NELSON MANDELA

UNIVERSITY

RESEARCH OUTPUTS

2025

Faculty of Law

Editor: S Gillespie

TABLE OF CONTENTS

1 ARTICLES

1.1 ACCESS TO JUSTICE

1.1.1 Welgemoed, M "The Role of a Legal Secretary in Preparing Candidate Legal Practitioners and Law Graduates for Legal Practice"

Legal and Administrative Studies 2025 1(32) 9–36

ABSTRACT

Legal secretaries are not legal practitioners; yet, they are in a position to provide valuable practical and professional training to candidate legal practitioners, during their term of practical vocational training, as well as to law students performing paralegal services at university law clinics. In a country like South Africa, legal secretaries mostly perform administrative work in law firms and at university law clinics. Despite their administrative knowledge, they also accumulate experience in the drafting of various legal documents, legal ethics, professionalism and, sometimes, even legal knowledge. This experience puts legal secretaries in the position to assist legal practitioners with training candidate legal practitioners and law students for entry into legal practice. Such additional training becomes important in light of the fact that legal practitioners, and even legal academics, have complained about the competence of law graduates who enter legal practice – they simply do not have sufficient practical knowledge and the relevant skills that practice requires. Conventionally, legal practitioners act as principals for candidate legal practitioners, which task is statutorily ascribed to them when candidate legal practitioners enrol for practical vocational training. Legal secretaries are not conventional trainers. In this article, it is argued that there is a firm theoretical foundation to recognise the important role that legal secretaries can play in the professional and practical upbringing of candidate legal practitioners and university law clinic students. The doctrines of constructivism and kinesthetics learning are relevant in this regard. It is argued that legal secretaries should be seen as "para-lawyers" or legal assistants in the sense that they should work with legal practitioners in providing practical and professional training to candidate

legal practitioners and students. It is trite that university law schools use the lecture method to teach law, resulting in law graduates mainly receiving theoretical training with little to none practical experience. Work-integrated learning is important for law graduates wanting to be admitted as legal practitioners and legal secretaries can make a contribution, especially legal secretaries who have years of experience behind them.

1.2 ADMINISTRATIVE LAW

1.2.1 Van Dyk, O "A Tribunal Is Not a Court, But It Might Be as Effective as a Court: A Reflection on *Ledla Structural Development (Pty) Ltd v Special Investigating Unit* 2023 (2) SACR 1 (CC)"

Obiter 2025 46(2) 460–470
https://doi.org/10.17159/d4mge061

ABSTRACT

The Constitution of South Africa, 1996 makes provision for "disputes that can be resolved by the application of law" to be resolved, in appropriate circumstances, by an independent and impartial tribunal. For this reason, the place of independent and impartial tribunals is entrenched in South Africa's constitutional text. Therefore, superior courts cannot be regarded as the only means to review administrative action and access courts. Although the Constitution makes provision for the use of independent and impartial tribunals, the legislature has not yet enacted legislation that makes provision for the use of a general, independent and impartial tribunal that can be used for the resolution of administrative disputes. Instead, what South Africa currently has in place are tribunals that are established on a mostly ad hoc basis. This is with the exception of tribunals like the Rental Housing Tribunal; the Water Tribunal; the Competition Tribunal; the National Consumer Tribunal; and the Companies Tribunal. The effectiveness of these tribunals, as well as of dispute resolution forums in the field of labour law, in resolving disputes in a speedy, inexpensive and impartial manner highlights the importance of independent and impartial tribunals in giving effect to the right to just administrative action and to access to courts. The Constitutional Court has grappled with the status and importance of "administrative tribunals" in two recent decisions. The first of those decisions is *Competition Commission of South Africa v Group Five Construction Ltd* 2023 (1) BCLR 1 (CC). The Group Five matter dealt with whether the jurisdiction of the Competition Tribunal was ousted in matters carved out to give the High Court jurisdiction. The second of these decisions is *Ledla Structural Development (Pty) Ltd v Special Investigating Unit* 2023 (2) SACR

1 (CC), which is the subject of this contribution. In *Ledla*, the Constitutional Court was called upon to decide, among other things, whether a Special Tribunal, established in terms of section 2 of the Special Investigating Units and Special Tribunals Act (74 of 1996) (SIU Act), was a court. It is worth noting that the SIU Act was enacted, among other things, to establish Special Tribunals to adjudicate civil matters emanating from investigations of Special Investigating Units (SIUs). This means that an SIU does not need to queue at the high courts for matters emanating from its investigations to be heard. Instead, SIUs take matters emanating from their investigations directly to Special Tribunals, where they are speedily resolved. The legislature has thus created a legal framework that provides for a special adjudicative regime for SIUs. In *Ledla*, the Constitutional Court held that a Special Tribunal was not a court in terms of section 166(e) of the Constitution but was competent to adjudicate legality reviews brought before it. This contribution examines the reasoning and possible implications of the court's finding that a Special Tribunal has the power to adjudicate legality reviews even though it is not a court. Furthermore, this contribution uses the court's reasoning to emphasise the importance of introducing independent and impartial tribunals to ensure that administrative-law disputes are resolved in an accessible, speedy and inexpensive manner. What follows below is a discussion of the general characteristics of a tribunal, and then a discussion and analysis of the Constitutional Court judgment in *Ledla*. This contribution concludes by making a case for the establishment of independent and impartial administrative tribunals.

1.3 COMPETITION LAW

1.3.1 Van Tonder, JL "Characterisation of restrictive horizontal practices under Competition Law (Part 1)"

Obiter 2025 46(4) 872–886
https://doi.org/10.17159/1qv68n24

ABSTRACT

Sections 4(1)(a) and (b) of the Competition Act 89 of 1998 reflect the distinction in competition law between horizontal restrictive practices that may be evaluated either through a "rule of reason" analysis or treated as automatically unlawful under a "per se" approach. Section 4(1)(a) contemplates a "rule of reason" analysis in terms of which anti-competitive effects of the conduct in issue must be proved and, if such effects are demonstrated, they are susceptible to justification on technological, efficiency or pro-competitive grounds. By contrast, where the impugned conduct involves any of the restrictive horizontal practices listed in section 4(1)(b) – namely, price-fixing, market division or collusive tendering – it is prohibited "per se" in that the anti-competitive effect thereof is presumed and cannot be justified on technological, efficiency or pro-competitive grounds. Whether section 4(1)(b) includes or excludes pro-competitive agreements involving price-fixing, market division or collusive tendering depends on whether every agreement that directly falls into one of these prohibited categories automatically violates section 4(1)(b). This can be an issue because, on the face of it, not every agreement that involves price-fixing, market division or collusive tendering necessarily harms competition. Cooperation agreements, such as joint ventures, may have neutral or even positive effects on competition. Section 4(1)(b) must therefore be able to distinguish between conduct that should be condemned per se and conduct that has a legitimate purpose and requires, at the very least, a rule-of-reason analysis. This is the issue that characterisation seeks to address. It is settled in South African competition law that any conduct alleged to have contravened section 4(1)(b) must be properly characterised in order to ascertain whether the conduct in question squarely falls within the ambit of section 4(1)(b).

In other words, it must be ascertained whether the impugned conduct, properly characterised, is the kind of conduct that is to be prohibited per se under section 4(1)(b), with no scope for justification. The main aim of this series of three articles is to review characterisation under section 4(1)(b) of the Competition Act, and to assess what it involves. Part 1 critically reviews the applicable South African framework and principles relevant to characterisation, as emerged from American Natural Soda Ash Corporation v Competition Commission (ANSAC) and Competition Commission v South African Breweries Ltd (SAB). Pursuant to section 1(3) of the Competition Act, appropriate foreign and international law may be considered when interpreting or applying the Competition Act. This is complementary to section 1(2)(a), which directs that the Competition Act must be interpreted in a manner that is consistent with the Constitution and that gives effect to the purposes set out in section 2. In this light, this article also considers the approach to whether conduct is anti-competitive by object or effect under article 101 of the Treaty on the Functioning of the European Union. Part 2 builds on Part 1 by reviewing and assessing further key facets of characterisation that have emerged from the South African case law since ANSAC and SAB. Part 3 reviews and assesses the approach relevant to characterisation of restraints of trade, as developed in Dawn Consolidated Holdings (Pty) Ltd v Competition Commission.

1.4 CONSUMER PROTECTION LAW

1.4.1 Tait, Mark "Determining a Reasonable Deposit in terms of Section 17 of the Consumer Protection Act 68 of 2008 in the Tourism Industry"

Obiter 2025 46(2) 436–449
https://doi.org/10.17159/b31g4k41

ABSTRACT

Section 17 of the Consumer Protection Act permits a service provider to require from a consumer the payment of a reasonable deposit when the consumer makes an advance booking. The question addressed by the article is how to determine what a reasonable deposit is. The article considers first whether the factors mentioned in s17(4) must be considered when determining the reasonableness of a deposit. Second, the article proses a basis for determining a deposit by using a scorecard, with minor adjustments, that was developed for determining a reasonable cancellation fee, which a service provider is permitted in terms of s17 to charge if a booking is cancelled in advance.

1.5 CRIMINAL LAW

1.5.1 Denson, R and Van der Walt, G "Euthanasia in South Africa: A Critical Analysis of Contemporary Legislative Issues in Light of Religious Values"

Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam 2025 8(2) 231–249
https://jurnal.unissula.ac.id/index.php/ua/issue/view/1147

ABSTRACT

Despite death being one of the certain eventualities of life, religious, medical, and philosophical factors appear to shape one's perception of death. Medical advancements have introduced the possibility of exercising control over an individual's death, prompting questions regarding the existence of a legal right to choose how and when to die, particularly in cases of suffering where euthanasia is administered by another party. Euthanasia and Physician Assisted Suicide (EPAS) represent one of the most contentious ethical debates globally. This debate is not novel; indeed, most countries outrightly reject the legalisation of EPAS, while others opt to enact legislation to legalise and regulate the practice of euthanasia under specific conditions. Legislators in South Africa have been hesitant to legislate on this contentious matter, leaving the judiciary in an uncertain position to make ad hoc judgments without any guidance from Parliament. Religion, moral principles, and constitutional rights are central to this debate. Clarity on this issue could foster a scientific contribution to South African law by enabling focused research into both the practical and ethical implications of legalised euthanasia, facilitating the development of safeguards and regulatory frameworks, and promoting research into the psychological impact on patients and healthcare providers.

1.5.2 Dweba, A; Lerm, H and Gumboh, E "The Criminal Culpability of Health-Care Practitioners in South Africa"

Obiter 2025 46(1) 1–27
https://doi.org/10.17159/5ab0nb45

ABSTRACT

Health-care practitioners are not superhuman. They are fallible and prone to making mistakes that have legal consequences. Mercifully, given that medicine is not an exact science and that anything can happen during a surgical procedure or otherwise, mistakes are not a frequent occurrence. From a legal perspective, it remains a challenge to distinguish inadvertence from wilful disregard for consequences. Health-care practitioners are anxious about the perceived eagerness of the law-enforcement agencies, including the South African Police Service and National Prosecuting Authority, to attach criminal responsibility to health-care practitioners and to pursue criminal charges against them, apparently without regard to what type of mistake has been made, nor the degree of deviation from the expected standard of care. The circumstances under which health-care practitioners work are also relevant. This article argues that health-care practitioners, like other professionals such as engineers and architects, as well as members of the community such as motorists where the circumstances so warrant, are criminally accountable for their actions. However, our law, unlike other foreign jurisdictions, does not recognise degrees of negligence in determining criminal liability. As the law in South Africa currently stands, an accused is either negligent or they are not. Even the slightest degree of negligence would be sufficient for the National Prosecuting Authority to sustain a conviction on a charge of culpable homicide. This article advocates that the threshold for measuring criminal culpability is too low, and that, in order to avoid unfair and unreasonable results, it should be increased to the level of gross negligence or recklessness. To achieve this, it will be necessary to bring about law reform in South Africa in cases involving all forms of professional liability, and other forms of criminal liability such as that involving motorists. The South African Law Reform Commission has recently announced that it will be investigating the matter under Project 152 Criminal Liability of Healthcare Professionals. It is expected that the Commission

will call for submissions from all interested parties to assist in its investigation. It is also anticipated that the Commission will explore whether the South African legal system is ripe for a paradigm shift, adjusting the threshold for criminal liability in cases of culpable homicide. What is suggested is that South Africa should follow the legal systems of Scotland, New Zealand, India and England, which have all changed in the last few decades. The reason these legal systems have been chosen stems from the fact that they all have the same common-law heritage. The inception and initial application of the law of negligence in those countries, especially in criminal-law matters, closely resemble steps in the South African legal system. Ordinary negligence was originally the yardstick by which criminal conduct was measured and judged. Unlike South Africa's legal system, there have been distinct threads of development in the other legal systems. Because of the principles of fairness and public interests, countries like Scotland, New Zealand, India and England have all moved away from a low threshold involving ordinary negligence, to a high threshold that includes gross negligence or recklessness.

