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Law student's rare upgrade to graduate with PhD after submitting an LLM

What started out as an LLM in the Department of Private Law under the supervision of Professor Hanri Mostert in 2018 has instead ended with Rebecca-Lee Pein graduating with a PhD during this March 2022 graduation season. Thanks to the extensive work she put into her dissertation on artisanal mining, she was accepted for the rare opportunity to upgrade from an LLM to a PhD.

Professor Mostert said that upon reading Rebecca's thesis around the end of 2020, she felt it was far beyond what was expected of a master's thesis.

"I told her she had written a doctoral thesis. The faculty committee recommended that she upgrade, that one additional chapter be added, and that she submits it as a PhD," said Mostert. "She had the intention of doing an LLM. I provided feedback for her and then I didn't hear from her while she was implementing the feedback I provided. When I opened the manuscript after this, I saw from the 40 000 words she originally had, her corrections in response to my appraisal had blown up the thesis to an around 80 000-word manuscript."

Striking the balance that earned a PhD

Rebecca had done this while training as a candidate attorney at one of the continent's largest law firms, Edward Nathan Sonnenbergs (ENSafrica). She began her two-year stint of articles there in 2019 in its commercial law department with a team that worked with big mining clients.

Through a balance of exercise, planning and seeing friends and family, Rebecca has made this notable achievement. "The articles are huge amounts of work, pressure and tight deadlines. I had to be very meticulous and organised. I needed to create a schedule. I wanted to have flexibility because I love running. I wanted to stay fit and healthy and now and then I wanted see friends and spend time with family."

Juggling the strain of her articles, practical legal training classes and studying and writing for board exams, she submitted her thesis manuscript to Mostert after adding extensively to it based on Mostert's guidance.

"I naturally added a bit of my opinion, which is the difference between a master's and a PhD. By the end of 2020 when she checked it, she said that I had really taken her comments seriously and done every correction. She told me it was basically a PhD and recommended that I upgrade to a PhD. I did that and submitted a proposal and within a few weeks it was accepted. By 2021, I started transforming my master's into a PhD by adding more of my own opinion and reworking areas of the thesis. By the end of 2021 I submitted it, it was marked and I got it back around the middle of January and the rest is history," explained Rebecca.

A family in geology

Titled "The 'Formalisation Dilemma' of Artisanal and Small-Scale Mining: An analysis with reference to the Democratic Republic of the Congo (DRC)", the thesis stems from Rebecca's interest in geology and her exposure to mining in the continent through her parents' work.

"My parents are geologists and my sister is a geologist. I've always been surrounded by the mining world and geology. At dinner time, we were always talking about rock formations. Our holidays were to the Drakensberg to look at which rocks were sedimentary," said Rebecca.

"My mother, Helen Pein, and step-father, Anton Esterhuizen, had their own mining companies and they worked all over Africa, and I was often lucky enough to accompany them and see mining sites. Through this, I got exposed to the artisanal mining world, which is the informal sector. This is where people go to mines and dig and there are dangers. I knew then and there that I am passionate about the informal sector, human rights, child labour, occupational health and safety and mining law. When I started my master's, I knew the topic was going to be artisanal mining. It was an intersection of property law, mining law, human rights law, environmental law all the things I was passionate about – almost like the human side of law and mining."

Shining light on the work of "zama zamas"

Rebecca defines artisanal mining as a sector that involves unregulated miners going into mining sites to mine for themselves, locally referred to as *zama zamas*.

"I looked at the DRC because my mother had worked a lot in the DRC, so I knew it well. The eastern DRC is known well all over the world for conflict minerals, civil war and child labour issues. However, the DRC has come a long way because they have regulated and have legalised artisanal mining. I wanted to look at how artisanal mining has been formalised in sub-Saharan Africa, looking at the case example of the DRC and what lessons we can learn from this to apply in South Africa."

Mostert feels that Rebecca's research shines light on the plight of artisanal miners and the systems that fail them.

"These are people that have been failed by systems, both by current governments and governments during colonialism and post-independence. There might be a strong unwillingness to be regulated by a system that has consistently failed them," said Mostert.

Yet law has been developed that could facilitate better regulation of this sector.

"In other parts of the continent, like in the DRC which Rebecca focused on, the legal system for artisanal mining is very sophisticated, but there is a little take up of the law. Rebecca casts a light on why it is so difficult for this extremely good legislation to be implemented and I think this a very useful contribution to make," added Mostert.

Yet Rebecca maintains that informality in mining will be around for a long time. "Informality is going to exist, regardless of regulations. From the beginning, there was a system that was set up to fail. We can't blame current governments when there is a history to these systems and failures. Until we address the underlying issues of state failure and weakness, we won't be able to address informality."

Mostert said that what Rebecca has achieved is phenomenal.

"She did all of this while training to be an attorney at one of the biggest firms in Africa. Typically, the two years of articles is a very harrowing experience. Rebecca managed to finish a PhD while training as a candidate attorney. I think that is a phenomenal achievement. The thesis flew through the examination process. That is also a phenomenal feat."

For Rebecca, however, this is a moment of reassurance and that she has little to fear. "I think I've always had a bit of imposter syndrome and that I would be caught out somehow. This experience has reassured me that I am more capable than I thought I was and that I can do more than I set my mind to. I've accomplished so much over these last 10 years. It totally is possible; no one is out to catch you."

Story by Wendy Martin, UCT News.



PhD graduand Rebecca-Lee Pein

Photo: Supplied

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