

### Prof Serges Kamga ushering in a new era

By Valentino Ndaba

At the UFS, Vision 130 is guiding the institution towards its 130th anniversary in 2034, with the aim of repositioning the university for greater heights. Leading the charge within the Faculty of Law, is the new Dean, Prof Serges Kamga. An experienced academic leader with a strong commitment to education and social justice, Prof Kamga brings fresh perspectives and innovative ideas to shape the faculty.

With Vision 130 as his compass, Prof Kamga envisions the faculty as a catalyst for nurturing globally competitive graduates and generating cutting-edge knowledge to address the challenges of the modern world. "Vision 130 provides us with the transformative tool we need to achieve our goals," Prof Kamga affirms. "Ву ensuring student-centredness, implementing transformation policies, and building a research-led faculty, we can advance internationalisation and innovation, and contribute to development and social justice through engaged scholarship."

#### Curriculum transformation and personnel diversity

Prof Kamga places great importance on curriculum transformation to prepare students for a rapidly changing world. Integrating interdisciplinary studies and promoting experiential learning, the faculty aims to equip graduates with the skills needed to thrive in diverse professional landscapes.

Promoting personnel diversity is central to Prof Kamga's strategy. By fostering an inclusive environment that values diverse perspectives, the faculty seeks to enhance the learning experience and create a supportive community for all.

> At the core of Prof Kamga's approach is upholding the fundamental values of the UFS, such as inclusivity, diversity, and social justice. By cultivating a culture that embraces these principles, the faculty can better support development and social justice through engaged scholarship.

#### Expanding influence and partnerships

To become a research-led institution, Prof Kamga emphasises the promotion of a strong research culture within the Faculty of Law. "In pursuit of Vision 130's overarching objective to become research-led, our strategy will include promoting a strong research culture in the Faculty of Law, with specific emphasis on activities such as faculty research discussion, faculty research days, and the winter school on postgraduate study. Research and supervision recently took place, which brought experts in the field to the Bloemfontein Campus, also numerous doctoral candidates registered in the faculty, as well as postdoctoral fellows, all travelling from across South Africa and even from other African states, including among others, Ghana, Kenya, and Lesotho," he said.

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> VISION 130 Renew and Reimagine for 2034

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The University of the Free State Africa Reparations Hub (UFSARH) aims to anchor the African reparations agenda through scholarship and advocacy.

### UFS to launch **Africa Reparations Hub**

Bv Valentino Ndaba

he University of the Free State (UFS) is set to launch an Africa Reparations Hub. which will serve as a hub for Pan-African-led reparations scholarship, policy, and advocacy. The University of the Free State Africa Reparations Hub (UFSARH) will be housed within the UFS Faculty of Law.

"The UFSARH vision is to be an international academic forum to institutionalise, promote and advance the Africa reparations agenda," says Khanya Motshabi, UFSARH Strategic Lead.

"Its mission anchors the Africa reparations agenda through scholarship, and research, advocacy. The hub is underpinned by the values and principles of excellence, ubuntu, social justice, African-centredness, and Pan-African epistemological grounding of all its initiatives, operations, activities, and undertakings.'

As a Pan-African centre, the hub will work at national, regional, and international levels, and resolves to conduct research, offer education, develop policies, and advocate for reparations via a UFSARH Panel of Experts on Africa Reparations.

It will have three key facets: a database on Africans for Africa, which will serve as a repository for resources and an information archive; it will serve as home to the expert group on Africa reparations; and anchor a research group on the subject.

Convened by Dr Catherine Namakula, the hub will be established under the auspices of the Faculty of Law and the Department of Public Law, and would be accountable to an advisory board led by Prof Serges Kamga, Dean of the Faculty of Law, and Prof Shaun De Freitas, Head of the Department of Public Law.

# HUMAN RIGHTS MONTH: I have the right to ...

By Prof Danie Brand

What does it mean to say one has a right to something, such as access to housing or to protest or to property? What are human rights? What do they 'do'?