1.5.3 Ntontela, Mahlubandile "The Criminalisation of HIV Transmissions in South Africa"

Obiter 2025 46(4) 919–935
https://doi.org/10.17159/sbsvej90

ABSTRACT

The HIV/AIDS pandemic sent shock waves through the world when it first appeared in around 1981. Globally, jurisdictions conceived different measures and mechanisms aimed at curbing both the spread of the virus and the premature deaths associated with the virus. The international community's work has focused its attention on advocating for those living with the virus, rather than on giving guidance and binding principles to states on how best to approach the risks associated with the virus. In the absence of proper guidance from the international community, some countries have resorted to creating HIV-specific legislation aimed at punishing those who maliciously contribute to the spread of the virus. In other countries that shun the creation of such laws, the approach has been to rely on existing criminal sanctions to punish malicious and intentional transmission of HIV. South Africa has predominantly opted to adopt the latter approach. The article analyses and explores the approach adopted by South Africa, using both common-law and legislative measures to sanction the intentional transmission of HIV where the perpetrator knew they were HIV positive. The article further analyses and critically discusses how courts have interpreted existing laws to hold accountable those who knowingly transmit the virus.

1.6 CRIMINAL PROCEDURE LAW

1.6.1 Gumboh, E "Justice in Limbo: Missing Court Records in Malawi"

JUSTICES: Journal of Law 2025 4(1) 1–15
https://doi.org/10.58355/justices.v4i1.153

ABSTRACT

The right to a fair trial includes the right to be tried within a reasonable time and to appeal. Missing court records delay the criminal process and create significant challenges for offenders who wish to exercise their right to appeal. Through case analysis, this contribution argues that Malawi's response to missing court records translates into an incoherent and inconsistent approach that undermines the right to a fair trial, often leaving accused persons in limbo. While the Judiciary has made some headway in responding to missing court records, the existing jurisprudence does not adequately protect the rights of accused persons. A legislative response is recommended to ensure consistency and certainty. In the meantime, the Judiciary must proactively develop guidelines to govern the handling of cases with missing files.

1.6.2 Gumboh, Esther and Ntontela, Mahlubandile "Parole for Lifers: The Constitutional Court Errs in Walus v Minister of Justice and Constitutional Development"

Potchefstroom Electronic Law Journal 2025 28 1–36

ABSTRACT

Janusz Walus was sentenced to death for the murder of Chris Hani in 1993. With the advent of the Constitution and the S v Makwanyane Constitutional Court judgment, his sentence was converted to life imprisonment in 2000. Walus became eligible for parole in 2005 in terms of the Correctional Services Act 8 of 1959. However, his release was denied on several occasions by the Minister of Justice. Following a series of court challenges, Walus challenged his continued imprisonment before the Constitutional Court in 2022. The central issue before the Court was whether there is a point at which denial of parole for a prisoner serving life imprisonment is no longer justifiable by the crime's seriousness and the court's sentencing remarks. More broadly, the Walus case speaks to whether eligible prisoners can justifiably be denied parole on the sole basis of factors beyond their control. The decision is also significant in interpreting the phrase "sentencing remarks" in the parole board policy. While the Constitutional Court made the correct decision in releasing Walus on parole, its reasoning is questionable. The Court erred in interpreting the Parole Board Manual and the law.

1.6.3 Ntontela, Mahlubandile "The Right to Legal Representation at the State's Expense at the Pre-Trial Stage for Arrested and Detained Persons"

De Rebus 2025 September Issue 27–28

ABSTRACT

The right to legal representation in criminal proceedings is universally acclaimed. In South Africa (SA), courts have, for over a century, recognised the right to consult a lawyer during a pre-trial procedure. The right to be informed about legal representation is closely connected with the presumption of innocence and the right to remain silent (S v Zuma and Others 1995 (2) SA 642 (CC) at para 33). South Africa, as a constitutional democracy, relies on the Constitution for the rights of people suspected of having committed an offence. Thus, the point of departure in all criminal matters is the Constitution and its subordinate laws. The Constitution gives every arrested, detained and accused person the right to have access to a legal representative. The Constitution further gives the right to have access to a legal representative at the State's expense, where substantial injustice would result should such a right be denied. The article explores the meaning of s 35(2)(c) of the Constitution and presupposes circumstances where such a right might apply during the pre-trial stages of criminal proceedings.

1.7 ENVIRONMENTAL LAW

1.7.1 Lemine, Bramley J; Basson, Yvette; Sefela, Glenwin and Daniel, Shaddai "Expanding on Lemine's 'The Efficiency of Section 2(4)(L) of the National Environmental Management Act in the Context of Cooperative Environmental Governance'"

Obiter 2025 46(1) 207–217
https://doi.org/10.17159/ns7q1q44

ABSTRACT

This contribution provides further insights into matters raised in a previously published contribution titled "The Efficiency of Section 2(4)(l) of the National Environmental Management Act in the Context of Cooperative Environmental Governance" (Lemine 2021 42(1) Obiter 2162). The earlier contribution focused primarily on ascertaining whether the wetland framework, albeit in different pieces of legislation and policies, was in fact uncoordinated. From that perspective, the institutional challenge was based on the action required arising from such a framework. The new insights offered in this contribution provide a broader basis for the interpretation, application and fulfilment of section 2(4)(l) of the National Environmental Management Act (107 of 1998) (NEMA) in the context of wetland resources management. Lemine's earlier contribution offered significant insights into understanding aspects of wetland management issues in relation to section 2(4)(l). However, the authors of the current contribution have extended the scope of the interpretation of section 2(4)(l) to include wetlands management in South Africa and as applied elsewhere. It is posited that this triangulation of sciences and perspectives addresses omissions in the previous contribution. In light of the above, this contribution considers wetland management also through the lens of first-generation rights, rather than exclusively as an issue affecting third-generation rights, for instance. Such a focus provides a platform for considering the relationship between persons with disabilities and specific areas (namely wetlands) that are vulnerable to flood disasters. The note considers the impact on this relationship of the realisation of the two-fold meaning of "environment" (built

and natural) (Glazewski Environmental Law in South Africa (2023) 4), and contributes towards the importance of the wise use of wetlands.

The "harmonisation of policies, legislation and action" relating to wetland management, and persons with disabilities is a fundamental point in this contribution. "Harmonisation" is considered in an extraterritorial context under existing agreements, protocols, conventions, goals and institutions. This consideration casts the net wider than across only a South African context or a purely environmental perspective, as illustrated by Lemine (Lemine 2021 Obiter 169–172). Also, "harmonisation of policies, legislation and action" is not limited to coordinated South African legislation and policies to promote the improved management of wetlands (Lemine 2021 *Obiter* 169–172). This note gives consideration to regional and international actors, demonstrating the long reach of section 2(4)(*l*).

1.8 FAMILY LAW

1.8.1 Denson, R and Van der Walt, G "Child Abduction: The Hague Convention on the Civil Aspects of International Child Abduction and National Law: The Ad Hoc Central Authority for the Republic of SA and Another v Koch N.O. and Another [2023] ZACC 37"

Obiter 2025 46(4) 1032–1047
https://doi.org/10.17159/90ankz29

ABSTRACT

In Ad Hoc Central Authority for the Republic of South Africa v Koch NO (2024 (3) SA 249 (CC) (AHCA v Koch), the Constitutional Court considered an appeal from the judgment of the Supreme Court of Appeal (SCA) (Koch NO v Ad Hoc Central Authority for the Republic of South Africa 2022 (6) SA 323 (SCA) (AHCA v Koch SCA)). The Constitutional Court delivered its judgment on 23 November 2023. It is a landmark case in international family law and child abduction. The case not only considers the broader context of international law but also illustrates the multifaceted challenges created by international child abduction. The main issue that the Constitutional Court was required to consider was the interpretation of article 13 of the Hague Convention on the Civil Aspects of International Child Abduction, 1980 (South Africa ratified the Convention on 16 July 1995). Article 13 provides that a court is not under an obligation to order the return of a child if it is established that the person, institution or other body that opposes the return (a) had consented to or subsequently acquiesced in the removal or retention of the child; or (b) the return would "expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

1.8.2 Denson, R "The Constitutionality of the Non-Recognition of Domestic Partnerships in South Africa: Revisited"

LeXonomica - Journal of Law and Economics, Maribor University
2025 December
(Indexed in Web of Science with the ESCI index Online ISSN: 1855-7147)

ABSTRACT

Marriage has traditionally been defined as the legally recognized voluntary union for life in common of one man and one woman, to the exclusion of all others while it lasts. It is, however, questionable whether the above definition still holds true for South Africa as major changes in Western societal attitudes and behavior reflect a growing number of different or alternate lifestyles. In present day South African society there is an increasing number of couples who choose to live together without formalizing their relationship in the eyes of the law. These couples live together, set up a common household, which may or may not include children, some with the intention of entering into a marriage at a later stage whilst others choose to give the institution of marriage a miss altogether. These relationships are referred to as domestic partnerships, life partnerships, de facto marriages, concubinage or cohabitation. The position at present in South Africa is that only those unions which comply with the formalities as prescribed by statute are regarded as valid marriages and are afforded legal protection and privileges which automatically arise as a result of such marriage. The protection afforded to civil marriages does not extend to domestic partnerships. The question which arises is whether the law's refusal to grant legal recognition and protection to domestic partnerships can be regarded as unconstitutional.

1.9 HUMAN RIGHTS LAW

1.9.1 Greeff, L-A "The Non-Ratification of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: South Africa and Australia in Perspective"

African Human Rights Law Journal 2025 25 332–357
http://dx.doi.org/10.17159/1996-2096/2025/v25n1a13

ABSTRACT

This article analyses South Africa's and Australia's ongoing refusal to ratify the Optional Protocol to the Convention on the Rights of the Child (CRC) on a Communications Procedure and argues that accession is essential to ensuring meaningful access to justice for children, particularly in light of the CRC Committee's forthcoming General Comment No. 27 on access to justice and effective remedies.

1.9.2 Maseka, Ntemesha "The African Human Rights System's Response to Corporate Conduct that Harms People and the Environment"

Obiter 2025 46(1) 218–234
https://doi.org/10.17159/9pxq0p52

ABSTRACT

Corporations possess the economic power and resources to contribute positively to the realisation of human rights. However, they have been linked to human rights abuses, frequently affecting the environment and people residing in close proximity to their operations. This state of affairs challenges the traditional state-centric nature of international human rights law that recognises that the state is the sole actor bound by human rights obligations. While the African human rights system does not overhaul international human rights law by expressly holding corporations accountable for human rights violations, it does recognise their complicity. This article explores the African Commission's integral role in holding states accountable for protecting individuals within their jurisdiction from corporate interference with their right to a healthy environment. Drawing insights from the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria (SERAC), the article reveals the African Commission's guidance to states on measures to safeguard the right to a healthy environment. Also, the Commission's proactive stance in offering soft law guidance applicable to corporations is commended as it encourages a culture of accountability. While the African human rights system has made positive strides, the state remains the primary enforcer of corporate accountability, and there is still a great need for multifaceted efforts to foster accountability among corporations operating on the continent.

1.9.3 Ndimurwimo, LA; Erasmus, D and Opara, LC "Contextualising the Institutional Approach to the Kampala Convention on the IDPs in Africa: A Legal Hypothesis"

Law, Democracy and Development 2025 29 1–29
https://doi.org/10.17159/2077-4907/2025/ldd.v29.12

ABSTRACT

The situation calls for humanitarian assistance and protection, with the number of IDPs continuing to grow and coming with significant social and economic costs. This article explores the challenges the AU faces as a regional institution in implementing its Kampala Convention of 2009 in response to the plight of IDPs. To this end, the article analyses the legal regime of the Convention and associated policies and actions that provide protection to IDPs, including the obligations of state parties to assist such persons. It recommends that AU member states provide practical solutions to integrate displaced persons, such as adopting legislative measures for social grants to enhance the socio-economic rights of IDPs. It argues that the issue of IDPs in Africa is a major humanitarian concern that requires urgent attention. The AU, in partnership with international community and other stakeholders, must address the root causes of displacement while ensuring the protection and rights of IDPs. Key actions include conflict resolution, economic development, climate adaptation, and legal protection. The Kampala Convention should be enforced to safeguard the rights of IDPs, while global cooperation can provide funding and support. A sustainable, rights-based approach is essential to improving the lives of millions of displaced people in Africa.

