing' of personal information is any operation or activity, whether automated or not, pertaining to the collection, receipt, storage, modification, sharing or destruction of personal information. This may only occur with the consent of the data subject, if required by law, if it protects the legitimate interests of the data subject, or if it is necessary for performance in terms of a contract to which the data subject is a party.

Who is collecting information and why

Section 18 prescribes that the following should be shared with the data subject once any personal information is collected: the source from which the information is being collected,

the name and address of the party collecting the information, the purpose of the collection, whether the collection occurs in accordance with any law, who will receive the information, the security measures used to ensure the confidentiality and correctness of the information, that the subject has the right to access and rectify any part of the information gathered, and objection to the processing. Any complaints in this regard may be lodged to the Information Regulator, an independent party who oversees the Act and answers to the National Assembly, and whose contact information must also be shared with the data subject.

The Act determines that the information may only be collected directly from the data subject, unless it is contained in a public record, it is required for a public purpose or to protect the interests of the data subject, it is not reasonably possible to obtain it from the data subject, or does not prejudice the subject if obtained from another source.

The data controller must comply with prescribed duties, which includes: ensuring that all conditions for lawful processing are met (including obtaining the prescribed consent and ensuring confidentiality); collecting information directly from the data subject; informing the subject about the purpose of the processing; providing the subject with access to the information; keeping the information up to date; correcting the information; deleting incorrect or obsolete records; and complying with any information notice or enforcement order served by the Information Regulator.

No marketing

It should also be noted that the Act prohibits all forms of direct marketing unless a data subject has given their consent. A data subject may only be approached once for consent and must at all times be afforded the right to 'opt out' of any future communications.

It is important to note that the provisions of the Act will not apply to the processing of personal information that is collected in the course of a purely personal or household activity, such as keeping a directory of the addresses and phone numbers of friends and family. It will also not apply to the collection of information for the purpose of national security, for

the prevention of unlawful activities, if it is collected by the Cabinet, the Executive Council of a province, or by the courts when exercising its judicial function.

The processing of information as a matter of 'public interest' will also be excluded. This is generally where information is processed for journalistic, artistic, or literary purposes. Ethical consideration will apply in these instances, and there will be a weighing of the data subject's right to privacy versus the data controller's freedom of expression. As a general rule of thumb, one should always remember that there is an important distinction to be made between 'public interest' and what is interesting to the public – the latter will not be exempted from the provisions of the Act.

Take care

In summary, a data controller must carefully collect and process the personal information of their clients, employees, and any other party whose information they are processing, in line with the provisions of the Act as summarised above. Consideration should be given to the appointment of an information officer, otherwise the head of the private or public body will be regarded as such. This individual will register with the Information Regulator and ensure that the provisions of the Act are met within the organisation. South African citizens must be aware of the rights provided by the Act and must be mindful of the transactions they enter into – whether in person, automated, or online. Care must be taken when 'posting' information on social media, as this will be viewed as publications and consequently enjoy no protection under this Act.

The Act is available online and it is suggested that if anyone wishes to get clarification on any definitions or provisions, to read through the Act and, if necessary, approach a legal specialist for any assistance.

The opinion piece above was written in July 2020 and is included in this edition of the Kovesilex in memory of our colleague Mr Francois Quintin Cilliers, who passed away in 2021. ■

UFS alumna and Council member honoured by the American Bar Association

Dr Nitha Ramnath | 01 July 2022



Leah Molatseli – alumna and Council member of the University of the Free State (UFS) – is the first African woman to be recognised by the American Bar Association in its list of Women of Legal Tech for her contribution and influence in the legal tech industry. A commitment to diversity is one of the core values of the American Bar Association, which the Law Practice Division aims to reinforce in the legal tech sector. Annually, talented women in the legal tech space are recognised for making an impact on legal tech.

A lawyer by profession, published legal tech author and speaker, as well as legal tech and innovation specialist, Molatseli uses technology and innovative means to empower and educate law professionals. She is currently head of business development at Legal Interact, a South

African law firm that provides technology solutions for the legal industry.

Prof Francis Petersen, Rector and Vice-Chancellor of the UFS, congratulated Molatseli on her achievement. “On behalf of the executive committee of the University of the Free State (UFS) and the university community, I would like to extend my warmest congratulations on being recognised by the American Bar Association for your contribution to the legal tech industry. Being the first African woman to be honoured in this way makes this accomplishment even more extraordinary. You are a trailblazer in your field in so many ways,” said Prof Petersen.

Prof Petersen said, “The university, and the Faculty of Law in particular, is proud to be associated with you. We also

appreciate your continued support to the institution. Your dedication and expertise inspire us all – I will continue to follow your professional journey, because I know there is much more in store”. Prof Petersen continued to thank Molatseli for contributing to the legal field in an innovative and contemporary manner.