One often hears of human rights being asserted as if they give one an absolute claim to something specific and discrete, which can be enforced against anything and everyone else, irrespective of the impact on the interests (and rights) of others, as well as broader public goals or values.

Perhaps the clearest example of this was the way in which the right to ownership of land was understood under apartheid property law. Ownership then was an absolutely exclusive right: it entitled its holders to exclude everyone else without a countervailing right from their land, irrespective of circumstance or context. All a landowner had to prove before a court to obtain an eviction order if they sought to evict someone from their land, was that they had the right (owned the land) and that those they sought to evict had no countervailing right in law to be on the land. If the right was proved in this way, the remedy of exclusion through eviction followed automatically - the court had to grant the eviction order.

#### **Constitutional right to** peaceful protest

A more recent example of this view was on display in the way in which members of parliament complained about their removal from the house when they attempted to shut down the President's State of the Nation Address through protest action. Many responded by saying their removal was unjustified because, by trying to stop the address from proceeding, they were exercising their constitutional right to peaceful protest. The assumption underlying this response is that the right to protest peacefully and unarmed entitles you to protest peacefully and unarmed in any way you see fit and regardless of the consequences for other people and for society at large.

With this view of rights, a right bestows on its holders a sphere of absolute inviolability - an abstract space within which they can do what the right entitles them to do (protest, hold property, speak, associate or whatever), subject to nothing and noone else, with no limitations. Rights are seen as instruments through which to separate ourselves from other people and unilaterally impose our will and our interests on others. Rights operate as trumps, boundaries, conversation stoppers.



Rights are seen as instruments through which to separate ourselves from other people and unilaterally impose our will and our interests on others.

#### **Understanding human rights**

Fortunately, our constitution embodies a different vision or understanding of human rights. In various ways, our constitution makes it clear that what exactly our human rights entitle us to do, or have, or experience, is never abstractly fixed, immutable, or absolute, but must always be determined anew within context. Whenever we seek to exercise one of our human rights, its precise contours and limits must be determined in light of the circumstances prevailing at the time we seek to exercise it; the history of our country; the impact that our exercise thereof will have on the rights and interests of other people; and how our conduct in terms of the right aligns with the public interest and broader constitutional goals.

In this view of rights, our understanding of the right of ownership (which is of course not one of the human rights proclaimed in our constitution but is only indirectly protected in Section 25 of the Constitution) has been moulded into something entirely different from the apartheid conception. Landowners no longer have absolute, exclusive control over their land that simply arises from the fact that they have the right to ownership. If landowners today want to remove people occupying their land without any legal right to do so in addition to and after proving their ownership - they must persuade a court that eviction would be just and equitable in light of all relevant circumstances (prevailing circumstances; interests of others, including the occupiers of their land; the public interest; constitutional goals) before they will succeed.

# **Steadily increasing PhDs** among UFS academics

By Valentino Ndaba

Our vision is that by 2034, the proportion of academic staff with PhDs will increase to 75%. With each graduation ceremony, the University of the Free State (UFS) is moving closer to making this a reality. Our aspirations of becoming a research-led institution that prides itself on academic excellence, quality, and impact, are outlined in Vision 130, which is the strategic intent to reposition the UFS for its 130th anniversary.

This year's April graduation saw a general total of 94 PhDs being conferred, which is a significant growth compared to the 84 conferred during last year's April graduation ceremonies.

On 20 April 2023, three of the ten candidates conferred the new title of 'Dr' by the Faculty of Law, were UFS academic staff. Dr Kudzai Mpofu (Research Assistant in the Department of Mercantile Law), Dr Anthea-Lee September-Van Huffel (Private Law lecturer), and Dr Martie Bloem (Private Law lecturer) were just a few of many UFS academics to receive their doctoral degrees this autumn.

#### Saving small businesses through quality research

Dr Mpofu's study contributes to the development of business rescue legislation aimed at restructuring small businesses in financial distress. He used a comparative research methodology to evaluate the business rescue models of small enterprises in Kenya, the United Kingdom, the United States, and South Africa.