1.10 LABOUR LAW

1.10.1 Gathongo, J "A Critical Review of the Unwelcome Element in the Determination of Sexual Harassment in Kenya: Guidance From South Africa"

Obiter 2025 46(1) 51–67

https://doi.org/10.17159/7gz8fk91

ABSTRACT

Sexual harassment in the workplace is a burning issue, both in Kenya and South Africa. Both Kenyan and South African labour laws outline the specific elements or prerequisites that must be met for the conduct of the harasser to be considered sexual harassment. One such element is the presence of unwanted or offensive conduct by the harasser. Nevertheless, in Kenya, enforcing this element is still challenging, and there has been a lack of uniformity in the courts over whose viewpoint should determine if the behaviour is unwanted or offensive – that is, whether from the harasser's or the complainant's perspective. This issue is exacerbated by a lack of extensive research in Kenyan employment law on this element. This article presents a critical analysis of the "unwelcome or offensive" element in determining cases of sexual harassment in the Kenyan employment setting using lessons from South African legislation. The results from the analysis indicate that in the Kenyan context harassers often employ this element as a defence to argue that the complainant's behaviour, if examined carefully, demonstrates their acceptance of the harasser's conduct. In essence, this leads courts to scrutinise the behaviour of the complainant for any slight indication that the conduct was unwelcome. The underlying implication is that the complainant is subjected to a trial-like process, diverting attention away from the conduct and behaviour of the alleged perpetrator of the sexual harassment. In navigating such sensitive terrain, there is a need for the Employment Act to be amended and to consider adopting similar tests to those in the South African 2022 Code of Good Practice on the Prevention of Elimination of Harassment in the Workplace.

1.10.2 Gathongo, J "Hate the Sin and Not the Sinner: Addressing Unfair Discrimination Against Ex-Convict Job Applicants in Kenya and Insights From International Law"

Obiter 2025 46(3) 102–128
https://doi.org/10.17159/zd06ya48

ABSTRACT

The Kenyan criminal justice system is founded on the principle of restorative justice, which serves as an instrument for societal transformation aimed at fostering positive change in individuals. In this context, the primary goal of incarceration is to facilitate the rehabilitation process of individuals, thus improving and enabling them to reintegrate into society in a morally acceptable manner. However, securing work after reintegration remains a significant challenge for ex-convicts, given the criminal record tagged on them. In most cases, employers are under the impression that individuals with criminal histories are not trustworthy and so employing them would create a hazardous work environment. While several efforts have been made to improve workplace equality in Kenya, various forms of discrimination are becoming increasingly common and widespread. The mandatory requirement for all job applicants to submit a Certificate of Good Conduct (CGC) from the Directorate of Criminal Investigations (DCI) before consideration for employment is an example of ongoing discrimination in Kenyan workplaces. The consequence is that this practice selectively singles out only job applicants who have been previously convicted and subjects them to differential treatment on grounds linked to their CGC, even though these applicants have arguably been rehabilitated through successfully serving a prison sentence and reintegration into the labour market. Kenyan employers need to ensure that they promote equal opportunities for all job applicants as stipulated in the Employment Act. This would ensure effective competition and inclusion for all members of society, provided they possess the requisite qualifications. One way to do so is by protecting them against indirect discriminatory practices perpetuated by employers during the recruitment process, particularly the mandatory requirement that all job applicants must submit a CGC from the DCI before employment. The

article concludes by highlighting that Kenya should follow the approach of South African legislation and the International Labour Organization Convention, where the deciding criterion for employment hinges on the inherent requirement of the job.

1.10.3 Gathongo, JK and Ndimurwimo, LA "A Critical Analysis of the Proposed Law on the Employees' Right to Disconnect in Kenya"

Potchefstroom Electronic Law Journal 2025 28(2) 1–24

https://doi.org/10.17159/1727-3781/2024/v27i0a17859

ABSTRACT

The right of employees to "disconnect" from work-related communications has emerged as a concern in employment laws in recent times. Many employees find it increasingly challenging to disconnect from their duties at the end of the workday, and in Kenya, this is no exception. In the contemporary era of advanced technology, employees are tethered to their workstations beyond regular working hours. Employers regularly request or direct employees to complete assignments, activities and other projects beyond their contractual working hours in modern workplace environments. This supplemental teleworking is often unpaid overtime. The practice significantly undermines employees' time for rest and privacy, jeopardises their safety and health, and hampers productivity and remuneration. Kenya has taken steps to address this increasing workplace hazard by proposing stringent regulatory measures to grant workers the right to disconnect from their workplace environment beyond the contractually agreed working hours. Although all employees deserve the right to disconnect, the question is whether the new legislation is necessary. This article analyses the recent draft of the bill that seeks to introduce the right to disconnect in Kenya in regard to its scope, efficiency and implications for employees. The article argues that the "right to disconnect" or "connect" is catered for under the current provisions of the Employment Act of 2007 in the scope of overtime regulation. The passage of the Employment Act (Amendment) Bill of 2022 into law in Kenya would, therefore, be an unnecessary duplication of the law.

1.10.4 Myburgh, Anton "Labour Court Dispute Resolution: Effective and Expeditious?"

Industrial Law Journal 2025 46(2) 706–721
https://doi.org/10.47348/ILJ/v46/i2a1

ABSTRACT

This article explores two things. Firstly, whether the Labour Court has delivered on the statutory promise of providing for the effective and expeditious resolution of labour disputes, particularly in relation to the review of arbitration awards of the Commission for Conciliation, Mediation and Arbitration — the conclusion being that it has not. Secondly, what plans are in place to address the backlog, and how the court might reduce the inflow of reviews by adopting a uniform approach to their determination — thus enhancing the predictability of the outcome.

1.10.5 Ndimurwimo, LA and Gathongo, JK "A Critical Thought on Paternity Leave for Working Fathers"

Journal of Law, Society and Development 2025 12 1–21
https://doi.org/10.25159/2520-9515/16613

ABSTRACT

Paternity leave is one of the crucial aspects of employment relations that fosters paternal involvement in family life and raising children. Contrary to the importance of paternity leave in our modern societies, laws can be promulgated on wrong perceptions that women must stay at home and take care of the household and children, while men are obliged to work to provide for their families. The current reality of life calls for a paradigm shift in traditional gender roles of men and women that both are equal and have become career- and family-orientated. In many democratic societies, constitutionally entrenched rights prohibit unfair discrimination based on sex or gender. However, labour laws in some jurisdictions do not expressly provide for paternity leave for working fathers the way women are given a reasonable period to take maternity leave for the caring of their newborn babies. This warrants a debate on whether excluding paternity leave in laws and policies aligns with constitutional values. We investigate how existing paternity legislation is regulated and the impact that failure to provide paternity leave has on the children. Paternity leave in South Africa, Kenya, and Tanzania is discussed within an international, regional, and national legal framework and compared with the Western countries of Iceland, Norway, and Sweden. The article concludes that effective measures and policies are essential in Africa to dismantle traditional gender stereotypes and promote equal roles in the workplace.

1.11 LAW OF DELICT

1.11.1 Mukheibir, André "The Law of Delict and Gender-Based Violence in South Africa"

Obiter 2025 46(4) 950–967
https://doi.org/10.17159/y5w1aj39

ABSTRACT

South Africa's law of delict has undergone much development, most of which has taken place by virtue of the Constitution of the Republic of South Africa, 1996, and its predecessor, the Constitution of the Republic of South Africa, Act 200 of 1993. This has been particularly important in the context of gender-based violence (GBV) and police liability for omissions and commissions. In a number of groundbreaking cases, the courts developed the common law by casting the net of the law of delictual liability wider to ensure that there is accountability for serious instances of GBV. The question of whether this development has been successful in abating the scourge of GBV is complicated. While the police have been held liable over a period of two decades for failures to protect the vulnerable, specifically women and children, statistics paint a sad picture of violence continuing unabated. Moreover, the amounts of damages that are being paid out to individual plaintiffs could be utilised to prop up an ailing police force.

1.11.2 Mukheibir, André "The DZ Defences and the Development of the Once-And-For-All Rule"

THRHR 2025 88 1 February 53–81

ABSTRACT

The last decade was characterized by an exponential increase in medical negligence cases as well as the amounts of money claimed. The result of this is that funds that can be used for medical treatment is being paid out to plaintiffs. In the last few years defendants have indicated that they would pay damages in instalments of in kind (in the form of medical treatment). The Constitutional Court in In *Member of The Executive Council for Health and Social Development, Gauteng v DZ obo WZ* 2018 (1) SA 335 (CC) found that payments in instalments of in kind would be offend the once and for all rule. In this case Froneman J held that the facts of the case were not such that they would form a basis upon which to develop the common law around the once-and-for-all rule, but that it could happen in the future. As a result of this decision defendants in a number of cases raised the so-called DZ defences. In two instances the courts developed the common law to allow the defences. The payment of damages in instalments and in kind balances the individual plaintiff's right to damages with access to health services. The State Liability Amendment Act will, should it be enacted, would provide for payments in instalments and in kind. The Portfolio Committee for Justice and Correctional Services, however, found that this legislation was not desirable and that it was better to wait for the final report of the South African Law Report Commission in this regard. In the interim the possibility exists that the matter can be heard by the Constitutional Court.

[After this article was published, the Supreme Court of Appeal in *TN obo B N v Member of the Executive Council for Health of the Eastern Cape Government* (383/23) [2026] ZASCA 14 (11 February 2026) overturned one of the decisions (discussed in the article) in which the common law was developed. The court held that the development of the common law by the High Court was too drastic and such a drastic reform should not be made by judges.]

1.12 MARINE AND COASTAL LAW

1.12.1 Franckx, Erik "Some Reflections on Legal Scholarship"

The International Journal of Marine and Coastal Law 2025 40(4) 896–905

https://doi.org/10.1163/15718085-bja10253

ABSTRACT

This contribution examines the relationship between scholars and journals like *IJMCL* and the importance of using a common vocabulary to argue law of the sea issues, based on personal recollections relating to Eastern Europe and the South China Sea.

1.13 MEDICO-LEGAL LAW

1.13.1 Welgemoed, M "Die lewende testament – is daar regsekerheid in die Suid-Afrikaanse reg?"

Litnet Akademies 2025 22(2) 655–682

ABSTRACT

The concept living will generally refers to a clause in a will stating that, if the testator is in a permanent vegetative state and dependent on a ventilator to remain alive, the ventilator should be switched off. In theory, the concept of a living will is not recognised in South African law. In practice, however, the situation appears to differ. Both the legal and medical professions appear to support living wills and recognise their value for individuals. There is currently no legislation in South Africa that regulates the legality of living wills. It is of the utmost importance that legal certainty relating to the legality and enforceability of living wills is reached.

A person suffering from a terminal illness may have a living will stating that medical treatment must be ceased or that a ventilator must be switched off. Technically, the medical practitioner who switches off the ventilator as well as the person who authorises this action, can both be charged with murder if it is found that the deceased was, legally speaking, still alive when the ventilator was switched off.

This article examines the theory behind living wills and considers the perspectives of both the legal and medical professions regarding their legality. Some legal practitioners support the legality of living wills and even provide guidelines on the necessary requirements for such documents to have legal force. As for the medical profession, the South African Medical Association (SAMA) advises medical practitioners to approach living wills with caution and to consult with SAMA in cases of uncertainty. SAMA has issued guidelines intended to help protect medical practitioners against the possibility of medical malpractice and possible legal consequences if a person dies as a result of compliance with a living will. In this regard, the customs and practices of the medical profession can be useful guidelines in determining whether living wills should be regarded as valid and enforceable.

Legal academics such as Strauss and McQuoid-Mason argue that, should a person die as a result of the cessation of medical treatment, the withdrawal of artificial feeding or the switching off of a ventilator – all in accordance with the wishes expressed in a living will – the person has, in fact, died of natural causes. They maintain that in such cases, neither the medical practitioner nor any other involved party should be held legally liable, as the death was caused by the underlying terminal illness, not by an unlawful act. This argument reflects academic support for the legality and enforceability of living wills. The determination of the time of death however remains a crucial factor, and this issue is briefly discussed in this article.

Furthermore, the article also examines the legal position in selected foreign jurisdictions. The legal positions of the Netherlands, Canada and New Zealand, all of which allow for the existence of living wills through legislation, may offer valuable insights for South Africa. In this article, it is submitted that a person's fundamental human rights play a significant role in the determination of the validity of a living will. These rights enshrined in the Constitution – the supreme law of the country – must be respected. Any law inconsistent with the Constitution is invalid to the extent of the inconsistency. The fundamental rights, relevant to the arguments in this article, include the rights to life, equality, human dignity, and freedom and security of the person. Some of these rights are intertwined and should be respected collectively, such that a person's wishes, as contained in a living will, are honoured and given effect to. For example, the right to equality may be undermined if one patient is permitted to refuse medical treatment in person, while another is not allowed to do so through a living will. Furthermore, while the right to life is fundamental and respected by the law, a person's right to dignity must also be considered. Thus, their wishes – even if contained in a living will – should be respected.

