

ACADEMIC FREEDOM IN AFRICA UNDER ATTACK:
A TRIBUTE TO PROFESSOR CISTAC

Date: Monday 18 April 2016

Time: 17:00 to 18:30

Venue: Moot Court, Ground Floor, Law Building, Faculty of Law, Hatfield Campus,
University of Pretoria, Pretoria, South Africa

Presenter: Dr. Kwadwo Appiagyei-Atua

- Slide 1

- Slide 2

- Gilles Cistac had the habit of going for coffee and chatting with friends at the popular Café ABC before starting his working day at Universidade Eduardo Mondlane where he was a professor.

- Slide 3

- Sadly, however, on Tuesday March 3, 2015, Gilles could not see his students and colleagues again after his visit to ABC. At around 8.45am, while waiting in front of the café for a taxi, a car passed by and shots targeted at him were fired, hitting him several times. He fell while his assailants who committed the dastardly act fled. Gilles was taken to the hospital and operated upon but he could not survive the attack. He died a few hours later.

- Slide 4

- Shall we observe a minute's silence in honour of Prof Gilles Cistac.
- Gilles first came to Mozambique in 1993 on appointment from the French embassy in Maputo to provide assistance/advice to the Mozambican government in developing a new electoral law. He obviously fell in love with Mozambique so after completion of his assignment and a short stay back in France, he returned in 1995 to work as a professor of public law at Universidade Eduardo, a job he devoted himself to until his death. At the time of his death, he was engaged in a number of activities, including operation of a research unit dedicated to the harmonisation of the law in the SADC member states. He also worked as an adviser to several government ministries.
- Gilles was dedicated to his work and was admired by colleagues and students alike. No wonder a few days after his death, the law library of Universidade Eduardo Mondlane was named after him during which ceremony the director of the Law Faculty, Prof Armando Ndimande, noted, *inter alia*, that "Gilles Cistac will influence a generation of jurists because his contributions in the field of public law in Mozambique will not go unnoticed."

- Slide 5

- In 2009, Cistac received the French order of merit *Ordre des Palmes Académiques* in the rank of a *Chevalier* (knight) for his work on

decentralisation in Mozambique. The "Ordre des Palmes Académiques" is the highest French order of merit in the sciences.

- In a speech in recognition of the award, the presenter, M. Thierry Viteau underscored the exceptional human and professional qualities that Cistac was made of and concluded: "Le professeur Cistac illustre, avec éclat, l'innovation pédagogique et l'expertise qui font la renommée de l'école juridique française dans le monde."
- A year after being honoured with this award, he received his Mozambican citizenship and thereby became a Franco-Mozambican national.
- As an expert in his field, Prof Gilles Cistac did not shy away from offering critical comments on matters affecting constitutionalism, decentralisation, human rights, rule of law and appropriation of state power in Mozambique. This sometimes brought him into conflict with the establishment and pro-government forces.
- In the aftermath of the 15 October 2014 election which returned the ruling FRELIMO party to power, the opposition RENAMO party which won 34% of the votes cried foul. Consequently, it demanded, among others, constitutional devolution of power, including the right to govern the provinces in which it won the majority of votes.
- Gilles Cistac supported such views, claiming that the Mozambican constitution allowed for the creation of subaltern hierarchies and drafted a legislative proposal for the RENAMO in relation to that contention for discussion in the national Parliament. The FRELIMO party rejected these demands as "unconstitutional" while pro-government newspapers and supporters criticised Cistac for his opinions.
- It did not take long after the raising of these issues before Gilles was gunned down. In fact, according to *The Economist*, a week before his death, Cistac had received death threats on Facebook from a user under the alias of "Calado Calachnikov"— Portuguese for "silent Kalashnikov" to which he filed a complaint with the Attorney-General.
- In response to his death, spontaneous marches took place in several Mozambican cities to honour Cistac.
- **Slides 6,7 and 8**
- The embassies of France, the European Union, the United States and other countries, condemned the attack and demanded a fast, effective and impartial investigation of the matter. 3 March 2016 marks a year since Prof Cistac's assassination, yet nothing has been heard about the case.
- Prof Cistac's situation seems to fall on all fours with the Kenneth Good case. Kenneth Good is an Australian national who was teaching at the

University of Botswana as Professor of Political Studies but had his employment terminated after being declared “an undesirable inhabitant of, or visitor to, Botswana” and being expelled from Botswana on 31st May 2005.