In his thesis, titled: A business rescue model for unincorporated business entities in South Africa, he proposed a business rescue model that provides eligibility criteria, a procedural framework consisting of a step-by-step rescue process, and an institutional framework addressing the roles/duties of the debtor, business rescue practitioner, and the judiciary in ensuring that unincorporated business entities are rehabilitated.

Part of the Vision 130 plan is to enhance research capacity and capabilities by placing a greater emphasis on the balance between research, teaching, and learning for impact. Dr Mpofu is driven by the desire to make an impact. "I am motivated to use my expertise and research to make a positive impact on society. I look forward to applying my research findings to real-world problems, engaging with policy makers, industry professionals, and community organisations, and making meaningful contributions to society through my academic work," he said.

#### Interrogating government's regulation of South Africa's natural resources

Dr September-Van Huffel's research study, titled: A critical investigation of state custodianship and its implications for the South African property regime, evaluates the potential for change in the interaction between the government as public trustee or custodian and private property holders as far as land reform is concerned.

Her thesis investigates a state custodianship approach to rural agricultural land, particularly within the context of land reform initiatives and increased regulatory control over natural resources such as water, minerals, and land for public interest; and the efficacy of the construct of state custodianship should it be applied to land as a natural resource. Her research considers the socio-political basis for the legal construct of state custodianship, and whether this novel construct has proven capable of delivering transformative outcomes such as equitable redistribution.

#### Advocating for diversity to transform the legal system

With her thesis, titled: The requirement of 'fit and proper' for the legal profession: a South African perspective, Dr Bloem challenges the entry criteria for practising law.

"With this thesis, I challenge the current understanding and application of the 'fit and proper' requirement for admission to legal practice, finding that it is superficial and one-dimensional. I argue for the reimagining of the requirement to allow for diversity and for the critical thinking needed to enable transformation of the legal profession."

Dr Bloem adds, "The study draws a direct link between objectives such as public interest, access to justice, and social justice. I also propose that being 'fit and proper' should be a continuous responsibility of all legal professionals and informed by constitutional values, not mere compliance with fixed rules of conduct. With this thesis, I intend to contribute to the transformation of the legal profession as well as legal education."

### UFS signs groundbreaking MOUs with National Credit Regulator and National Consumer Commission



By Anthony Mthembu

he Department of Mercantile Law at the University of the Free State's (UFS) Faculty of Law, in collaboration with the National Consumer Commission (NCC) and the National Credit Regulator (NCR), launched a partnership through the signing of Memoranda of Understanding (MOUs). The MOUs were signed at a function held on 7 September 2023 in the Equitas Senate Hall at the UFS's Bloemfontein Campus.

In attendance at the signing was the Vice-Chancellor and Principal of the UFS, Prof Francis Petersen; the Dean of the Faculty of Law, Prof Serges Kamga; the CEO of the National Credit Regulator, Nomsa Motshegare; Acting Commissioner of the National Consumer Commission, Thezi Mabuza; and Timothy Radikeledi from the Provincial Consumer Protection Office, amongst others.





The respective representatives from the NCC, NCR and the UFS celebrate the launch of their new partnership. From left, Thezi Mabuza, Acting Commissioner of the NCC; Nomsa Motshegare, CEO of the National Credit Regulator; and Prof Francis Petersen; Vice- Chancellor and Principal of the UFS.

> "This gathering signifies the dawn of something new for the future of this institution and for consumerism. We hope that this partnership will contribute towards improved consumer protection through research which is going to influence consumer protection while addressing consumer concerns in the province and within the South African Development Community," said Mabuza.

### UFS staff journey to Turkey for *higher education insights*

he University of the Free State (UFS) Office for International Affairs (OIA) and Bahcesehir University are reaping the benefits of their benchmarking and teaching collaboration, facilitated by their participation in the Erasmus+ International Mobility Programme. The partnership emphasizes the significance of international cooperation in higher education.

On Friday 14 July 2023, eleven UFS staff members travelled to Istanbul, Turkey to spend five days benchmarking the best societal development and valuable insights into global challenges and solutions at higher education practices.