It is evident that both the legal and medical professions respect these fundamental rights and, for that reason, tend to regard living wills as legally enforceable. It is expected that the legal convictions of the community, or boni mores, will be influenced by these rights to the point that living wills are regarded as valid and enforceable.

It will be argued that South African law must be developed, either through a landmark court decision or, preferably, through dedicated legislation. Legislation would create legal certainty and reduce unnecessary litigation and concomitant legal costs. Such development of the law will bring about transformation, replacing the uncertain legal position of the past with greater clarity. If a person has the right to refuse medical treatment, such a person must surely be allowed to stipulate such a desire in a living will. This would provide assurance to both the medical practitioner carrying out the person's wishes and any family member granting such proxy consent, that they will not attract any legal liability upon the person's death.

It is unclear why the law has not yet developed in this regard. The South African Law Commission has already drafted concept legislation in 1997 to regulate euthanasia, palliative care and living wills. More recently, the National Health Amendment Bill of 2018 proposed clear guidelines for the validity of living wills. However, none of these has been enacted into law. As far as case law is concerned, legislation is preferable, as there is no guarantee that the courts will adopt a similar perspective on issues relating to euthanasia, palliative care and living wills.

A living will featured prominently in Clarke v Hurst 1992 2 SACR 676 (D), although the court never pronounced on its validity. Since then, no other court decision has dealt with the issue of living wills. However, the inconsistency of the courts' perspectives in this area of the law is evident from decisions in Stransham-Ford v Minister of Justice and Correctional Services and its appeal, Minister of Justice and Correctional Services v Estate Late Stransham-Ford. The question remains: Why has legal certainty not evolved since the decision of the court in Clarke?

It is submitted that little has changed. However, it must be noted that the Interim Constitution came into effect in 1994, followed by the final Constitution in 1996, ushering in a democratic dispensation with the Constitution as supreme law of the country.

On the face of it, this shift should make it easier for living wills to be recognised as legal and enforceable, given the constitutional rights discussed above. However, the task may also be more complex, especially where the death of person can ensue, as the right to life remains deeply significant and the most important of all fundamental rights.

Whatever the case may be, the formal recognition and enforceability of living wills is desirable. It would provide legal certainty and peace of mind to terminally ill individuals, as well as to their families and loved ones. These individuals are already facing the trauma of illness – they should not also be burdened by uncertainty over whether their living will shall be respected.

1.14 MINERAL LAW

1.14.1 Badenhorst, PJ "Unlawful and illegal mining in South Africa: *primum est leges imponere deinde remedia*"

TSAR 2025 3 472–485
https://doi.org/10.47348/TSAR/2025/i3a3

ABSTRACT

The article seeks to clarify what constitutes lawful and unlawful prospecting and mining. It highlights the ambiguity within the Mineral and Petroleum Resources Development Act 28 of 2002 particularly regarding key issues such as the ownership of unsevered minerals and minerals that have been lawfully or unlawfully severed from the land. It argues that the Act's shortcomings are supplemented by the common law, including its remedies for unlawful mining. The theory of subjective rights to minerals is employed to support conclusions about common-law ownership. The article further demonstrates that the concept of illegal prospecting and mining—and its connection to offences and penalties—is rendered contradictory by poorly drafted and incomplete amendments to the Act in 2013. It concludes that the resolution of legal issues relating to unlawful and illegal mining lies not within the public property regulatory regime, but in supplementary common-law principles. Ultimately, it emphasizes that legal clarity regarding unlawful and illegal prospecting and mining must be established before the broader challenges associated with illegal mining can be effectively addressed.

1.14.2 Badenhorst, PJ "Historical Mine Dumps: *Melius Est Petere Fontes Quam Sectari Rivulos*! *Promispace CC v DRD Gold Limited and the City of Johannesburg* (062949/2023) 2024 ZAGPPHC 959 (26 Sept 2024)"

TSAR 2025 2 391–400

https://doi.org/10.47348/TSAR/2025/i2a12

ABSTRACT

At issue before the court in *Promispace CC v DRD Gold Limited and the City of Johannesburg* were: (a) whether the City of Johannesburg was the owner of the mine dump; and (b) if not, whether (i) the mine dump had acceded to the property, or (ii) it constituted an abandoned thing (*res derelicta*) and therefore belonged to no one (*res nullius*). The court, however, simply accepted that the mine dump formed part of the sale and transfer of the property.

The author's discussion of the *Promispace* decision underscores the importance of recognising that common-law principles apply to mine dumps created prior to the enactment of the Mineral and Petroleum Resources Development Act 28 of 2002, as well as understanding the content of these principles. The court ought to have examined how ownership of the mine dump was originally acquired and whether any subsequent changes in ownership had occurred.

1.15 PUBLIC LAW

1.15.1 Matlala, Rorisang and Agbor, Avitus A "Political Instability, Underdevelopment and the Misgivings of Democracy: Problematising the Issue of Political Leadership in Africa"

Twist Journal 2025 20(1) 21–30
https://doi.org/10.5281/twist.10049652#352

ABSTRACT

This paper contends that political leadership plays a crucial role in fostering social and economic justice, peace and stability, national unity and socio-economic development. The absence of effective and responsive political leadership has been a catalyst for social and economic injustices, leading to intra-state conflicts in parts of Sub-Saharan Africa. Attaining social and economic justice requires the interaction of multiple factors that go beyond existing structures. Although often overlooked, political leadership is argued to be a critical factor in achieving these goals. The paper examines the importance of responsible, responsive, and ethical political leadership as an essential requirement for social and economic justice and good governance. This includes upholding and respecting human rights, promoting civic participation, ensuring accountability, managing state resources responsibly, and fostering social cohesion among the diverse demographics within a state. This paper emphasises that political leadership is the pivotal variable that must be considered when driving a state towards providing social and economic justice for all. In this context, the international and regional human rights frameworks concerning social and economic rights serve as valuable tools to guide political leaders in their pursuit of social and economic justice and good governance within Sub-Saharan African societies.

1.16 SOCIAL SECURITY LAW

1.16.1 Olivier, M "Social Security in South Africa: Overview of Developments – Historical Perspectives"

Industrial Law Journal 2025 46 847–870

ABSTRACT

This contribution concerns an assessment of the historical development of formalised social security in South Africa. It firstly provides a historical overview of the development of non-contributory social security (social assistance) in accordance with distinct time periods, noting that initial non-state interventions have gradually been augmented and with time displaced by initially restrictive but later expanding arrangements serving particular categories of the poor. Until 1993 racial inequality remained a distinct hallmark of social assistance provisioning, the removal of which resulted in an exceptionally comprehensive system of state support with powerful direct and indirect, distributional impact. Secondly, historical perspectives on the development of contributory social security (social insurance) are reflected on, per risk category. Key risk benefit categories (in old age, unemployment, occupational injuries and diseases, health care, sickness, maternity, disability, and dependants' domains) have incrementally been captured in public and private contributory arrangements, and coverage progressively extended to include mostly vulnerable workers, the majority of whom are Africans. Finally, and in conclusion, an overall assessment of historical developments is provided. An integrated and calibrated social security system is still lacking, while significant gaps remain, both system- and institutionally wise. Key categories of vulnerable persons, notably the long-term unemployed and informal economy and self-employed workers, remain largely excluded. A shift from non-state and private provisioning to larger, public scheme arrangements has been discernible, but uneven: among others, the establishment of the envisaged National Social Security Fund has yet to materialise.

1.16.2 Olivier, M "Whither Social Security" in *Mission 2055: The Labour Relations Act 66 of 1995: 30 years on and 30 years beyond* (eds: R. le Roux & E. Kalula) (University of Cape Town)

Acta Juridica 2025 312–353

ABSTRACT

The contribution highlights the need for critical reform of the South African social security system, despite significant advances made over the last few decades. The required reforms must be informed by the need for a reconceptualised understanding of the comprehensive social protection objectives to be achieved, a context-sensitive appreciation of the social security risk concept and the associated vulnerabilities underlying the social security response framework, and an enhanced comprehension of work. Incorporating economic and environmental risks in the social security scope would ensure that social security could meaningfully respond to climate change concerns and loss of livelihood support. This would also provide a basis for accommodating those engaged in care work and in the informal economy. Substantive equality considerations, enshrined in both the Constitution and international law, would strengthen the case for including excluded and marginalised categories of persons, including the long-term and structurally unemployed, and help to inform system redesign to better accommodate disadvantaged women. The concerning trend towards new exclusions and limitations in South African social security must be confronted.

1.17 TRUST LAW

1.17.1 Nel, EC (Eben) "Die fidusiere plig in Suid-Afrika: 'n vierkantige pen in 'n ronde gat? Dlhomo v Chalwa 2024 4 SA 161 (KZP)"

Tydskrif vir die Suid-Afrikaanse Reg / Journal for South African Law 2025(2) 369–378
https://doi.org/10.1163/15718085-bja10253

ABSTRACT

The fiduciary-duty concept and its practical application by South African courts, with the *Dlhomo v Chilwa* as an example, is taken under scrutiny. In general, it is submitted that the fiduciary duty is the result of a particular relationship which is of a fiduciary nature, subject to certain primary common-law principles. In the case of the trustee, the relationship is framed in the context of a *stipulatio alteri*. Although the fiduciary relationship may have contractual characteristics, it also supports the communal interests of the parties involved. It is submitted that presiding officers often do not make an effort to consider the legal nature and origin of the fiduciary concept or critically evaluate the underlying relationship. In some instances, due to a results-driven focus, the facts are overly emphasized and the legal basis neglected, preventing the proper development of fiduciary law. It is submitted that the correct application of a clearly defined fiduciary legal theory will ultimately lead to better results. In the *Dlhomo* case, no proper differentiation is made between the two different roles of the defendant, namely as trustee and as chief executive officer. The function of a person in a fiduciary role *per se* versus his or her duties in a purely managerial position was not considered by the court. The facts of this case emphasize the need to differentiate between the fiduciary function and other trust roles an individual may be engaged in at the same time. In each matter, the circumstances should be properly investigated to determine whether one or more fiduciary relationships did indeed exist. The respondents' fiduciary duty in her position as trustee was indisputable, while the legal nature and extent of her position as chief executive officer was less obvious. It is unclear whether as manager her duty to act in good faith was the same as, or similar to,

the fiduciary duty associated with trusteeship. It is submitted that this question can only be answered satisfactorily if the requirements for the establishment of a fiduciary duty have been determined. The lack of courts to properly analyze fiduciary relationships and its’ resulting duties is inhibiting the establishment of objective fiduciary-law principles.

2 OTHER PUBLICATIONS

2.1.1 Van As, HJ contribution towards the UNODC's "Rotten Fish: A Guide on Addressing Corruption in the Fisheries Sector", 2nd Edition 2025

ABSTRACT

Fisheries resources are under immense pressure from overfishing, climate change, and the mismanagement of fish stocks, among other factors. Crimes in the fisheries sector, often fuelled by corruption, are a key contributor to this crisis. They undermine global and local efforts to use, manage, and protect fisheries resources sustainably. As a result, the livelihoods of millions of people, especially in the least developed coastal countries, who depend on fish to survive, are increasingly at risk.

The Secretary-General of the United Nations, António Guterres, has warned about an "ocean emergency", highlighting the urgent environmental and security threats that overfishing and related crimes pose. According to the Food and Agriculture Organization of the United Nations (FAO), almost 40 per cent of marine fish stocks are overfished or depleted, putting aquatic and ocean biodiversity at grave risk.

The nature of the fisheries sector provides fertile ground for corruption. The global fishing industry is a complex net of activities, actors, and authorities spanning multiple countries and jurisdictions. This complexity brings significant regulatory and enforcement challenges, opening numerous opportunities for criminal exploitation. Corruption strikes at the core of the fight against crimes in the fisheries sector. It weakens regulation and enforcement across the entire fisheries value chain: From forged licenses and underreported catch quantities to mislabelled fish sales, corruption enables criminal activities while hampering law enforcement's ability to act. Unless corruption is effectively addressed, all other efforts to regulate the fisheries sector and combat crimes in it will fall short.

This guide sheds light on the often overlooked link between corruption and crimes in the fisheries sector, highlighting the significant financial, environmental and

societal damage that will persist if Governments fail to address corruption within their domain.