Molatseli is host of and guest speaker for various legal tech talks globally, as well as a guest lecturer at the University of Cape Town, where she develops and teaches legal tech innovation-related courses to the legal industry. A Mandela Washington fellow, as well as a Notre Dame alumna, she is a member of the Women in Tech South African Chapter, a country member for the Global Legal Tech Consortium, and is one of 2022’s ILTA’s Most Influential Women in Legal Tech honourees. ■

Use social media responsibly, advises Deputy Minister John Jeffery

Lunga Luthuli | 11 July 2022

According to the international market and consumer data company Statista’s June 2022 data, more than 4,6 billion people worldwide are using social media; this is an increase of 1 billion people compared to the total users in 2020.

Delivering his lecture on ‘Social Media, Freedom of Expression, and the Law’ on the University of the Free State Bloemfontein Campus on 30 May 2022, John Jeffery, Deputy Minister of Justice and Constitutional Development, said, “The power of social media lies in the sheer magnitude of the number of people using it.”

He said: “Section 16 of the South African Constitution provides that everyone has

the right to freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.”

He advised perpetrators of malicious social media posts about the consequences and the harm to persons who are victims.

Depending on the circumstances, a person who suffers harm because of being the subject of someone else’s social media posts, can be protected under the Protection from Harassment Act. According to the Act, this is due

to mental, psychological, physical, or economic harm.

Speaking at the Odeion School of Music, Deputy Minister Jeffery said, “Social media brings with it the importance of responsible use. As a social media user, you are entirely responsible for whatever appears on your social media accounts.”

He said: “Whatever you do in life – your conduct and your words – can be put onto various platforms and they will be there for a very long time. Do better, be better – and use social media to inspire people, to have an impact on the world, and to make it a better place.” ■

Nicoleen Moorcroft – overcame brain



Like many others who have juggled full-time work and studies, it was not always an easy task for Nicoleen Moorcroft, Senior Officer in the Office of the Rector and Vice-Chancellor, Prof Francis Petersen. At some point in her study journey, Moorcroft – who received an LLB degree with distinction during the April 2022 graduations – was diagnosed with Arnold-Chiari malformation, a condition in which brain tissue extends into the spinal canal.

The LLB degree is her third qualification. Moorcroft completed a bachelor's degree in Social Sciences in 2009, and a Social Sciences Honours degree majoring in Psychology in 2010.

Looking back on her studies, Moorcroft says she had to “accept studying as a complete lifestyle change, rather than just something I do in my spare time”.

LLB graduate Lizandré Mulder excels in law and athletics

Lunga Luthuli | 21 April 2022

Moving from Jansenville – a town outside Uitenhage – to Bloemfontein for her LLB studies, things got off to a shaky start for Lizandré Mulder. New in a ‘big town’, the ‘country girl’ felt out of her element and not used to big-city life. Thanks to her lecturers, the journey to a legal qualification at the University of the Free State (UFS) ended with an average final-year mark of 80% for the Law graduate.

Back in Jansenville, Lizandré’s neighbour nicknamed her ‘klein prokureurtjie (little lawyer)’ as she was growing up, because she had a ‘habit of arguing’, which motivated her to choose law as a career. She says, “arguing with facts earlier, has turned into a passion”. “The competitive side of me always wants to win; I guess that makes me the perfect candidate for a future advocate,” she says.

Managing undergraduate studies, Lizandré – who is also an accomplished athlete – says all she did was study and train. “The only thing I struggled with was my sleeping schedule, as I was constantly tired from hard training, and I studied till the morning hours while I had to wake up again early for morning training.”

The track, field, and cross-country runner has received numerous national medals for the sport and will be competing in this year’s South African Athletics Championships in Cape Town on 22 April 2022.

Graduating with the LLB degree, Lizandré plans to finish her master’s degree with a possible topic on the legality of human

surgery to earn her third degree

Lunga Luthuli | 25 April 2022

“My declining health and intense medical treatment unfortunately meant that I had to stop studying. In 2016, I underwent Chiari decompression surgery to relieve the pressure on my brain; this significantly improved my health and mental capabilities.”

During this time, Nicoleen also got married and gave birth to a daughter. She says: “Having learnt the value of time management early in my life, this invaluable skill also helped when balancing work, studies, and personal responsibilities. I was also incredibly lucky to have an exceptionally supportive and understanding team in the office – without their constant support and encouragement, I might not have been able to make it.”

Working closely with Prof Francis Petersen, Rector and Vice-Chancellor of the University of the Free State (UFS), Moorcroft is responsible for planning, coordinating, and managing specific institutional projects, initiatives, and functions under

the direction and leadership of Prof Petersen. The projects are aligned to the strategic objectives and goals outlined in both the strategic goals and Integrated Transformation Plan.

