



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Centre for Human Rights
Faculty of Law

REPORT

PLANNING MEETING FOR THE WORKSHOP ON ZIMBABWE'S IMPLEMENTATION OF AFRICAN HUMAN RIGHTS DECISIONS

Pretoria, 24 May 2018



1. Introduction

One of the mandates of the Implementation Clinic at the Centre for Human Rights (the Centre) is to engage with the national actors in African States towards the implementation of African human rights decisions. Having identified Zimbabwe as one of the focus countries for the year, the Centre in

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collaboration with some local partners in Zimbabwe are organising a national dialogue and capacity building workshop to enable the environment crucial to the implementation of human rights decisions. Thus on 24 May 2018, the Centre hosted a planning meeting with representatives from the Zimbabwe Lawyers for Human Rights (ZLHR), Zimbabwe Human Rights NGO Forum (ZHRF) and the Zimbabwe Human Rights Commission (ZHRC).

1.1 Meeting objectives

The overall objective of the meeting was to develop a road map to the execution of the national dialogue on the implementation of African human rights decisions by Zimbabwe. More specifically, the meeting aimed to:

- To introduce the project to the partners
- To provide an overview of the cases being considered
- To gather all the relevant information from all parties involved
- To develop a detailed strategy for the project which ensure the participation of a wide range of actors in Zimbabwe.

1.2 Meeting participation

The meeting was attended by Ms. Belinda Chinowawa (ZLHR), Ms. Blessing Gorejena (ZHRF), Dr. Makanatsa Makonese (ZHRC), Prof. Frans Viljoen (Director, Centre for Human Rights), Ms Henrietta Ekefre (Implementation Clinic Coordinator), Mr Michael Nyarko (Centre for Human Rights Litigation Coordinator), Mr Foluso Adegalu (LLD candidate, Centre for Human Rights), Ms Susan Mutambasere (LLM candidate, Centre for Human Rights), Mr Samuel Ndasi (LLM candidate, Centre for Human Rights) and Mr Jonathan Obwogi (LLM candidate, Centre for Human Rights).

2. Opening remarks

Prof Frans Viljoen, Director of the Centre, gave the opening remarks, introducing the work the Centre does around the implementation of decisions of international and regional treaty bodies. Since Zimbabwe has not accepted the mandate of any of the nine UN treaty bodies the focus is on the African Human Rights system in particular the decisions of the African Commission as it is the only one that is currently applicable to Zimbabwe, and has issued decisions against it apart from the SADC Tribunal. However, the SADC Tribunal is now defunct, and its decisions would be dealt with separately. Prof Viljoen indicated that it was an opportune time for dialogue with the Zimbabwean authorities as there is seemingly a new dispensation. He also remarked that the African Commission itself was also taking more seriously the issue of implementation of its decisions as demonstrated by the implementation workshop held in Dakar, Senegal in 2017.



A cross section of participants



Prof Frans Viljoen (middle) giving the opening remarks.

3. Presentations by the Clinic

Ms Henrietta Ekefre, the Implementation Clinic coordinator gave an overview of the mandates of the Clinic to the participants with more detailed presentation of the Zimbabwe mandate. The Zimbabwe mandate has two tiers: first the mandate regarding the implementation of decisions from the African Commission, the second involves advocacy around the implementation of the 'forgotten cases' of the defunct tribunal. The term forgotten cases refers to the cases decided by the SADC Tribunal before it was disbanded which includes decisions against Zimbabwe and Congo amongst other member states of the Southern African Development Community (SADC). Ms Ekefre also noted that one of the factors that impede implementation is often the lack of awareness of obligations arising from decisions as well as a lack of effective coordination amongst domestic actors, thus the need to develop a national implementation framework.



Ms Henrietta Ekefre (left) and Dr Makanatsa Makonese (right, Executive secretary, ZHRC)

The members of the Clinic, Ms Susan Mutambasere, Mr Samuel Ndasi and Mr Jonathan Obwogi introduced the six cases from the African Commission. The LLM students who make up the implementation clinic then presented the six cases that have decisions on the merits from the

Commission. The cases are *Zimbabwe Human Rights NGO Forum v Zimbabwe*, *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe*, *Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development (on behalf of Andrew Barclay Meldrum) v Zimbabwe*, *Scanlen and Holderness v Zimbabwe*, *Gabriel Shumba v Zimbabwe*, *Noah Kazingachire and Others v Zimbabwe*. The students presented brief facts of the case, the issues raised and the information they had found on the status of implementation of the cases. A short advocacy video on the *Shumba* case, prepared by the Centre was viewed by the participants.