3 CONFERENCES

3.1 NATIONAL CONFERENCES

3.1.1 Denson, R "What's in a name? The right of a husband to assume his wife's name" presented at the Private Law and Social Justice Conference titled Pushing the Boundaries of Private Law hosted by the Private Law Department, Nelson Mandela University on 1–2 September 2025

ABSTRACT

Everyone knows the importance of having a name, it forms part of your identity, your lineage and gives one a sense of belonging. To this extent, section 9(6) of the Births and Deaths Registration Act 51 of 1992 provides that no person's birth shall be registered unless a forename and a surname has been assigned to him or her. Section 28(1)(a) of the Constitution of the Republic of South Africa, 1996 furthermore provides that each child has the right to a name and a nationality at birth. When one looks at the personal consequences when parties enter into a marriage, the consequences relating to the marital status of the parties, the position in South Africa is that traditionally, many married women assume their husband's surname when they marry. However, they are not obliged to do this. Section 26(1) of the Births and Deaths Registration Act provides that in general people may not change their surnames unless the Director-General of Home Affairs has authorised the change. However, this rule does not apply to women who marry or who have been married. A woman does not need official permission to:

a) assume their husband's surname after marrying them (and the woman also does not require permission to retain a surname they bore at any prior time); or
b) revert to a surname they bore at any prior time (this applies if the woman divorces or becomes a widow – but also applies while they are still married); or
c) create a double-barrelled surname by adding the surname they assumed at marriage to any surname which they bore at any previous time.

These exceptions apply only to women who are or have been married. If a man wishes to do any of these things (for example, create a double-barrelled surname or assume their wife's surname), the man must obtain authorisation from the Director-General in terms of section 26(1). This differential treatment of men and women appears to conflict with the equality clause in section 9 of the Constitution. Furthermore, spouses in civil unions may change their surnames in the ways set out in section 26(1) of the Births and Deaths Registration Act and implies that this applies to both male and female partners in such unions. Thus, there is further unconstitutional discrimination 'between husbands in civil marriages and partners in civil unions. This paper addresses this discrimination in the light of the recent case Jana Jordaan and Others v Minister of Home Affairs and Another Case Number: CCT 296/24 Hearing Date: 4 March 2025 (Tuesday) where the Constitutional Court was requested to confirm the decision of the Bloemfontein High Court in J.J and Others v Minister of Home Affairs and Another (3626/2024) [2024] ZAFSHC 286 (12 September 2024).

3.1.2 Denson, R "The impact of the decision in Women's Legal Centre Trust v President of the Republic of South Africa and Others 2022 (5) SA 323 (CC) on the rights of the child" presented at the Family Law Colloquium hosted by UKZN, Howard Campus on 18–19 September 2025

ABSTRACT

The ad hoc piecemeal approach adopted by the courts and the legislature to the recognition and regulation of Muslim marriages impacted severely on the parties to these marriages, particularly on women and children, who, as vulnerable groups, were disadvantaged both on a social and economic level. The non-recognition of Muslim marriages in essence meant that there was no legal regulatory framework to enforce any of the consequences that arise as a result of the marriage, or any orders that are made by the Ulama at the dissolution of the marriage, thereby creating a perilous situation as the Ulama cannot compel compliance with their orders as it lacks the force of law. Parties to Muslim marriages, where they were financially vulnerable, were without much legal protection, leaving Muslim women and their children vulnerable to abuse and mistreatment. Taking cognisance of the hardship experienced by parties married in terms of Muslim rites, especially the plight of Muslim women and children, the Women's Legal Centre (hereafter referred to as WLC) brought an application in the Western Cape High Court (hereafter referred to as WCC) on 17 December 2014, seeking an order to force the President and Parliament to enact a law recognizing Muslim marriages. This application culminated in the judgement of the WCC in Women's Legal Centre Trust v President of the Republic of South Africa & Others. The President and the Minister of Justice was granted leave to appeal by the WCC to the Supreme Court of Appeal (hereafter referred to as SCA). Similarly, the WCC also granted the WLC, Mrs Faro and Mrs Esau leave to cross-appeal. The Constitutional Court (hereafter referred to as CC) which was delivered on 28 July 2022 confirmed the SCA judgement in Women's Legal Centre Trust v President of the Republic of South Africa and Others. The paper focussed on the impact which the Constitutional Court decision in Women's Legal Centre Trust had on the rights of children.

3.1.3 Myburgh, Anton SASLAW annual conference 2025 keynote: "The Labour Court's jurisdiction to intervene in disciplinary proceedings: from Booysen to Cibane" at the 28th SASLAW Annual National Conference, The Boardwalk, Gqeberha, Eastern Cape, 17–18 September 2025

ABSTRACT

The ad hoc piecemeal approach adopted by the courts and the legislature to the recognition and regulation of Muslim marriages impacted severely on the parties to these marriages, particularly on women and children, who, as vulnerable groups, were disadvantaged both on a social and economic level. The non-recognition of Muslim marriages in essence meant that there was no legal regulatory framework to enforce any of the consequences that arise as a result of the marriage, or any orders that are made by the Ulama at the dissolution of the marriage, thereby creating a perilous situation as the Ulama cannot compel compliance with their orders as it lacks the force of law. Parties to Muslim marriages, where they were financially vulnerable, were without much legal protection, leaving Muslim women and their children vulnerable to abuse and mistreatment. Taking cognisance of the hardship experienced by parties married in terms of Muslim rites, especially the plight of Muslim women and children, the Women's Legal Centre (hereafter referred to as WLC) brought an application in the Western Cape High Court (hereafter referred to as WCC) on 17 December 2014, seeking an order to force the President and Parliament to enact a law recognizing Muslim marriages. This application culminated in the judgement of the WCC in Women's Legal Centre Trust v President of the Republic of South Africa & Others. The President and the Minister of Justice was granted leave to appeal by the WCC to the Supreme Court of Appeal (hereafter referred to as SCA). Similarly, the WCC also granted the WLC, Mrs Faro and Mrs Esau leave to cross-appeal. The Constitutional Court (hereafter referred to as CC) which was delivered on 28 July 2022 confirmed the SCA judgement in Women's Legal Centre Trust v President of the Republic of South Africa and Others. The paper focussed on the impact which the Constitutional Court decision in Women's Legal Centre Trust had on the rights of children.

3.2 INTERNATIONAL CONFERENCES

3.2.1 Denson, R "The constitutionality of the non-recognition of domestic partnerships in South Africa: Revisited" presented at the Athens Institute for Education & Research (ATINER) 22nd Annual International Conference on Law, on 14–17 July 2025, Athens, Greece

ABSTRACT

The debate regarding the legalization of euthanasia and physician assisted suicide (EPAS) is not novel and has been a contentious issue in many countries around the globe, with some countries outrightly rejecting the legalisation of EPAS, others electing to enact legislation to legalise and regulate the practise of euthanasia under certain conditions. Whilst there are currently eight countries in the world which have promulgated legislation legalising euthanasia in certain circumstances, the legislator in South Africa been hesitant to enact legislation on this contentious issue. Instead, the judiciary has been left in a somewhat uncertain position to make *ad hoc* judgments without any guidance from Parliament. The Bill of Rights in the Constitution of the Republic of South Africa, 1996 (the Constitution)[1] contains fundamental human rights. As the supreme law of South Africa, compliance with the Constitution is mandatory subject to potential limitations as provided for in section 36. Religion, moral principles, and constitutional rights are at the centre of the debate. This research undertakes an investigation into the present and potential future approach to euthanasia in South Africa.

---

[1] Act 108 of 1996.

3.2.2 Govindjee, A 'The test for sexual harassment in dismissal cases' presented at the 28th South African Society for Labour Law Annual National Conference (Gqeberha, 17–18 September 2025)

ABSTRACT

This presentation considers the proper test for sexual harassment in dismissal cases in South African labour law, against the backdrop of the 2022 Code of Good Practice on the Prevention and Elimination of Harassment. It argues that the essential enquiry is whether there was unwelcome conduct of a sexual nature which the perpetrator knew, or ought reasonably to have known, was unwelcome. Properly understood, the test is therefore neither purely subjective nor purely objective, but combines elements of both. The presentation examines the role of fault, the significance of dignity, and the extent to which the Code and the case law at times blur the line between establishing sexual harassment and determining whether dismissal is an appropriate sanction. By revisiting leading authorities, it suggests that considerations such as power imbalance, impact on the complainant, and the gravity of the conduct should more carefully be located within the sanction enquiry. The presentation calls for greater conceptual clarity in the adjudication of sexual harassment disputes.

3.2.3 Ndimurwimo, LA "Redefining Belonging: SA's 2024 White Paper Reshapes Asylum Policy", a paper delivered to the Judicial Action Group (JAG) Ninth Annual Meeting on The Rule of Law: A Shield or a Spear? Maputo, Mozambique, 24–28 November 2025

3.2.4 Ndimurwimo, LA "Immigration Laws, Refugees and Naturalization Process: An African Perspective", a paper presented to Burundi Education Mission Fifth Annual Conference 2025, 22 August 2025, hosted by the University of Burundi, Mutanga Campus Bujumbura, Burundi & Sacramento State University, USA

3.2.5 Ndimurwimo, LA; Hamukuaya, H and Ndlazi, S "Constitutional Tensions in the Shift from Sanctuary to Insecurity: Refugee Laws and Policies in South Africa and Namibia", a paper delivered to the Namibia Constituion@35Conference Between Legacy and Lodestone, Namibia's Constitution amidst Reflection, Reform and Renewal: Navigating Constitutional Evolution in an Era of Transformation 14-15 August 2025, Arebbusch Country Lodge, Windhoek, Namibia

3.2.6 Ndimurwimo, LA and Marcus, L "The Future of Asylum in Africa and Beyond", a paper co-presented presented to the Bacon Immigration Law and Policy Program series on 7 April 2025 at the University of Arizona's James E. Rogers College of Law, Tucson, USA: https://law.arizona.edu/events/bacon-speaker-series-fulbright-scholar-leah-ndimurwimo

ABSTRACT

There are over 120 million forcibly displaced people worldwide, 43.4 million of whom the United Nations considers to be "refugees." Climate change is also a major contributor to the problem. At the same time, anti-immigrant and immigration restrictionism is on the rise. Can existing legal frameworks withstand these growing pressures and political shifts? The paper examines the resilience of asylum rights in South Africa and globally in the face of increasing forced displacement. It explores legal and policy challenges, assessing whether existing frameworks in the selected countries in Africa and USA withstand growing pressures and political shifts.

3.2.7 Ntontela, Mahlubandile "Using E-Learning Instructional Tools Through the Connectivism Theory in Institutions of Higher Learning". A paper presented at the First Southern African Regional Universities Association (SARUA) Conference, which took place in Lusaka, Zambia (May 2025)

ABSTRACT

The COVID-19 pandemic and the shift to blended learning have forced many institutions of higher learning within the SADC region to develop innovative ways of equipping students with online tools for learning and teaching. The challenge many institutions faced at the time and still face is that they are not well equipped with skills and knowledge on using e-learning instructional tools (i.e. Blackboard) to connect with their students within the learning and teaching space. Many institutions use learning theories such as behaviourism, cognitive and constructivism to prepare students for life after higher education. However, these institutions rarely use the connectivism learning theory as an approach to learning and teaching due to the lack of modern technology in some countries' institutions of higher learning within the SADC region. The paper is a desktop study that collects information from various sources and collates them to come to a conclusion on the discussed topic.

The paper critically discusses the Connectivism learning theory accepts that technology is a significant part of the learning process and that our constant connectedness gives us opportunities to make choices about our learning. Using these e-learning tools in institutions of higher learning ensures that they produce students who keep up with modern innovations and technological developments in society. Using various online tools to interact with students instead of one (usually rigid) official platform further facilitates more meaningful communication. The paper critically discusses the connectivism learning theory and the various e-learning instructional tools that institutions of higher learning may use. The paper argues that institutions of higher learning must innovatively invest in eLearning instructional tools if they are to produce outputs that meet international standards and keep up with the rest of the world.

3.2.8 Ntontela, Mahlubandile "Established Principles for Quality Judgment Writing Practices: A Lesson or Two for African Courts". A paper presented at the European Conference of African Studies (ECAS), which took place in Prague, Czech Republic (June 2025)

ABSTRACT

Writing a judgment after a presiding officer has heard all the evidence is one of the most daunting and challenging tasks for anyone who is called to decide on the matter. The exercise is not merely repeating evidence and giving a verdict based on intuition or common sense alone. The process requires a skilled writer carefully trained to undertake such a task. In many African jurisdictions, courts have been criticised for poor quality judgments, and this continued misconduct has led to some societies losing faith in the respective justice systems. Several contributing factors, such as the judges' selection processes and qualities, may affect the standard to which African judges deliver their judgments. For this reason, there are several contributing factors to poor judgment writing, and there is a need to revisit established principles to serve as a guide to quality judgment writing for African judges and magistrates.

The paper contains a collection of established principles that contribute to quality judgment writing for presiding officers. The principles and practices are collected from various authors and court judgments commenting on the issue. Finally, the paper shows how quality judgment can improve public trust in African judiciaries. The author further argues that quality judgment writing may be an incubator for strengthening the rule of law and democracies in some African countries.