Her typical day, says Nicoleen, involves interaction with stakeholders connected to the UFS either internally or externally. “I also spend a great amount of time ensuring that the initiatives and projects in our office are on track.”

On completing her LLB degree, Nicoleen says: “The aim has always been to supplement my role as a member of the support staff within the university, especially in the Office of the Rector and Vice-Chancellor. I have a massive passion for continuous learning and am very much looking forward to finding ways to improve on the impact I make as an employee of the UFS.”

“After four years of dedication to my degree, I am happy to take a break from academics to focus on other areas in both my professional and personal life,” says Nicoleen. ■

gene editing in South Africa for the purposes of disease treatment or the prevention thereof.

Lizandr  does not believe in having a role model, but to “always try to better myself in every aspect of life. I always believed that true inspiration and motivation come from within”.

After completing her master’s degree, Lizandr  will decide on her future career path. She says: “I am still deciding whether I want to remain in Bloemfontein or relocate to Potchefstroom, as the latter has a law firm specialising in medical negligence, a field I would like to specialise in. Besides this, the two cities also boast the best athletics coaches in DB Prinsloo, Head of [KovsieSport](#), and Jean Verster in Potchefstroom has mentored South African award-winning runner, Caster Semenya.

“Somewhere in the future, I definitely also plan on doing my doctoral degree in Law,” says Lizandr . ■

Specialisation needed to properly fight SA's corruption pandemic

André Damons and Dr Nitha Ramnath | 05 May 2021

South Africa does not have the specialisation to fight corruption. There is a need to determine what sort of specialisation is required in order to properly address the kind of corruption that is starting to look like it is endemic in South Africa.

This is according to Adv Hermione Cronje, Head of the Investigating Directorate (ID) at the National Prosecuting Authority (NPA), who was one of the panellists on Tuesday (4 May 2021) during the University of the Free State (UFS) webinar on corruption. The webinar, titled Corruption in South Africa: the endemic pandemic, is the second in the 2021 UFS Thought-Leader Series.

The rest of the panel comprised experts such as Adv Ouma Rabaji-Rasethaba, Deputy National Director of Public Prosecutions (NPA); Adv Paul Hoffman, Director: Institute for Accountability in Southern Africa, and campaigning as Accountability Now; Justice Dennis Davis, former Judge at the High Court of Cape Town and Judge President of the Competition Appeal Court; and Prof John Mubangizi, Dean: Faculty of Law, University of the Free State. Prof Francis Petersen, Rector and Vice-Chancellor of the UFS, was the facilitator.

The specialisation needed Adv Cronje said she agrees that specialisation, resources, training, and independence are critical. "We need specialisation in digital forensics. We have the advantage that, in the Zondo Commission, we have created a digital forensics capability that I believe is almost second to none. That capability

now needs to be put at the disposal of law enforcement," said Adv Cronje.

According to her, training is needed on the basics. There have not been many major corruption prosecutions in South Africa for many years, and there is not a cadre of skilled, big-case corruption prosecutors.

"We know it's a slow and very frustrating process. The system has been very broken, and I think the steps we are taking to build and rebuild will bear fruit, but not in a spectacular way that we all hoped for. But let's discuss the real issue; let's discuss how to resource, how to make trials happen more speedily. Why not have a corruption court?"

Co-locating to better fight crime Adv Rabaji-Rasethaba said the NPA has capacity and capability challenges in terms of fighting crime but is reorganising and rebuilding to ensure that it is on top of fighting corruption. "The Anti-Corruption Task Team (ACTT), which is the law enforcement agencies coming together to fight corruption, has also been hallowed out. But the good news there is that we are in the process of rebuilding it," said Adv Rabaji-Rasethaba.

According to her, they also have a module called Fusion Centre, and are currently working from the Financial Intelligence Centre in Centurion to make sure that the fighting of corruption is fast-tracked. This module was established when COVID-19 corruption started.

"We've now agreed that the NPA and the DPCI need to co-locate with the Asset Forfeiture Unit (AFU) to the special

investigating unit in DPCI, which is tracing assets, so that we can fast-track recovery of the proceeds of crime. We are also capacitating the NPA, particularly the specialised units such as the Specialised Commercial Crime Unit (SCCU) and the AFU, to make sure that we get all the right skills we need to be fit for purpose," said Adv Rabaji-Rasethaba.

The problem of corruption persists Prof Mubangizi said even though South Africa has an adequate and sufficient legal framework to deal with corruption, the problem persists because corruption has become institutionalised, systemic, and normalised. "And when something becomes institutionalised, systemic, and normalised, it becomes endemic," said Prof Mubangizi. A second reason, he said, is that our political leadership is largely responsible, as well as the lack of political accountability.