- Good’s expulsion stems from the fact that he had co-authored an article concerning presidential succession in Botswana in which he criticised the government and concluded that Botswana is a poor example of African presidential succession.
- The case was brought the African Commission on Human and Peoples’ Rights which concluded, among others, that the article written by the Professor is “a purely academic work which criticises the political system, particularly presidential succession in Botswana. There is nothing in the article that has the potential to cause instability, unrest or any kind of violence in the country. It is not defamatory, disparaging or inflammatory. The opinions and views expressed in the article are just critical comments that are expected from an academician of the field; but even if the government, for one reason or another, considers the comments to be offensive, they are the type that can and should be tolerated. In an open and democratic society like Botswana, dissenting views must be allowed to flourish, even if they emanate from non-nationals.”
- The similarities between the two cases are striking. In both cases, there was an election, which in the opinion of the academics, merited their comments because they fell within their areas of academic competence and expertise. In both cases, the professors proffered comments to address a democratic deficit they identified in both countries. In both situations, they were foreigners. However, the difference between the two is that Prof Good was not a citizen of Botswana while Cistac had obtained his Mozambican citizenship a few years back. It seems therefore that Cistac’s ‘crime’ or ‘mistake’ was to have naturalized his status to become a citizen of Mozambique. Therefore, probably, if he could not be expelled, he had to be eliminated.
- Both Good and Cistac’s behaviour fall in line with the composite theory on academic freedom which I have developed from the *Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics*, 1990 as well as the *Kampala Declaration on Intellectual Freedom and Social Responsibility*, 1990 as an African alternative to the Special and General Theories on academic freedom.
- According to John Searle, the Special Theory, derived from the German experience, recognised the exercise of academic freedom for professors (*lehrfreiheit* – freedom to teach) and students (*lernfreiheit* – freedom to learn) but these freedoms were to be enjoyed solely within the confines of the university space.
- Slide 9

- The General Theory, on the other hand, is an American derivative, which guarantees the exercise of academic freedom not only on the campus but also extramurally, through the exercise of the right to freedom of expression. This approach found expression in the 1915 *Declaration of the American Association of University Professors (AAUP)*.
- To ensure the enjoyment of academic freedom, the government (formerly, the ecclesiastical and monarchical authorities), which have/had the means to prohibit the production of new knowledge, monopolise existing knowledge and/or suppress its dissemination in order to maintain their stranglehold on power, is assigned the duty to respect, protect and fulfil the exercise of academic freedom.
- The focus on the State, however, does not take away the responsibility on non-state entities such as the church, individuals, other private entities who also violate academic freedom, one way or the other. However, that responsibility is subsumed under the responsibility of the state, under the state's duty to protect.
- This duty imposes on the State the duty to prevent violations of rights and freedoms or to punish violations to serve as deterrence or the state is held liable for having actually violated those rights.
- Thus, in the *SERAC and Anor v Nigeria* (Ogoni case), as referred to in the *Union des Jeunes Avocats v Chad* case, the African Commission decided that "Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties. This duty calls for positive action on the part of governments in fulfilling their obligation under human rights instruments. The practice before other tribunals also enhances this requirement as is evidenced in the case *Velásquez Rodríguez v. Honduras*. In this landmark judgment, the Inter-American Court of Human Rights held that when a State allows private persons or groups to act freely and with impunity to the detriment of the rights recognised, it would be in clear violation of its obligations to protect the human rights of its citizens.
- Like the *AAUP Declaration*, academic freedom in the African context is also to be enjoyed extramurally. The difference, however, is that academic freedom in Africa is connected to the wider concerns of the society for social transformation, democracy, justice, freedom and human rights.
- Thus, the preamble to the *Dar es Salaam Declaration* spells out how, where and when academic freedom is to be applied:

We, as academics, intellectuals and purveyors of knowledge, have a human obligation and a social responsibility towards our People's Struggle for Rights, Freedom, Social Transformation and Human Emancipation. Our participation in the struggle of our people is

inseparably linked with the struggle for the autonomy of institutions of higher education and the freedom to pursue knowledge without let, hindrance and interference from persons in authority.

- The *Kampala Declaration*, also recognises the symbiotic relationship that should exist between academic freedom and human rights/democracy in general.