3.2.9 Ntontela, Mahlubandile "The Courts' Role in Promoting Access to Justice for People with Communication Disabilities in South Africa". A paper presented at the Role of the Judiciary in a Democracy Conference, which took place in Lusaka, Zambia (October 2025)

ABSTRACT

People with communication disabilities in South Africa are one group that has been marginalised since the inception of the court systems in South Africa. In the 19th and 20th centuries, people with communication disabilities were treated in the same manner as those with mental illness. Likewise, accused persons would be committed to prison indefinitely without a trial. In 1994, South Africa became a constitutional democracy, and two years later, the Constitution came into effect. Section 9 of the Constitution of the Republic of South Africa prohibits unfair discrimination based on a disability, and sections 34 and 35 guarantee everyone access to justice and the courts. The question is: How can South African courts give effect to the right of access to justice for people with communication disabilities?

More than 30 years into democracy, there are still no clear legislative and procedural measures to ensure that people with communication disabilities have access to justice as explained in the Convention on the Rights of Persons with Disabilities (CRPD). Over the past years, South Africa has struggled to ensure equal access to the courts for people with communication disabilities. The courts have equally struggled to develop common law and procedural rules to ensure fair trial proceedings for people with communication disabilities.

The paper looks at the developments South Africa has enacted since 1994, enabling courts to give effect to the right of access to justice for people with communication disabilities. The paper argues that South African courts, armed with the Constitution, have all the necessary tools to give effect to the right of equal treatment before the law for people with communication disabilities. Finally, the

paper recommends a way forward to ensure that people with communication disabilities have access to justice and the courts.

3.2.10 Phorego, M "A Critical Analysis of the Role of Botswana's Directorate on Corruption and Economic Crime" A paper presented at the International Anti-Corruption Conference 14–15 April 2025 at Nelson Mandela University

ABSTRACT

Corruption, and the effects thereof are extensive and destructive having been found to manipulate human judgment, distort the organisational culture of institutions, undermine economic and political development, increase poverty, compromise human rights, corrode the integrity of economic and political systems, causing extreme inequalities, destroying public trust and confidence in government and threatening environmental protection.

The conference themes were:

1. Looking backwards – the impact of corruption

2. The mechanisms available to fight corruption

3. Measures implemented elsewhere – Europe, Albania, Guatemala and Botswana

4. Looking forward – possible sustainable solutions.

3.2.11 Snail Ka Mtuze, Sizwe L; Musoni, M "An Assessment of the Key AI Sovereignty Enablers Within the South African Context" in Belli, L, Gaspar, W B (eds) *The Quest for AI Sovereignty, Transparency and Accountability Internet Governance Forum – "The Eighteenth Annual Meeting of IGF"* (2024), Kyoto, Japan (Online)

https://direitorio.fgv.br/en/publication/quest-ai-sovereigntytransparency-and-accountability

ABSTRACT

African countries are taking steps in carving out their position as competitors in the development of Artificial Intelligence (AI). The mantra 'AI made in Africa for Africa' is guiding some Africans to take decisive actions to strategically position themselves as AI sovereigns with the authority to create enabling environments which promote local innovations and the use of AI tools to develop home-grown solutions, exercise control over actors in the African AI and data markets, and equipping citizens with the requisite AI digital skills. This paper assesses the Key AI Sovereignty Enablers (KASE) framework proposed by Belli within the South African context. The paper provides recommendations on the way forward reading KASE in South Africa.

3.2.12 Van As, HJ "The permeating impact of corruption" A paper presented at the International Anti-Corruption Conference 14–15 April 2025 at Nelson Mandela University

ABSTRACT

Corruption, and the effects thereof are extensive and destructive having been found to manipulate human judgment, distort the organisational culture of institutions, undermine economic and political development, increase poverty, compromise human rights, corrode the integrity of economic and political systems, causing extreme inequalities, destroying public trust and confidence in government and threatening environmental protection.

The conference themes were:

1. Looking backwards – the impact of corruption

2. The mechanisms available to fight corruption

3. Measures implemented elsewhere – Europe, Albania, Guatemala and Botswana

4. Looking forward – possible sustainable solutions.

3.2.13 Van As, HJ "Responses to Illicit trade: The case of South Africa's marine living resources" A paper presented at the EU: COST (Cooperation in Science and technology) Action on Globalization, Illicit Trade, Sustainability and Security (GLITSS) Conference – 28 August 2025 (online)

ABSTRACT

South Africa's high-value marine species, such as abalone (Haliotis midae - a marine mollusc), and West Coast rock lobster are poached by mostly foreign organized criminal syndicates working in conjunction with local gangs. While it seriously threatens the future existence of the species, it also opens up avenues for the illicit trade in other commodities. The dynamics behind this phenomenon are complex, involving multiple actors, socio-economic factors, and environmental concerns. The key dynamics include high demand and cultural significance; economic incentives; highly organised criminal syndicates; weak law enforcement and prosecution combined with insufficient penalties; poor inter-agency collaboration; bribery and corruption; and marginalisation of fishing communities by past and present governments. These illegal activities cause socio-economic decline, threatens the environment, and undermine respect for the rule of law.

In an attempt to counter the threat, a project, funded by the Norwegian Ministry of Foreign Affairs, was embarked upon in 2016, involving all law enforcement agencies, the fisheries department, the judiciary, the national prosecuting authority and the Nelson Mandela University where the FishFORCE Academy was established. A novel approach was developed to combat illicit trade in marine living resources, and associated crimes. The presentation will elucidate the multi-faceted approach to address the key dynamics contributing to the illegal trade and present some of the findings.

3.2.14 Welgemoed, M "CLINICAL LEGAL EDUCATION AS AN ACTIVE INGREDIENT THROUGHOUT THE LAW DEGREE" – International Conference: ATINER Conference, Athens, Greece, 14-17 July 2025

ABSTRACT

Many universities throughout the world have law clinics, or legal aid clinics, that provide practical legal education to law students. This education is achieved in that law students, ideally in their final academic year, provide access to justice to indigent members of society. Education is thus active and can be seen as work-integrated learning, as students are prepared for entry into legal practice. By providing paralegal services at law clinics, law students learn more about ethics, professionalism, working with people, understanding various cultures and character traits, how to handle conflicts of interest, as well as the law in its theoretical and procedural formats. Students also do legal research to arrive at solutions to clients' problems.

This type of legal education is called Clinical Legal Education, commonly abbreviated as CLE. Firstly, it comprises of a classroom component, during which theory and concepts are shared and discussed with students. Secondly, there is a practical component where students can put their theoretical knowledge to practice when either working with members of society at law clinics and/or engaging in simulated activities elsewhere. Thirdly, there is a tutorial component where students can engage with law clinic supervisors and course presenters about concepts that require clarity, which concepts could have arisen during the classroom and/or practical components.

The reality is that legal practitioners have complained about the quality of law graduates that are delivered by universities for purposes of legal practice. Apparently, law graduates are not "practice ready" when leaving university. This does not necessarily mean that they should "hit the ground running" when entering legal practice, but they should, at the very least, have a basic knowledge about how to practically apply the law in arriving at solutions to clients' legal problems. The question can therefore be asked: in an attempt to improve the quality of law

graduates, should CLE not be integrated into the law degree in such a way that it forms part of each and every module? This will result in a complete rethinking of how to present law modules, as well as acceptance of CLE by teachers of the various law modules, which may be serious obstacles. The suggestion is that simulated activities will suffice for earlier academic years, while final year law students should work at law clinics to enrich their practical knowledge while providing access to justice to society.

The end-result will be a law graduate who has had circumspective training in theory and practice of law in such a way that the graduate can make a meaningful and productive contribution in the working world from an early stage. This will have a positive impact on the morale and dignity of fresh graduates as human beings who have a passion for the practice of law to earn a living.

4 COLLOQUIUMS AND SEMINARS

4.1 Ndimurwimo, LA "International and Regional Legal Framework: Rights of Migrants, Protection from Discrimination and Xenophobia", a paper presented to the Community Leadership and Human Rights Training: Promoting Solidarity and Dialogue 18–19 November 2025 Masifunde Training Centre, Gqeberha, see https://www.chr.up.ac.za/latest-news/4262-promoting-unity-centre-for-human-rights-hosts-community-leadership-training-in-gqeberha

4.2 Ndimurwimo, LA "A Reflection as a Fulbright Scholar at the University of Arizona", a paper delivered to the Sunrise Rotary Club on 17 July 2025, The Arizona Sands Club, Tucson Arizona, USA

4.3 Ndimurwimo, LA "The Implications of the White Paper on Citizenship, Immigration, and Refugee Protection of 2024 on Asylum-seekers and Refugees in South Africa", a paper delivered to the Faculty Enrichment Series on 17 April 2025, James E. Rogers School of Law, University of Arizona, USA: https://arizona.zoom.us/j/83213411001

ABSTRACT

Immigration and asylum laws worldwide continue to wrestle with the persistent, though often obscured issue of race. The 2025 United States Executive Order extending asylum eligibility to white South Africans exemplifies a racialised asylum framework revealing how race remains central to the architecture of international migration regimes. Yet racism is not confined to Western contexts. The central contention is that, despite divergent legal frameworks, states collectively contribute to a systematic erosion of refugee protections. Employing Critical Race Theory (CRT), the paper argues that South Africa's reconciliation project remains largely superficial: beneath the rhetoric of inclusivity, racialised and xenophobic structures persist, exposing contradictions at the heart of its human rights discourse.

4.4 Ndimurwimo, LA "Human Rights in Africa: The Right to Food and Development", a guest lecture delivered on 16 April 2025, James E. Rogers School of Law, University of Arizona, USA

4.5 Ndimurwimo, LA "Legal Systems in the Sub-Saharan Africa Region", a guest lecture delivered to a Comparative Research Methods class on 4 April 2025, James E. Rogers School of Law, University of Arizona, USA: https://www.linkedin.com/posts/activity-7313671833847795713-LTJ8 utm_source=share&utm_medium=member_desktop&rcm=ACoAAAPffQEB2sSFcrFXIWCuvqS00XBTBICDPoU

5 BOOKS AND CONTRIBUTIONS TO BOOKS

5.1 Botha, Joanna "Disinformation and Democracy in Africa and South Africa" in Krotoszynski, Jr., Ronald J; Koltay, András and Garden, Charlotte (eds.), *Disinformation, Misinformation, and Democracy legal approaches in comparative context* (2025) 270–310

ABSTRACT

This chapter reviews the regulation of disinformation from an African human rights' law perspective, focusing on the right to freedom of expression and the right to vote. It provides an overview of the African regional law framework, specifically the African Charter on Human and Peoples Rights of 1981 (the African Charter)1 and corresponding jurisprudence.2 The chapter also analyses the way in which freedom of expression and disinformation laws have been applied in African countries, the aim being to contextualize and illustrate how African regional law plays out at the domestic level, but with an emphasis on the position in South Africa.

5.2 Franckx, Erik "Navigational Rights and Freedoms" in Donald Rothwell, Evan T. Bloom, Suzanne Lalonde, Jeffrey McGee and Madison Durham (eds.), *Elgar Concise Encyclopedia of Polar Law*, Cheltenham, Edward Elgar Publishing Limited, 2025, pp. 322–324

https://www.elgaronline.com/display/book/9781035300112/9781035300112.xml

ABSTRACT

The entry into force of the Polar Code in 2017, applicable to the Antarctic as well as to the Arctic, might well give the impression that navigational rights and freedoms are governed by a uniform regime in our globe's polar areas today. But this is a misconception (Franckx, 2023, 104, 119–21), as in reality, these regimes still remain poles apart, based as they are on totally different geographies, geologies and climates, as well as strategic value of the areas in question. This explains why in the Antarctic internationalisation is key, whereas in the Arctic, the legal regime has been developed by the coastal States in the area (Franckx, 1993, 6–8). These poles will accordingly be treated in turn.

5.3 Franckx, Erik "Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean" in Donald Rothwell, Evan T. Bloom, Suzanne Lalonde, Jeffrey McGee and Madison Durham (eds.), *Elgar Concise Encyclopedia of Polar Law*, Cheltenham, Edward Elgar Publishing Limited, 2025, pp. 17–19

ABSTRACT

The signing of an international treaty on high seas fisheries in the Central Arctic Ocean (CAO), defined as the single high seas portion surrounded by the waters over which the five Arctic rim countries (Arctic 5) exercise fisheries jurisdiction (Agreement of 2018, art 1(a)), at a ceremony held in Ilulissat, Greenland, in 2018, can be qualified as an extraordinary achievement on more than one account.