"I think the law does not bite hard enough. It's one thing to have the laws, but it's a completely different thing to have it properly and effectively enforced. This brings into question the role of law enforcement agencies. Unfortunately, most South Africans do not trust that these agencies are able to bring corrupt officials to book. Some of the members of these agencies are assumed corrupt themselves, and the agencies are perceived to be compromised, captured, and toothless," said Prof Mubangizi.

Remedies through SARS Judge Davis questioned why there is no real moral authority in the country. "We need to look to our political structures."

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On discussing the type of remedies that can be put in place to combat corruption, Judge Davis indicated that South Africa has enough institutions. "The NPA should be strengthened and should also reach out to the expertise in the country, which can assist in this regard. I still believe that the best way of dealing with corruption is through the use of the South African Revenue Service (SARS) to hold people accountable. If we can expedite these cases and actually find people guilty of tax fraud, we hold them to account and get back significant sums of money," said Judge Davis.

Need for Chapter Nine institution Adv Hoffman emphasised that the culture of

impunity has started and grown since the Scorpions were dissolved. "There is a need for the creation of a Chapter Nine institution that answers to Parliament and is specialised, trained, independent, resourced with security of tenure (STIRS), and compliant as the best way forward in the fight against corruption," said Adv Hoffman. One of the main jobs of the Chapter Nine institution would be to address the recovery of the loot of state capture.

Prosecute and convict

In his closing remarks, Prof Petersen said what he took from the webinar is coordination and capacity building

– making sure we build the capacity of specifically the NPA, but also other organs of the state. "The second thing is training. This is something we need to talk about, because other people – besides universities – could also play a role. The task of the university is actually to develop the leaders of tomorrow; to say – this is what society should look like," said Prof Petersen.

Accordingly, it is very important to make sure that we prosecute and convict. "This seems to be the most critical part, because if we get it wrong, the credibility of the whole system is under question. Citizens should also come in and play a crucial role." ■

UFS Centre for Labour Law celebrates 2020/2021 students

Lunga Luthuli | 03 March 2022

The University of the Free State (UFS) Centre for Labour Law recently celebrated the success of more than 540 participants who completed their studies in 2020 and 2021. Laetitia Fourie, Programme Director of the Centre for Labour Law, said: "In the past, the centre semi-annually celebrated the achievements of participants by way of a ceremony where certificates were awarded to those who successfully completed their short learning programmes."

"The event has always been special and provides an opportunity for the participants to feel valued and to share their success with their families at a prestigious event on the UFS Bloemfontein Campus," she said.

However, due to COVID-19, the centre was not able to host physical ceremonies in 2020 and 2021, and certificates had to be sent via courier. As a result, a decision

was made to follow in the footsteps of the institution and to host a virtual certificate ceremony for the classes of 2020 and 2021.

The centre offers short learning programmes in Basic Principles of Labour Law, Advanced Principles of Labour Law, Basic Principles of Social Security Law, Alternative Dispute Resolution, Basic Principles of Commercial Law, and Advanced Principles of Commercial Law.

Dean of the UFS Faculty of Law, Prof John Mubangizi, said that the programmes offered by the centre "fit into the mission of the faculty and drives it to be at the forefront of exploring how best to contribute to shaping and transforming society".

He said: "The advantages and benefits of short learning programmes are that they are affordable and an accessible way

to upskill, upgrade, and develop one's skills. They play a key role in developing South Africa into a better and more skilled country. They fill the gap in individuals' knowledge, giving a competitive edge on job promotion."

Prof Mubangizi said, "Continuous learning is mandatory if you want to become successful." He challenged the successful participants to "go out there, put the learnt skills to good use, believe, and not let fear stop you from success".

Tebogo Molapo, who completed a Certificate in Dispute Resolution and the Advanced Principles of Labour Law, says: "Representing workers as a shop steward, I must be competent, and also have aspirations of being a Labour Law expert. This year, I have registered for the Basic Principles of Social Security Law, and on completion, I would like to obtain a diploma or degree."

UFS Law Clinic celebrates Women's Month through transformation

Lunga Luthuli | 24 August 2021

Since January 2021, the University of the Free State Faculty of Law and the Law Clinic have appointed 13 black female candidate attorneys, which attests to the institution's commitment to transformation and the development of women.

Paul Antohnie, Lecturer and Head of the Law Clinic at the University of the Free State, says with the candidate attorneys assuming duty on 1 August 2021 for their two-year contract, the Law Clinic aims to ensure that they are "trained to become exceptional legal professionals who will fight for justice without fear or favour, especially on behalf of the lower income groups in the Free State".

The appointment of the 13 women coincided with the celebration of Women's Month in August, which is commemorated every year by paying tribute to the more than 20 000 women who marched to the Union Buildings in 1956, calling on the then government to abolish the pass laws.

Antohnie says: "Having all the women start on 1 August was not planned; however, it is apt, as it confirms the

excellence of the candidates we have appointed. They were chosen from a group of more than 250 applicants, and the competition was tough and gruelling."