- **Slide 10**

- Thus, the Declaration sets the standard as a useful reference point that the struggle for academic freedom is an integral part of the general struggle for human rights. African intellectuals, by playing a vanguard role in the human rights struggle and not seeing academic freedom as simply a freedom to be enjoyed within a gated university environment, will help use this freedom to attain larger freedoms for the people as a whole, which will in turn ensure greater protection for academic freedom. Academic freedom is a tool to promote effective gown-town relationship.

- Thus, Paul Zeleza rightly observes that:

For scholarly communities reared under colonial and postcolonial despotisms, civil liberties and the rights to education and self-determination are highly prized, and struggles for them have exacted high political and personal costs. These issues have tended to be tied more to the question of institutional autonomy and social responsibility, however, than strictly to internal institutional policing of speech as such.

- **Slide 11**

- The Composite Theory becomes even more important for application in the African context due to the fact that Africa's democratic experiment remains fledgling and is retrogressing with a number of political leaders finding ways to entrench themselves in power. Discontent has been expressed in almost all elections held in Africa. In Ghana, Kenya, Nigeria, Sierra Leone, Uganda, Zambia, and Zimbabwe, election petitions have been brought before the courts. However, each outcome maintained the *status quo*. Also about 12 regimes so far in Africa have managed to doctor the constitutions to extend their stay for a third or indefinite terms.

- **Slide 12**

- The situation in Mozambique is no different and Mozambique's academic freedom record, based on a continent-wide survey on the health of academic freedom, which I recently completed, places the country in the category of being "partially free," commensurate with its general freedom/democratic report.
- The 4 pillars of academic freedom were assessed, based on the local laws of each African country – institutional autonomy, self-governance, individual rights/freedoms and tenure. A fifth element, where a country

has recognised academic freedom specifically in its constitution was added.

- The findings revealed that Mozambique's laws are not compliant with respect to institutional autonomy as article 16 of the *Law on Higher Education no. 27/2009* vests in the President of the Republic the power to appoint, discharge or dismiss Rectors and Vice-Rectors of public universities.
- The same law recognises individual rights and freedoms for academics to define the areas of study, scientific research, etc; as well as the freedom to teaching and research according to the convictions faculty and without any form of coercion.
- Tenure is also guaranteed as institutions of higher education are granted disciplinary power over offenses committed by teachers, researchers, students, body and other technical and administrative personnel with right of appeal under the law.
- However, Mozambique does not specifically nor directly recognise academic freedom in its constitution.
- If the government had a hand in Prof Cistac's killing then it was probably because they could not easily expel him from the university or from the country. Therefore, he had to be eliminated. It would also affirm the fear expressed by academic freedom scholars and activists that the capture of institutional autonomy by the state fundamentally affects the ability to enjoy the other pillars of academic freedom, be it for academics or students.
- On the other hand, if it is the work of non-state actors acting on their own or for whatever reasons, it expresses a worry about the low regard that the people have for the rights and freedoms of others, which therefore places an onerous responsibility on the state to ensure that it fulfils its duty to protect the residents of Mozambique from such violations.
- It is worth noting that it is not only Prof Cistac who has fallen victim to the violation of his academic freedom. Indeed, violations of academic freedom take place in various shapes of forms and many scholars and students have fallen victim.
- **Slide 13**
- The Scholars at Risk Network (SAR) is an international network of higher education institutions dedicated to protecting threatened scholars, preventing attacks on higher education communities and promoting academic freedom worldwide. Launched over 10 years ago, it has worked to free more than 400 scholars and supported them to find sanctuary in universities which have membership affiliation with SAR. In return,

scholars contribute to their host communities through teaching, research, lectures and other activities.

Currently it has relationship with universities in Benin, Ethiopia, Ghana, Kenya and South Africa, including the University of Pretoria.

- SAR also has a monitoring wing that reports on violations of academic freedom which take place across the globe, of which myself and Prof Beiter volunteer for this cause. To facilitate this work, SAR has identified 5 principal areas where violations are perpetrated against academics in particular:
 - i. Death/disappearance/violence
 - ii. Wrongful imprisonment/detention
 - iii. Wrongful prosecution
 - iv. Retaliatory discharge/loss of position/expulsion from study
 - v. Restrictions on travel or movement

• **Slide 15**

- And the statistics on Africa, especially in the area of DDV are not very encouraging. Information available, accessed and verified.