Going on the trip, Dr Tamanda Kamwendo, lecturer, Department of Private Law said: "I will use new experiences to further improve our curriculum and the opportunity will help establish more international research collaborations."

### Events

wards

### Life and legacy of **Bram Fischer**

he second annual Bram Fischer Memorial Lecture was delivered by Prof Stephen Clingman from the University of Massachusetts, a renowned biographer of Bram Fischer. The lecture, titled 'Bram Fischer, or what happens when the world becomes inhospitable.' examined the enduring relevance of the anti-apartheid icon in both South African and global contexts. The event celebrated Fischer's commitment to justice and to making the world more hospitable. Prof Clingman explored Fischer's life and the ethical dilemmas he faced as a lawyer challenging oppressive laws. To honour Bram Fischer, the university announced the Bram Fischer postgraduate scholarship, generously funded by the Joffe Trust and Sir Sydney Kentridge.

This annual scholarship will cover full tuition and registration fees for two doctoral students. The inaugural recipients are Neo Komota and Kingdom Moshounyane. Prof Petersen congratulated them and encouraged them to continue their impactful research. Also attending the event was Ilse Fischer Wilson – Bram Fischer's daughter – and her husband, Dr Tim Wilson. Justice Albie Sachs, a UFS honorary doctorate recipient, his daughter, and Fischer's other daughter, Ruth Rice, joined virtually. Pictured are, from the left, front: Prof Serges Kamga, Dean of the Faculty of Law; Prof Clingman; Fischer Wilson; renowned author and advocate, Tembeka Ngcukaitobi, who provided a thoughtful response; back: Prof Danie Brand, Director of the Free State Centre for Human Rights at the UFS.





#### Uganda anti-gay law contradicts **African Union** qoals

24 May 2023, the iversity of the Free State (UFS) chapter of the Federation of African Law Students (FALAS). in collaboration with the Gender Equality and Anti-Discrimination Office, hosted a panel discussion on the Bloemfontein Campus, based on the Uganda Anti-Homosexuality Bill

Leading the panel discussion were UFS experts such as Prof John Mubangizi, who is the former Dean of the Faculty of Law and current Research Professor in the Free State Centre for Human Rights; Prof Mikateko Mathebula, Associate Professor in the Centre for Development Support; Khanya Motshabi, Senior Lecturer in Advanced Human Rights; as well as Akhona Komeni, Peer Mentor Supervisor at Free State Rainbow Seeds.

#### **UFS Programme Director** honoured with **FISA Chairperson** Award for fiduciary excellence

Henda Kleingeld, Programme Director for the Postgraduate Diploma in Financial Planning at the University of the Free State's (UFS) School of Financial Planning Law (SFPL), has been awarded the prestigious FISA Chairperson Award for her remarkable contributions to the fiduciary profession. The award, presented by the Fiduciary Institute of Southern Africa (FISA), recognises individuals who have made significant and lasting impacts on the fiduciary landscape.



#### African Society for Business, Law, and Economics *first annual* conference

The Department of Mercantile Law hosted the first Annual African Conference on Business, Law, and Economics (ACBLE) in conjunction with the Department of Mercantile Law at the University of Western Cape (UWC) during September 2023. This was the first revolving conference to be hosted under the activities of the African Society for Business, Law, and Economics.

### The Africa **we want**





The Faculty of Law hosted a two-tier Africa Day event on the Bloemfontein Campus on 25 May 2023. It included a round-table dialogue on 'Advancing Justice with a View of the Future: The 2063 Agenda for Sustainable Development' and a cultural exhibition titled: 'Appreciating Knowledge through Culture'.

Prof Danie Brand, Director of the Free State Centre for Human Rights at the UFS, Ntando Sindane, Lecturer in the Department of Private Law, and Dr Isolde de Villiers, Senior Lecturer in the Department of Mercantile Law, were part of the panel of experts who facilitated a discussion that looked through the lens of seven aspirational themes.