The candidate attorneys are a diverse group, with four from Kopsies, two from the University of Limpopo, two from North-West University, and the University of Venda, the University of South Africa, and the University of Fort Hare each represented by one individual.

With the group, Antohnie believes: "As an institution, our response is that the calibre of graduates is as good as those from other institutions, and without favouring anyone, we would state that where candidates are the best for the position, consider employing them."

He says: "Several of the women are already busy with their postgraduate qualifications. Their interests include human rights and access to justice, labour law, family law, and criminal law."

Anita Pangwa, one of the candidate attorneys, believes the appointment is an affirmation for her as a young professional who is black and female. She says, "It shows that the institution

is quite progressive when it comes to empowering people like me."

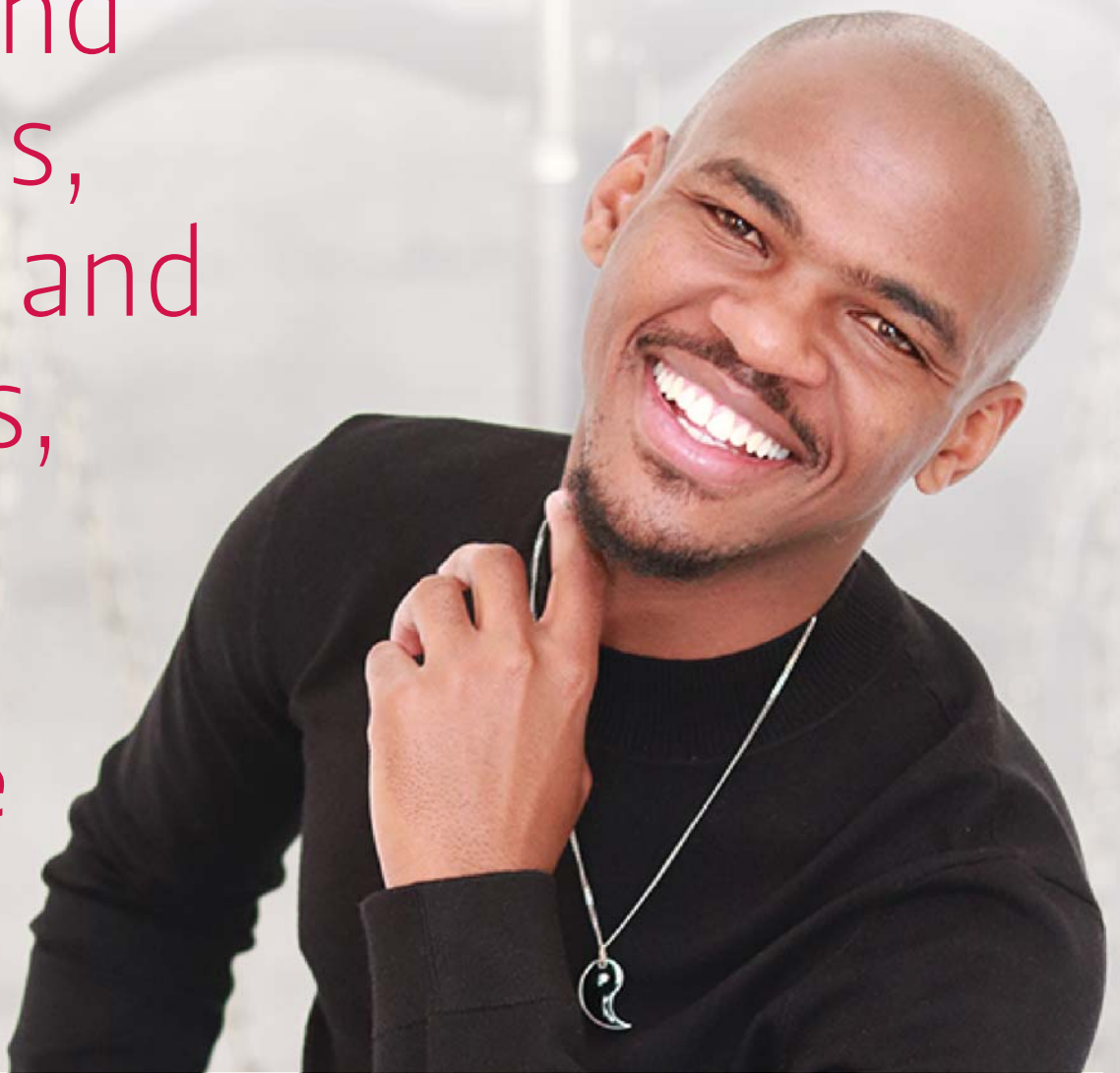
Anita says: "The Law Clinic is an example of a legal instrument for justice, which supports and defends democracy in South Africa and guarantees justice against improper prejudice to the public by being exposed to the different departments – Litigation, the Centre for Human Rights, Employee Relations, and the Law Clinic."