First, the Agreement of 2018 stands out as far as the substance is concerned, because it is the first time that commercial fishing has been banned in the high seas part of an ocean until sufficient scientific evidence can be gathered to ascertain that such fisheries can be conducted in a sustainable manner. The development of international fisheries law has so far been rather reactionary in nature, as it is only when a particular marine species has been almost fished to extinction that States have started negotiations on a draft legal instrument to stem the tide. Fur sealing (Convention of 1911 (regional basis)) and whaling (Convention of 1946 (universal basis)) are early examples of such practice. The collapse of the Alaskan pollock in the high seas part of the Bering Sea in the 1990s is a more recent example of the continuation of this trend in a sub-Arctic context.

Second, this is the first Arctic agreement where non-Arctic States were invited not only to participate in its drafting, but also to become parties on an equal footing with the Arctic 5. Third, during the tortuous road leading to the adoption of this Agreement, a first milestone proved to be the adoption of a non-legally binding Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean in 2015 (Declaration of 2015). If the invasion by Russian forces of Ukraine's Crimea peninsula in February 2014 influenced the adoption of the Declaration of 2015, the full-scale invasion of Ukraine eight years later has

had a similar straining effect on the implementation phase of the Agreement of 2018. As such, it seems to stretch at present the theory of the so-called ‘Arctic exceptionalism’ to its limits (Koivurova and Shibata, 2023, 1, 5), namely that cooperation in the Arctic normally transcends political tensions between actors elsewhere in the world.

5.4 Franckx, Erik "Denmark-Poland (Report Number 10-25)" in Coalter G. Lathrop (ed.), *International Maritime Boundaries*, vol. 9, Leiden, Brill | Nijhoff, 2025, pp. 6273–6289

ABSTRACT

This is the last agreement in the Baltic Sea region that settles a maritime boundary in an area where no boundary agreement, reaching at least the stage of signature, had been negotiated. This agreement between Denmark and Poland, in other words, fills in the last substantial gap on the Baltic Sea maritime delimitation map by covering the area south of the Danish island of Bornholm.

Negotiations started in the 1970s, with several rounds held in 1991, 2003, and 2007. On 1 March 2018, the last negotiation round was launched, and, after nine meetings held partly in Denmark and partly in Poland, the parties reached an agreement on 17 October 2018. The present agreement was signed on 19 November of that same year. The parties consequently needed more than 40 years to finally arrive at a mutually acceptable boundary.

The agreement establishes a single maritime boundary covering the continental shelves and exclusive economic zones of the respective parties.

The boundary extends for about 97 nautical miles (M) and consists of 23 turning points. The agreement does not clarify the exact status of the endpoints, but, in view of the fact that all related, previously-concluded agreements provide that the tripoints should still be arrived at by means of direct negotiations between the three countries concerned, it is assumed that this also applies to Points 1 and 23 of the present agreement.

The boundary divides the maritime area between the Danish island of Bornholm and the Polish mainland where the coasts of the parties are clearly opposite and the normal baseline applies as the relevant coastlines are not only smooth but also devoid of any Polish islands.

5.5 Mukheibir, A "Delict" in *Yearbook of South African Law*, 2025 (5) 372

ABSTRACT

The chapter covers law of delict cases for the period July 2023 - June 2024. The chapter covers the elements of delict, the actions of the law of delict (*actio legis Aquiliae, actio iniuriarum* and the Germanic Action for pain and suffering. The chapter also deals with cases involving the Road Accident Fund and the quantification of damages.

The bulk of the reported case law involves the Minister of Police, who was sued for wrongful detention, wrongful arrest and in some cases malicious prosecution. A number of medical negligence cases were also reported.

5.6 Myburgh, Anton “The impact of the Constitutional Court on the practice of labour law: A functional assessment in A Louw and C Garbers (eds) *Labour Law: Past, Present and Future* (LexisNexis 2025) 55

ABSTRACT

Anton Myburgh SC's chapter, "The impact of the Constitutional Court on the practice of labour law," explores how the highest court has reshaped the South African employment landscape. Featured in *Labour Law: Past, Present and Future* (LexisNexis, 2025), this functional assessment analyzes the court's influence on dispute resolution, the development of fair labour practices, and the evolving jurisdictional boundaries between the CCMA, Labour Court, and High Court.

The Constitutional Court's intervention in labour law has dramatically altered day-to-day legal practice. Myburgh's assessment examines key structural shifts, particularly:

- **Apex Jurisdiction:** Cementing the Constitutional Court's position as the ultimate authority on even ordinary labour matters.
- **Review Standards:** Shaping the test for reviewing arbitration awards (balancing correctness versus unreasonableness).
- **Equity and the Common Law:** Expanding the application of constitutional equity principles in the workplace and redefining common-law employment contracts.

5.7 Ntontela, M and Ntlama-Makhanya, N "The Institutional Resilience of the Judiciary in the Maintenance of an Accountable System of Governance in South Africa Details" in Contemporary Issues in Law and Society: Reflections from SA and Selected Jurisdictions (2025) ISBN 978 1 48515 422 8

ABSTRACT

Since the foundations laid by the Constitution Act 200 of 1993, the judiciary has occupied a unique status as the guardian of the Constitution, 1996. The judiciary has distinct powers of checks and balances and has been characterised as the pillar, custodian, watchdog, and stronghold of the new constitutional dispensation. Thus, the judiciary serves as an essential branch in promoting good governance principles as it operates inside the parameters of the separation of powers doctrine alongside the other State branches (the legislature and the executive). This is also grounded on its independence as it has since shown resilience in interpreting the Constitution, considering its 'newcomer' status in giving meaning and context to the new dawn of democratic principles.

However, there is also the emergence of tensions of hostility that are classified as 'lawfare' and designed to undermine its independence and integrity because of the rulings made against the other two branches and high-profile people of South Africa. The judiciary has been subject to unreasonable criticisms to an extent; in 2015, a meeting was scheduled between former President Zuma and former Chief Justice Mogoeng-Mogoeng to address the evident tensions. In 2023, Parliament scheduled a meeting with the Chief Justice following the remarks on the 'dragging of the feet approach' on implementing the State Capture Findings and Recommendations.

This chapter looks at the extent of the judiciary's independence to show its resilience towards attaining social justice in promoting an accountable system of governance. It is motivated by the two instances mentioned above when the judiciary had to engage with Parliament regarding what the authors refer to as unjustified attacks intended to damage the judiciary's reputation and credibility. The chapter argues that the principle of independence is a significant factor in its

resilience in ensuring the preservation of its integrity in its adjudicative role. It identifies judgments of limited scope in giving meaning to the influence of policy and legislative changes on the other branches in pursuit of the transformation project of the country as envisaged in the Constitution.

5.8 Olivier, M and De Clercq, P "Internal displacement, human mobility and climate change: The need for an integrated and comprehensive social protection approach" in V. Tandrayen Ragoobur, M. Olivier and G. Dafuleya (eds) *Assessing a Decade of Social Protection in SADC: Evidence to Inform Systems Strengthening* (University of Mauritius & SASPEN, 2025) 324–358

ABSTRACT

Anchored in a desk review of key policy and academic literature and drawing on practical field experience, the contribution reflects on critical dimensions of an integrated and comprehensive social protection response in the context of climate change-induced internal displacement and human mobility. It argues for incorporating and operationalising the humanitarian/development/peace nexus over and beyond humanitarian assistance. This requires an appreciation of the root causes of climate-induced internal displacement, as well as understanding of the often-present related conflict dimensions. There is need to acknowledge state responsibility and accountability, also to introduce social protection interventions with a longer-term focus. Building on existing good practice examples, a context-focused evidence base to inform designing and implementing appropriate responses is needed. Considering the multi-functional role of social protection, capacity-strengthening in relation to anticipatory, absorptive and adaptive capacities will assist considerably in crafting and implementing appropriate responses. The contribution concludes by highlighting pertinent interventions that need to be considered in these and related areas, to ensure that social protection provides an appropriate response to the many challenges faced by climate-affected IDPs and host communities. It emphasises the critical role of social protection as an entry point to nationally-owned responses to human mobility; the need for an evidence-based approach to inform remodelled social protection responses; multi-facetted remedial action to underpin a new approach; and the relevance of social protection's multi-functional role in relation to human mobility and displacement.

5.9 Snail Ka Mtuze, Sizwe L, Morige, Masego and Nzimande, Mbali "The law on artificial intelligence (AI) in South Africa in the evolving African legal landscape" in Belli, L, Gaspar, W B (eds) *AI from the Global Majority - Official Outcome of the UN IGF Data and Artificial Intelligence Governance Coalition* (2025)

ABSTRACT

This research article will look at the status of AI Laws and Policies in South Africa, the South African Draft AI Strategy (SADAIS) and critique thereof, South Africa's National Artificial Intelligence Policy Framework (NAIPF) as well as African initiatives to regulate Artificial Intelligence as it evolves. The article concludes with a thought on how South Africa is dealing with Artificial Intelligence and the scramble to publish Policy Frameworks to govern it.

5.10 Snail Ka Mtuze, Sizwe L and Musoni, M "An Assessment of the Key AI Sovereignty Enablers Within the South African Context" in Belli, L, Gaspar, W B (eds) *The Quest for AI Sovereignty, Transparency and Accountability* DC-DAIG 2023 Data Science, Machine Intelligence, and Law, vol 8, Springer, Cham. (2025)

https://doi.org/10.1007/978-3-032-02762-7_3

ABSTRACT

African countries are taking steps in carving out their position as competitors in the development of Artificial Intelligence (AI). Policy positions are echoing the mantra 'AI made in Africa for Africa' (Smart Africa, 2021; AUDA NEPAD, 2024; African Union, 2024) as a way to signal the importance of African AI sovereignty characterised by the use of African data by Africans to develop products and services that can adequately address African challenges and meet African needs and demands, while also developing the African AI economy.

5.11 Snail Ka Mtuze, Sizwe L and Musoni, Melody "Personal Data Architectures in South Africa" in Luca Belli, and Walter Britto Gaspar (eds), *Personal Data Architectures in the BRICS Countries* (Oxford, 2025; online ed, Oxford Academic, 14 Nov. 2025)

https://doi.org/10.1093/9780198974468.003.0006

ABSTRACT

This book provides a comprehensive analysis of personal data protection frameworks within the BRICS nations—Brazil, Russia, India, China, and South Africa—and explores the potential for enhanced cooperation as regards the management and regulation of international data flows, amongst the increasing number of new group members. This study is particularly relevant in light of the recent BRICS commitment, enshrined in the grouping's 2024 Declaration, aimed at jointly promoting 'a global framework for data governance'. The ways in which this policy objective can be achieved are explored in the conclusion of this volume, highlighting what concrete path might be realistically followed by the group. Drawing on the pioneering research of the CyberBRICS project, each chapter delves into the unique legislative landscapes of the member countries, highlighting significant regulatory developments such as Brazil's General Data Protection Law (LGPD), Russia's evolving privacy and data localization regulations, India's Digital Personal Data Protection Act 2023 and its Data Empowerment and Protection Architecture, China's Personal Information Protection Law (PIPL), and South Africa's Protection of Personal Information Act (POPIA). The authors examine the complexities and challenges each nation faces in harmonizing data protection with economic growth and technological innovation, while also addressing issues of national sovereignty, cybersecurity, regulatory compliance, and international coordination. A comparative analysis of the BRICS personal data architectures underscores the distinctive approaches and institutional frameworks adopted by BRICS countries and how this unusual grouping is growing, influencing an increasing number of countries with its policy and governance choices. The concluding chapter synthesizes these insights to offer concrete solutions and mechanisms for sustainable transborder data transfers and digital trade,

emphasizing the importance of fostering legal interoperability and shared governance principles. By proposing model contractual clauses and strategic cooperation pathways, the book advocates for a shared BRICS stance on personal data protection, aiming to balance data subject rights with the imperatives of cybersecurity and digital sovereignty in a connected digital economy. This volume is an essential resource for policymakers, legal practitioners, and scholars interested in understanding a future where emerging economies are increasingly shaping the dynamics of data governance and digital cooperation.