The dialogue generated valuable insights on repositioning Africa as a beacon of hope, inclusivity, justice, and prosperity, aligning with the UFS Vision 130 strategic plan. Additionally, the exhibition added to the dialogue's impact, featuring impressive displays of cultural attire, food, and artefacts by students representing diverse African countries.

#### **Prof Prince Sarpong awarded** ACCA prize for financial management

Prof Prince Prince Sarpong, Senior Lecturer in the School of Financial Planning Law (SFPL), was recently honoured with the prestigious Association of Chartered Certified Accountants (ACCA) prize for Financial Management. The ACCA is a globally recognised professional body for accountants. Dr Sarpong's research primarily revolves around financial market behaviour - he has published several papers in esteemed international peer-reviewed journals. Obtaining an ACCA qualification opens doors to new opportunities in teaching, research, and collaborative endeavours.

### No compromise: LANGUAGE-FAIR trial rights

language guarantees for vulnerable language users, accused persons making confessions, and victims of gender-based research in more depth with her.

#### Your research spans multiple jurisdictions in Africa, from the Sahel region to the Horn of Africa and the Cape. What countryspecific practices have you found regarding fair trial rights in these regions?

Language-fair trial rights are entrenched as constitutional imperatives in many negotiable. Nigerian and Kenyan courts to language-fair trial rights and actually declared trials absolute nullities due to lack of comprehension of proceedings by accused persons. Indigenous languages are languages of record in Ethiopia, Rwanda, Somalia, and Tanzania.

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Rwanda elevates the standard of linguistic competence of an accused to thorough translates to the mother tongue. In Canada, even jury panellists are subjected to language competency tests, and in South Africa, judges are assigned cases according to their proficiency in the language indicated by the trial participants as the preferred language express no compromise on the principle language used by the person making it.

#### Multilingualism is a significant challenge in legal processes across Africa. What were some of the most common issues or difficulties related to language that you identified during your research, and how do these impact the fairness of trials?

There is a gap bordering on disconnection between the formal courts and the population they serve - to the extent that legal processes are perceived as elitist and foreign, mainly because of the language expressions, whereas African tradition for the most part considers sexual language as pervasive. This constrains the trial and punishment of sexual violence. Investment in the standardisation of sign languages is limited, making the trial of persons with speech disabilities in their 'home-made' languages impracticable. There is heavy reliance on translation and interpreting to propel trials, often leading to resource measures, such as engaging police officers as interpreters. Transplanting African customs from indigenous languages to fit court situations by way of translation leads to loss of meaning and watering battle with evaluating interpretative competency against the backdrop of a lack of training of judicial interpreters

Measuring linguistic comprehension is an actual challenge for courts, often manifesting in asking people whether they Supreme Court of Justice of Ontario that would resolve this hurdle.

#### Your book also mentions the potential applicability of lessons from African jurisdictions to those outside of Africa.

Contrary to popular opinion, the study already serving as channels for trials; they are not merely colloquial speech, but carriers of identities and human dignity. They should not be ignored but recognised and promoted. A trial that must proceed in a language that an accused person does the safeguards governing such trials must apply.

#### As the legal landscape and languages in Africa continue to evolve, what recommendations or measures do you propose to improve existing approaches to ensuring fair trials in multilingual contexts?

Decolonial discourse and reparation to Africa from the legacies of enslavement, characterise the rise in esteem of African languages in all spheres of society. The use of intermediaries in Kenya and South Africa to protect and support vulnerable of gender-based violence - in their communication with the courts should be emulated by other countries and extended to persons who are illiterate, in order to mitigate the intimidating sophistication of the courts on our people.

#### **African Healthcare** FS Faculty of Law would like to congratulate Dr Tamanda Kamwendo Who was conferred with a Doctor of Laws degree at University of KwaZulu-Natal 2023 May Graduation.

Dr Kamwendo completed her thesis titled "Access to healthcare in the age of CRISPR: An analysis of the right to heritable human genome editing in the context of the Tuberculosis epidemic in South Africa."

Dr Tamanda Kamwendo research serves as an appraisal for South Africans on how to demand access to gene-editing services as a legal right in the search for a suitable treatment for TB. The research also provides momentum for South African policymaking by providing recommendations for research and the clinical use of CRISPR therapeutics as a medicinal product since South Africa has no gene-editingspecific policies or statutes.