Her goal for the next two years is to learn as much as she can. "The institution has provided us with an amazing opportunity by encouraging us to continue postgraduate studies – master's degrees. I hope by the end of the two-year journey I will be an admitted attorney of the High Court, have obtained my master's degree, and also published an article in a legal journal," she says.

With the appointment, Antohnie pays tribute to the cooperation that the University of the Free State has with the Safety and Security Sector Education and Training Authority (SASSETA), which funds internships for candidate attorneys over two years. ■



Ups and downs, gains and losses, and an LLB degree later



Nonsindiso Qwabe | 19 April 2021

'Be loyal to your calling and the universe will locate you.' This slogan is the mantra that University of the Free State LLM student, Tshepang Mahlatsi, lives by. It is also this slogan that carried him through a tumultuous journey during the pursuit of his LLB degree, which he received during the Bloemfontein Campus graduation ceremony on 19 April.

Mahlatsi began his LLB degree in 2014, but he had to take a break from his academics in 2016 after being clinically diagnosed with depression. He obtained his qualification in 2020. Mahlatsi said 2016 was a year that started on a high note for him as a third-year Law student and newly elected prime for Tswelopele residence, but quickly took a downward dive when he found himself overwhelmed by leadership demands – coupled with the simultaneous loss of loved ones and constant academic pressure. It ultimately led to a breakdown, forcing him to put his studies on hold. "I am graduating with my LLB after life-changing events in my undergraduate years – from student politics, depression, and PTSD, to starting a mental-health organisation and using both CUADS and Kovsie Counselling support services to come back to 'normalcy'."

He said the year-long break from his studies left him feeling discouraged as he watched his peers and classmates progress and graduate. "It was the most difficult thing to do to remind myself that I wasn't stupid."

"This journey exposed a lot about myself; it exposed that with determination and resilience, you can achieve what you set out to achieve. I had to persevere not because I wanted to, but because my family has never seen a graduate. I was doing this for them; to give them something they've never had," he said.

UFS support services can save lives

Mahlatsi would like more students to make use of the UFS support services and not crumble under mental-health problems. "I hope to inspire students to use their support services and not be ashamed – services such as CUADS and Student Counselling and Development. I hope to inspire student leaders and students to realise that you can be a well-rounded student and still have challenges, but eventually, success awaits us all." ■

Four new extraordinary professors for the Free State Centre for Human Rights

Dr Annelie De Man | 03 March 2021

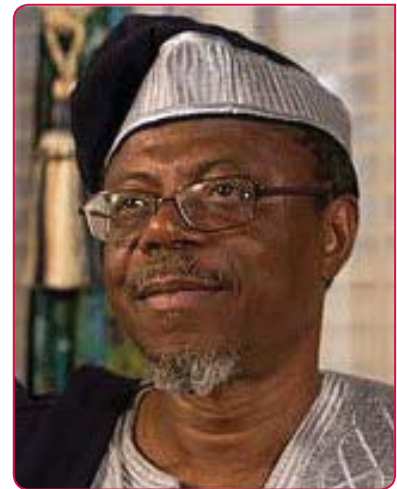
An acting judge of the Constitutional Court of South Africa, a renowned scholar of African history and African studies, a former deputy chair of the United Nations Committee on Economic, Social and Cultural Rights, and a scholar in the field of constitutional law, human rights, and public law. These are some of the new extraordinary professor appointments at the Free State Centre for Human Rights (FSCHR) in the Faculty of Law at the University of the Free State (UFS).



Judge Dhaya Pillay



Prof Sandra Liebenberg



Prof Toyin Falola

The four new extraordinary professors – Judge Dhaya Pillay and Profs Loot Pretorius, Toyin Falola, and Sandra Liebenberg – bring a wealth of experience to the FSCHR, contributing to a critical, interdisciplinary, and contextually engaged research, advocacy, and legal-practice institution as part of its focus on the relationship between human rights and transformation.

Judge Dhaya Pillay has dedicated her professional life to the pursuit of

transformation through law and has a wealth of experience as a defender of human rights. As attorney in apartheid South Africa in the 1980s, she focused her work on assisting political detainees during the states of emergency, as well as other politically related cases. She was a judge of the Labour Court from 2000 to 2010, after which she was appointed to the KwaZulu-Natal High Court where she still serves. She has served as judge in the Supreme Court of Appeal and is a Commissioner of the Independent

Electoral Commission. She is currently acting as a justice of the Constitutional Court and is also shortlisted for a permanent appointment in this – South Africa's highest court. Throughout her career, Judge Pillay also maintained a strong presence in academia. She has served as an extraordinary professor in the Faculty of Law at the University of Pretoria and has been a visiting academic or fellow at Seattle University, New York University, the University of Oxford, the Open



University, and most recently, Harvard University.