	East	South	Central	North	West	
DDV	13	4	2	16	24	59
WID	13	1	1	14	7	36
WP	9	1	0	8	0	18
RD	6	0	0	2	4	12
TR	0	0	0	4	0	4
Other	0	2	0	7	11	20
Total	46	8	3	51	46	

- Examples are as follows: 2015, June 11, Dr. Castel-Branco, a professor of Economics at the Institute for Social and Economic Studies in Mozambique, was charged with crimes against the security of the state. He is alleged to have posted an article on Facebook in November 2013, criticizing the former President Armando Guebuza for bad governance and calling on him to resign. This is a case of wrongful prosecution.
- Going outside Mozambique, one may refer to Dr. Blessing Chinsinga, Associate Professor in the Department of Political and Administrative Studies at Chancellor College, University of Malawi (UNIMA). He was summoned to the Zomba Police Station for interrogation over the contents of one of his class lectures in which he gave examples of reasons for popular protest taken from Egypt and Tunisia. He was subsequently dismissed along side the President, Secretary General and Legal Advisor of the Chancellor College Academic Staff Union. The decision to sack these colleagues was later set aside by the Malawian courts.

- It is about time African academics took their freedom more seriously and organised effective ways to protect them, especially in this age of managerialism. The Council for the Development of the Social Science Research in Africa (CODESRIA) has made some efforts in this direction but more needs to be done.
- Also, the African Commission on Human and Peoples' Rights has a role to play to ensure that academic freedom finds its rightful place among the list of human rights provisions in the African Charter on Human and Peoples' Rights. The Commission's *Principles and Guidelines on the Implementation of the Economic, Social and Cultural Rights guaranteed in the African Charter on Human and Peoples' Rights* gives room for the recognition of academic freedom but not in the *Declaration of Principles on Freedom of Expression in Africa*.
- This is in spite of the fact that at the time the Declaration came into existence in 2002, 14 African States had broken away from the past and now given explicit recognition of academic freedom in their constitutions, with 7 others given direct recognition (at least one of the pillars of academic freedom). There were other cases of violations which happened in Sudan, Egypt and including the Malawi case mentioned above and fell squarely within the context of freedom of expression as well as academic freedom, yet the Rapporteur shied away from making public interventions in her last report.
- It is suggested that the African Commission reformulate the Declaration of Principles on Freedom of Expression in Africa to cover academic freedom and extend the mandate of the Special Rapporteur to specifically cover academic freedom issues as it did in the case of *Good v. Botswana*, relying on articles 60 and 61 of the African Charter on Human and Peoples' Rights.
- Conclusion:
- SAR:
- 'Around the world today, scholars are attacked because of their words, their ideas and their place in society. Those seeking power and control work to limit access to information and new ideas by targeting scholars, restricting academic freedom and repressing research, publication, teaching and learning.'
- Prof Gilles Cistac, unhappily, is one of such victims. Through his death, Africa and France have lost an academic gem, un homme de dialogue qui aimait la vie.
- To those who caused his death, silencing Cistac will not silence academic freedom or freedom of expression. For as quoted by Socrates before he was put to death for pestering the people in exercise of academic freedom,

- **Slide 16**
- ...[I]f you think that by putting men to death you will restrain any one from upbraiding you because you do not live well, you are much mistaken; for this method of escape is neither possible nor honorable; but that other is most honorable and most easy, not to put a check upon others, but for a man to take heed to himself how he may be most perfect. Having predicted thus much to those of you who have condemned me, I take my leave of you." (Plato, Apology 30)

I believe this is exactly what Prof Cistac would have said if he'd the opportunity to say his last word before being killed. However, unfortunately for him, he was killed by a bunch of faceless, callous-minded cowards and outlaws.

- **Slide 17**
- We academics should not be cowered into submission. Gandhi admonishes: "Many people, especially ignorant people, want to punish you for speaking the truth, for being correct, for being you. Never apologize for being correct, or for being years ahead of your time. If you're right and you know it, speak your mind. Speak your mind. Even if you are a minority of one, the truth is still the truth."
-
- **Slide 18**
- Let us protect academic freedom. **Slide 19** For as Martin Luther King, Jr said, "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."
- **Slide 20**
- Je suis Cistac! Thank you.