### Dr Stopforth's research advances rights of Uber drivers in gig economy By Valentino Ndaba

Mercantile Law at the University of Grey Stopforth, a Lecturer in the Free State (UFS), recently achieved the remarkable milestone of obtaining a Doctor of Laws with a specialisation in Mercantile Law. His academic journey and dedication to the field have led to invaluable contributions and groundbreaking research in labour law, particularly focusing on the modern-day gig economy and the challenges faced by ondemand workers such as Uber drivers.

His doctoral thesis, titled "Decent Work for On-Demand Workers in the Modern-Day Gig Economy," has been a pivotal contribution to the field. Through comprehensive comparative and evaluative research, Stopforth addresses the lack of labour law protection for on-demand workers, notably platform workers like Uber drivers. Dr Stopforth's multifaceted approach aims to explore disciplines beyond law, seeking practical solutions to improve the precarious situation faced by platform workers daily.

#### Challenges faced by on-demand workers

Dr Stopforth highlighted the significant hurdles faced by on-demand workers, particularly the absence of labor law protections due to their classification as independent contractors. These workers lack the rights and benefits afforded to traditional employees, facing job instability, limited access to social benefits, and inadequate dispute resolution mechanisms

"There are numerous challenges experienced by on-demand platform workers, especially when considering the wide range of labour laws from which they are excluded. These include the rights and protections prescribed by the Labour Relations Act, the Basic Conditions of Employment Act, the Employment Equity Act, the Skills Development Act, the Unemployment Insurance Act, the Occupational Health & Safety Act, and finally, the Compensation for Occupational Injuries and Diseases Act," he said.

Dr Catherine Namakula is Senior Lecturer of Public Law at the University of the Free State and a member of the United Nations Human Rights Council's Working Group of Experts on People of African Descent. In her latest book, Fair Trial Rights and Multilingualism in Africa, she incorporates a 'language fair trial rights code' - an amalgamation of 31 principles proven by case law and trial practice as best approaches to ensuring language-fair trial rights.

#### Congratulations to Dr. Tamanda: **Pioneering CRISPR Research in South**



#### Advancing rights of Uber drivers

His research resulted in two accredited articles addressing vulnerability among ondemand workers. These articles highlighted the struggles faced by these workers in accessing basic social and labour rights, advocating for more inclusive legislative frameworks to protect them.

"This contribution consisted of a twopart article wherein Prof Denine Smit and I identified and analysed the various categories of vulnerability among ondemand workers in the gig economy. Consequently, we concluded the first part by suggesting that while platform work could serve as an interim and viable solution to joblessness, more advocacy is needed to promote decent work within this sector,' added Dr Stopforth.

Dr Stopforth said that they ultimately recommended that, "the time has come for lawmakers to engage all stakeholders to reconsider traditional work categories with a view to including new forms of work, such as on-demand work, which currently do not fit the traditional work mode. In addition, we argued that at least in the interim, the time is ripe for platform companies to consider innovative and future-thinking ways in which they can mitigate the identified structural vulnerabilities.

Such dedication to this field reflects a commitment to reshape the landscape of Labour law, striving to ensure fair treatment and protections for all workers in an everchanging work environment. Dr Stopforth's work stands as a testament to the pursuit of a more equitable and just future for on-demand workers in South Africa and beyond. 🔳

## Law of Delict Colloquium

The University of the Free State's Department of Private Law, in collaboration with the Free State Centre for Human Rights hosted a colloquium on 26 and 27 September 2023. The colloquium focused on exploring the meaning and purpose of 'constitutional damages'.

> International Mercantile Law Conference



### Eighth Annual International Mercantile Law Conference

The Department of Mercantile Law organised its 8th Annual International Mercantile Law Conference from 8–10 November 2023. The aim of the conference was to bring together scholars and students of all disciplines and fields in Mercantile Law.



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# Merry Christmas & Happy Holidays

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