She has also penned a number of academic publications over the course of her career.

In April 2020, she obtained her doctorate in law (LLD) from the University of Pretoria. She is currently converting her thesis into a book to be published towards the end of 2021.

After 40 years of dedicated service to the University of the Free State, Prof Jan-Loot Pretorius retired at the end of 2019. For the last four years, he has served as coordinator of research and postgraduate teaching at the FSCHR. Prof Pretorius' reputation and standing as scholar in the field of constitutional law, human rights, and public law – more generally – speaks for itself. He completed his LLD at the UFS in 1986 on the topic 'The concept of public interest and the limitation of human rights'.

Over the course of his academic career, he has amassed a large number of scholarly publications in the form of books, chapters in books, and journal articles and has addressed a large number of national and international conferences. Prof Pretorius is a regular contributor to the Employment Equity Law handbook, which is updated annually. In addition, he has received many honours and awards, most prominently the Alexander von Humboldt Foundation scholarship for a research project on constitutional models for employment equity at the Max Planck

Institute for Comparative Public Law and International Law, Heidelberg, Germany, which was awarded to him three times during his career. Prof Pretorius has supervised 8 doctoral degrees, 7 research master's, and 26 mini-dissertations.

Prof Sandra Liebenberg is Distinguished Professor and holder of the HF Oppenheimer Chair in Human Rights Law at the University of Stellenbosch. As a scholar, she enjoys considerable international recognition, as evidenced by her B1 NRF rating. She has published four books as author or editor; 32 chapters in books; and 32 articles in peer-reviewed journals and has delivered plenary or keynote presentations at a large number of national and international conferences. She received her LLD from the University of the Witwatersrand in 2011.

In addition to the various boards and committees she has served or serves on, Prof Liebenberg recently concluded a four-year term as member, and from 2019 to 2020 as deputy chair of the United Nations Committee on Economic, Social and Cultural Rights. Prof Liebenberg is the founder of the Socio-Economic Rights Project of the Community Law Centre at the University of the Western Cape.

Prof Toyin Falola is a renowned scholar of African history and African studies. He holds the Jacob and Frances Sanger Mossiker Chair in the Humanities at the University of Texas (Austin), where he is also a University Distinguished Teaching

Professor; and the Mwalimu Julius Nyerere Chair of Modern African History At-Large with Benue State University, Nigeria.

As author or editor, he has published more than 100 scholarly books on topics such as diaspora and migration, empire and globalisation, intellectual history, international relations, religion and culture, in addition to many journal articles and chapters in books. Prof Falola has been awarded 10 honorary doctorates and has received, among many other awards, the Distinguished Africanist Award from the African Studies Association, the Ibadan Foundation Award for Professional Excellence in Scholarship, and the Cheikh Anta Diop Award for Excellence in African Studies. He served as vice-president of UNESCO's Slave Route Project International Scientific Committee from 2011 to 2015, and currently sits on the Carnegie African Diaspora Fellows Programme and the International Committee of the Thabo Mbeki African Leadership Institute at UNISA.

Judge Pillay and Profs Pretorius, Liebenberg, and Falola join the current group of extraordinary professors: Retired Judge and Professor Dennis Davis; Prof Mwiza Nkhata; Prof Gracienne Laauwers; Prof Karl Klare; Prof Lucy Williams; and Prof Serges Kamga. Over the next three years, they will be closely involved in various research projects of the FSCHR and will also participate in postgraduate teaching and supervision. ■

Faculty of Law academics bag three more PhD degrees

Prof Bradley Smith and Moleboheng Moshe-Bereng | 25 August 2022

James Faber, from the Department of Private Law, obtained his PhD degree in July 2020. His thesis dealt with his primary field of study – the law of succession – and focussed on the act of testation with a view to elucidating the concept of a testator's intention to make a will. It is noteworthy that the examiners highlighted the originality of his research by pointing out that no in-depth investigation of this topic had thus far been undertaken in the South African law of succession.

On 25 January 2021, Clive Vinti from the Department of Public Law was awarded his PhD degree. The Treaty on the Lesotho Highlands Water Project between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa (LHWP) is confronted with a potential decline in the quantity and quality of water due to the coalescence of climate change, drought, population growth, sedimentation and pollution in the Orange River. Thus, the World Bank has predicted that Lesotho will eventually be unable to provide water to South Africa

under the LHWP. Access to the water in the LHWP is regulated by the LHWP, the domestic legislation of both Lesotho and South Africa, and international law. To this end, the LHWP prioritises the supply of water to South Africa and regards the potable water uses of Lesotho as “ancillary” to the project, which can only occur “without prejudice” to the supply of adequate water to South Africa. Vinti opines that this objective is contradicted by the water legislation of Lesotho, which prioritises water supply to the residents of Lesotho in a conflict of uses. This disjuncture in the legislative regime of the LHWP will be unable to address the projected conflict of uses in the LHWP. Consequently, in his thesis, Vinti sought to suggest legal responses to the projected conflict of uses in the LHWP.