6 PUBLIC LECTURES

6.1 Snail Ka Mtuze, Sizwe, L Attended and Presented at African Cyber Law Conference (ACLC) - Towards an Integrated and Intelligent Cyberspace through Harmonised African Legal Frameworks "The use of Artificial Intelligence (AI) in the legal process - An analysis of court cases decided" (04 to 05 February 2025)

6.2 Snail Ka Mtuze, Sizwe, L Attended and Presented at Seminar on the Intersection Between on Artificial Intelligent (AI), Intellectual Property and Human Rights at University of Limpopo (2025-Online)

6.3 Snail Ka Mtuze, Sizwe, L Presented at The Institute of International Auditors SA (IIA SA) Public Sector Conference – "Game Changers Surviving Public Interest Through Innovation- Hybrid Public Sector Forum" (05 and 06 May 2025)

6.4 Snail Ka Mtuze, Sizwe, L Presented at Black Lawyers Association BLA –AI Breakfast Colloquium "The Practice of Law in the Era of Artificial Intelligence and the Fourth Industrial Revolution" in Gqeberha Eastern Cape-(23 to 24 May 2025)

6.5 Snail Ka Mtuze, Sizwe, L Presented at CPDP LatAm, The Latin American Edition of the Computers, Privacy and Data Protection Conference "Data Governance in the Global Majority –FGV Direito Rio De Janeiro (15 to 19 July 2025)

6.6 Snail Ka Mtuze, Sizwe, L Attended and Presented at CISA (Certified Information Systems Auditor)- Shift Happens Shift Proofing Compliance Conference "Embedding a Culture of Compliance that Survives Change" (27-28 August 2025)

6.7 Snail Ka Mtuze, Sizwe, L Attended and Presented at Webinar-Cyber-security Law in the EU Influence African and SA Data Protection-CPDP LatAm Data Governance Conference (FGV Direito Rio De Janeiro) (October 2025)

6.8 Snail Ka Mtuze, Sizwe, L Attended and Presented at Botswana Institute of Banking and Finance (BIBF) 2025 Data Protection Conference "AI and Cyber-security in Data Protection" (09 to 10 October 2025)

6.9 Snail Ka Mtuze, Sizwe, L Attended and facilitate the Session -The Future of Law in an AI-Driven World, organised by Cliffe Dekker Hofmeyer (CDH) and University of Pretoria (UP) -23 October 2025

6.10 Snail Ka Mtuze, Sizwe, L Presented at Cyber Security Indaba- Next-Gen Cyber-security: Innovating for Tomorrow's Challenges" at The Innovation Hub Pretoria (29 to 30 October 2025)

6.11 Snail Ka Mtuze, Sizwe, L Attended and Presented at The 69th Annual IPM (Institute of People Management) Convention and Exhibition on "Future Forward HR: Shaping the Future of Work" (16-18 November 2025)

7 REPORTS AND POLICY DOCUMENTS

7.1 Van As, HJ "The Development of Lacey-Type Provisions to combat Transnational Organised Crime in the Trafficking of Illicit Aquatic Living Resources in Southern Africa"

ABSTRACT

Marine living resources in South Africa and other member States of the SADC are under threat from organised crime syndicates that operate cross-border. The laws of individual countries normally provide for the prevention, investigation and prosecution of offenders that commit crimes in the fisheries sector in those countries. However, the proceeds of such crimes are often moved across borders by criminal syndicates, and in some instances to countries where the species are either not found or the country is landlocked, with the result that the illicit activity is not criminalised. The inability of administrations to use available mechanisms to secure support from other countries to address the illicit trade in its marine species necessitates the investigation of other options that may be available. One such possibility is Lacey-type legislation for SADC member States. The Lacey Act makes it a crime to "import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife that was taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law."

Implementing Lacey-type provisions is recommended for addressing cross-border fisheries crimes. The approach will be to draft a Code in line with the Protocol on Fisheries and the Charter for the MCSCC. This draft Code will be accompanied by a discussion paper that can later be turned into a policy brief. Once the draft Code and the policy brief are in place, the Ministers of Fisheries, followed by the Ministers of Justice, will be approached to incorporate the provisions in their domestic legislation.

8 AWARDS AND ACHIEVEMENTS

8.1 Denson, R has successfully completed the Erasmus+ Programme staff mobility to Maribor University, Slovenia where lectures were presented to 2nd and 3rd year law students

8.2 Gumboh, E - Faculty of Law's Emerging Researcher of the Year Award 2025

8.3 Hokwana, T - Faculty of Law's Excellent Teacher of the Year Award 2025

8.4 Knoetze, E has successfully completed the Erasmus+ Programme staff mobility to Maribor University, Slovenia where lectures were presented to 2nd and 3rd year law students

8.5 Ndimurwimo, LA successfully completed the Fulbright Visiting Research Scholar Program from February to September 2025 at James E. Rogers College of Law, University of Arizona in the USA

8.6 Ndimurwimo, LA received the Nelson Mandela University Vice Chancellor 's Excellence Awards 2025

8.7 Ndimurwimo, LA supervised the best Faculty of Law's LLB Treatise of the year. Stuurman, L The Impact of the New Immigration and Citizenship Bill on Asylum-seekers, the candidate graduated in 2025

8.8 Ndimurwimo, LA - Faculty of Law's Excellent Researcher of the Year Award 2025

8.9 Ntontela, Mahlubandile - Faculty of Law's Emerging Teacher of the Year Award 2025

8.10 Snail Ka Mtuze, Sizwe, L Appointed as Examiner at WITS and UP

8.11 Snail Ka Mtuze, Sizwe, L Appointed as External Examiner at UJ and UNISA

8.12 Snail Ka Mtuze, Sizwe, L Appointed as External Examiner at UKZN – LLM Dissertation, (2025)

8.13 Welgemoed, M has successfully completed the Erasmus+ Programme staff mobility to Maribor University, Slovenia where lectures were presented to 2nd and 3rd year law students

9 NEWSPAPER ARTICLES AND NEWSLETTERS

9.1 Snail Ka Mtuze, SL "Opinion: Missed POPIA Opportunity in Matric Results Court Case" 10 January 2025 (IT Web)

https://www.itweb.co.za/article/opinion-missed-popia-opportunity-in-matricresults-court-case/xA9POvNEj3mqo4J8

ABSTRACT

On the 8th of January 2025 in the case of Information Regulator versus the Department of Basic Education (DBE) and others, there seems to have been a missed and important opportunity to develop much needed jurisprudence on the Protection of Personal Information, Act of 2013 (POPIA). An individual matriculant by the name of Ms Spies applied to the High Court in order for the 2021 matric results to be published via print media and electronic media, omitting the name and surname, as it had been done in the past. The Information Regulator (IR), at the time, did not oppose the relief sought and "abided by the court order" and the order was granted. It must be noted that the court, at the time, did not deal with the merits of the application nor did it give a detailed judgement as to how it came to the said conclusion. The once-off court judgement did not create any precedent, and it related to an individual and not the entire country. The POPIA only became enforceable in June 2021 after the one year grace period hence the IR did not have much standing to approach the court or make any findings about the DBE's method of publication of matric results in previous years. The court seemingly did not take into account that in terms of the POPIA, the IR is a body of five individuals in terms of Section 41 of the POPIA. The fact that the court repeatedly referred to the applicant as "she" in other words, chairperson Adv Pansy Tlakula and not "it" or "the regulator" more than three times appears as an indication of this, which is unfortunate. The regulator was within its right to carry out the "assessment" in terms of Section 89 of the POPIA, and the fact that the outcome of the investigation was in November 2024 had nothing to do with the courts being busy at the time.

10 MEDIA COVERAGE

10.1 **Ntontela, Mahlubandile,** has, throughout the year 2025, frequently featured on Umhlobo Wenene FM's talk shows to discuss various legal aspects. Umhlobo Wenene FM is the second-largest radio station in South Africa, with over 5 million listeners.

11 SUPERVISION OF LLM TREATISES/DISSERTATION/THESES

11.1 APRIL 2025 GRADUATION

11.1.1 Erasmus, D supervised SEGANO, Tswarelo "Preservation Orders to Recover State Assets Obtained Through Corruption" completed for April 2025 graduation.

11.1.2 Gathongo, JK supervised DE LANGE, Chari Stephan "Legal Liability in Terms of the Occupational Health and Safety Act 85 of 1993" completed for April 2025 graduation.

11.1.3 Gathongo, JK supervised DIKOBO, Kati Jacob "Sexual Misconduct by Educators Against Learners in the Limpopo Province" completed for April 2025 graduation.

11.1.4 Gathongo, JK supervised NOMBILA, Elliot Xolani "Unfair Discrimination Based on an Arbitrary Ground" completed for April 2025 graduation.

11.1.5 Gathongo, JK supervised QUMZA, Lizeka "Legal Protection of Workers with Visual Impairment" completed for April 2025 graduation.

11.1.6 Keith-Bandath, RE supervised LOKOTSCH, Lise-Mari Anne "Disciplinary Action of Employees for the Private Consumption of Cannabis" completed for April 2025 graduation.

11.1.7 Meyer, J with co-supervisor Lerm, HW supervised PILLAY, Asayvanie "The Constitutionality of the Criminal and Related Matters Amendment Act 12 of 2021 in Cases of Domestic and Related Offences" completed for April 2025 graduation.

11.1.8 Van der Walt, JA with co-supervisor Keith-Bandath, RE supervised BOTHMA, Deon "Substantive Equality and the Individual Right to Affirmative Action" completed for April 2025 graduation.

11.1.9 Vrancken, PHG with co-supervisors Simelane, T and Snail, SL supervised NDILA, Yonela "The Applicability of the Cybercrimes Act 19 of 2020 to Cybercrimes Occurring in the Maritime Environment" completed for April 2025 graduation.

11.2 DECEMBER 2025 GRADUATION

11.2.1 Botha, JC supervised HENCIL, Xzavier Francis "The Data Message Offence in Section 14 of the Cybercrimes Act 19 of 2020 and the Criminalisation of Harmful Communications" completed for December 2025 graduation.

11.2.2 Botha, JC supervised MBADLANYANA, Unathi "Section 3 of the Prevention and Combating of Corrupt Activities Act 12 of 2024: Sanctioning of Public Officials for Failure to Deliver Educational Resources" completed for December 2025 graduation.

11.2.3 Gumboh, E supervised NGXANDE, Nombeko Renette "Sentencing of Child Offenders: A Focus on Imprisonment" completed for December 2025 graduation.

11.2.4 Keith-Bandath, RE supervised RAMOROKA, Lesiba Jim "Vicarious Liability for Sexual Harassment in South Africa" completed for December 2025 graduation.

11.2.5 Keith-Bandath, RE supervised RATAZA, Themba Theophilus "Unfair Suspension in the Public Service as an Unfair Labour Practice" completed for December 2025 graduation.

11.2.6 Qotoyi, T supervised MTHEMBU-LUTHULI, Nomzamo Vuyiswa "The Application of Section 197 of the Labour Relations Act 66 of 1995 on Termination of Service Level Agreements" completed for December 2025 graduation.

11.2.7 Van der Walt, JA supervised BUYANA, Asaduma "The Unfair Labour Practice Relating to Promotion in the Public Education Sector" completed for December 2025 graduation.

12 SUPERVISION OF LLD THESES

12.1 APRIL 2025 GRADUATION

12.1.1 Vrancken, PHG with co-supervisors Van As, HJ and Knoetze, E supervised CHRISTOFFELS-DU PLESSIS, Anthea "Customary Fishing Rights in South African Fisheries Law" completed for graduation April 2025.

ABSTRACT

The legal framework governing fishing rights in South Africa locates customary fishing rights as part of small-scale fishing rights. In this thesis, it is proposed that customary fishing rights must be defined as a sui generis and independently defined class of fishing rights. This must be achieved in accordance with the Constitution, 1996, which confers distinct recognition to customary law and, therefore, customary rights of indigenous communities. Drawing on international human rights law and policy and lessons from New Zealand, Canada and Kenya, the thesis proposes a definition of customary fishing rights to be inserted in the Marine Living Resources Act of 1998.

12.2 DECEMBER 2025 GRADUATION

12.2.1 Van der Walt, JA supervised MAMASHELA, Ntsoaki Lydia "Equal Pay for Work of Equal Value: Lessons From Canada and the United Kingdom" completed for graduation December 2025.

ABSTRACT

This research investigates the principle of equal pay for work of equal value in Canada, the United Kingdom and South Africa, irrespective of race, gender, colour, or any other personal factors. This concept is enshrined in international conventions of the United Nations and the International Labour Organisation, as well as in domestic legislation in several nations, including Canada, the United Kingdom, and South Africa. Nevertheless, even with these and domestic regulations put in place, hurdles persist in effectively resolving gender and race-based pay inequalities in facts and practice. Addressing these challenges would assist an employee in instituting a claim against an employer in a dispute concerning equal pay for equal work. Accordingly, this study provides important insights that may guide legislative and policy reforms for South Africa.

12.2.2 Botha, JC with co-supervisor Du Plessis, M supervised OLIVIER, Morné "Judicial Selection and Appointment in South Africa" completed for graduation December 2025.

ABSTRACT

This study explores the constitutional requirements for selecting and appointing judges in section 174 of the Constitution of the Republic of South Africa, 1996. Judges should be fit, proper and appropriately qualified, while the judiciary should broadly reflect South Africa's race and gender composition. Criteria and guidelines developed by the Judicial Service Commission, the body responsible for the nomination and selection of judges, are analysed to assess whether they are congruent with the constitutional requirements. The research concludes that merit and diversity are not binary, but complementary, to ensure that the most appropriately qualified candidates are appointed.