In April 2022, Sakkie Muller from the Department of Public Law obtained his PhD degree. Titled “Mediation as an alternative to litigation with special reference to medical negligence claims”, the motivation for the study stems from the healthcare crisis that South Africa

faces currently and has grappled with in the recent past. Adversarial court litigation through the civil justice system is the conventional method to resolve medical claims. Litigation, and the

litigation of medical negligence claims, in particular, is expensive, time-consuming, complex, and emotionally taxing, and the eventual outcome often fails to satisfy the needs of the litigants. In Muller's view, attempting to resolve medical negligence issues through adversarial processes does not promote normative constitutional values, such as dignity and equality and, importantly, access to justice. This informed his need to investigate the need for legal reform and the adoption of alternative and transformative practices to dispute resolution.

The Faculty of Law wishes to congratulate Drs Faber, Vinti and Muller on their outstanding achievements and is especially proud of the fact that they show that they are well on their way to becoming leading South African scholars in their various fields of law. ■

Prof Smith's research cited in four groundbreaking judgments in last two years

Moleboheng Moshe-Bereng | 25 August 2022

Recognition of an academic's research is one of the pinnacles of a career in academics.

During 2020, Prof Smith was involved in advising counsel in the *Bwanya* matter, that inter alia involved a claim that withholding intestate succession benefits from a surviving heterosexual life partner was unconstitutional. In the court of first instance (reported as 2021 (1) SA 138 (WCC)), Prof Smith's research was cited in support of the finding that a High Court will not offend the doctrine of precedent by tinkering with a

standing reading-in order granted by an earlier judgment of the Constitutional Court. In the subsequent confirmation proceedings in the Constitutional Court (reported as 2022 (3) SA 250 (CC)), his research was again cited as part of the majority judgment's rationale in deciding to extend the intestate succession benefit to such unmarried couples.

Also in 2021, an article published by Prof Smith was relied on by the Free State High Court to deviate from the earlier positive law position created in *Zulu v Zulu* 2008

(4) SA 12 (D) regarding putative marriages and their patrimonial consequences (see *MS v Executor, Estate Late NS* 2021 (6) SA 483 (FB)).

Earlier this year, in *PAF v SCF* ([2022] ZASCA 101), the Supreme Court of Appeal also relied on a publication of Prof Smith's to conclude that a divorce court has the common law power to pierce the veneer of a trust that has been abused by a spouse so as to reduce the true value of that spouse's accrual, thus frustrating the objectives of the accrual system. ■

UFS extraordinary professor appointed to serve in the Constitutional Court

Dr Annelie De Man | 25 February 2021



Judge Dhaya Pillay

Judge Dhaya Pillay, Extraordinary Professor in the Free State Centre for Human Rights at the University of the Free State (UFS) Faculty of Law, has been appointed an Acting Justice of the Constitutional Court of South Africa. Judge Pillay will serve in this capacity in the country's highest court for the first term of 2021.

Judge Pillay has also been shortlisted for a permanent position in the Constitutional Court and will sit before the Judicial Service Commission in May 2021 for interviews. She was nominated for this position by the Free State Centre for Human Rights.

Judge Pillay joins the Constitutional Court from her position as judge in the KwaZulu-Natal High Court, where she has served since 2009. She previously served for an acting term in the Supreme Court

of Appeal and was a judge in the Labour Court.

She joined the Free State Centre for Human Rights as Extraordinary Professor in December 2020.

A strong presence in academia

Judge Pillay has dedicated her professional life to the pursuit of transformation through law and has a wealth of experience as a defender of human rights. As attorney in apartheid South Africa in the 1980s, she focused her work on assisting political detainees during the states of emergency, as well as other politically related cases. She was a judge of the Labour Court from 2000 to 2010, after which she was appointed to the KwaZulu-Natal High Court where she still serves. She has served as judge in the Supreme Court of Appeal and is

a Commissioner of the Independent Electoral Commission.

Throughout her career, Judge Pillay also maintained a strong presence in academia. She has served as an extraordinary professor in the Faculty of Law at the University of Pretoria and has been a visiting academic or fellow at Seattle University, New York University, the University of Oxford, the Open University, and most recently, Harvard University.

She has also penned a number of academic publications over the course of her career.

In April 2020, she obtained her doctorate in law (LLD) from the University of Pretoria. She is currently converting her thesis into a book to be published towards the end of 2021. ■

EQUITAS



Kovsilex is the official newsletter of the Faculty of Law.

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