4. Briefing from partners

At this juncture, the representatives of the partner organisations from Zimbabwe gave feedback on the cases presented on by the students, given that most of the cases were litigated by both the Zimbabwe Lawyers for Human Rights (ZLHR) and Zimbabwe Human Rights forum (ZHRF).

a) Zimbabwe Lawyers for Human Rights – ZLHR

Ms Bellinda Chinowawa from the ZLHR shared with the meeting that in addition to the six highlighted cases there had been Interim measures in a communication that had been filed by ZLHR. The case relates to voting by the diaspora to which the Commission *mere motu* issued provisional measures directing the government of Zimbabwe to facilitate diaspora voting in the constitutional referendum in 2012. There was no implementation by the state and ZLHR is still waiting for a decision on the merits from the Commission. When the new Constitution provided an opportunity, ZLHR then filed a case in the Constitutional Court on the same issue which is awaiting determination.

Ms Chinowawa also mentioned that one of the challenges at the moment with follow ups on decisions is that the government's ready response and defence is that they resolved a lot of issues through the constitution therefore there exist no need for further action. Regarding the case of *Scanlen and Holderness v Zimbabwe*, she reported that although the Commission had recommended the repeal of Sections 79 and 80 of the Access to Information and Protection of Privacy Act, the government instead repealed Section 83 of the same act. It is thus hard to determine whether the repeal was indirect implementation, a sign of the impact of the case or some other agenda by the government.

b) Zimbabwe Human Rights Commission – ZHRC

Dr Makanatsa Makonese from the ZHRC, directed the meeting to a need to engage with the government prior to calling them to a public event. She expressed the concern that proceeding to a public event directly might not be ideal and therefore a diplomatic approach should be adopted which should be organising small separate meetings with the relevant government departments as a build up to the main event. Dr Makonese also admitted that although the ZHRC has affiliate status with the

Commission, they had not been actively involved in the implementation of decisions of the African Commission which is part of their broad mandate in terms of Article 45 of the African Charter. She thus suggested that ZHRC can assist in facilitating the pre-meeting interface with government departments.

c) Zimbabwe Human Rights Forum - ZHRF

Ms Blessing Gorejena, the Executive Director from the ZHRF weighed in on the progress of implementing the African Commission's recommendation in case of *Noah Kazingachire and 2 Others v Zimbabwe*. She noted that although there have been zero compliance with the Commission's recommendations, her organisation, the ZHRF which represented the victims in this case is engaging parliament on policy and has developed a model law on wrongful deaths, an issue that was central in the Kazingachire case.

She also mentioned that there is a gap between the Commission and the local mechanisms that is to report back on the level of implementation. The government participants at the Commission appear not to share information with the relevant departments responsible for implementing them. She also expressed concern regarding the capacity of some of the institutions responsible for implementation. Ms. Gorejena made reference to the Universal Periodic Review (UPR) mechanism where a committee has been established to coordinate and ensure the government reports to the UN Human Rights Council periodically. She then noted that such a process should be adopted with regards to reporting to the African Commission and other African human rights bodies as well.

5. Discussion on way forward

Following the presentation from the clinic and briefing from the partners on the status of implementation of the decisions discussed. The following were agreed on:

I. Adopt a hybrid approach: A combination of national dialogue and capacity building workshop

On the way forward, the participants agreed that a hybrid approach which combines a national dialogue with a capacity building workshop should be organised in Zimbabwe with all the major actors. A three staged approach to the execution of the project was also agreed on: first, a build-up process to the national dialogue will be embarked on, which includes engagement with technical staff within government institutions, civil society and the ZHRC; this build up engagement would then inform the agenda for the national dialogue and workshop later in the year; the national dialogue and capacity building workshop will inform the next plan of action.

II. **Be strategic about the time and manner in which the national dialogue is to be held**

The elections are to be held this year and since the date is yet to be announced, the project must take this factor into account. Since the elections are likely to be in third quarter of the year, it was agreed that the national dialogue and capacity building workshop be carried in October 2018 after election would have occurred and elected office holders taken the oaths of office.

With regards the build-up engagement, that would be done from June with the technical staff in government departments since they are more permanent and for continuity after the change of some officials post elections. This is also important because they are in charge of drafting national policies.

III. **Way forward for the SADC tribunal**

The meeting agreed that the discussion of the SADC Tribunal would not form part of the dialogue and capacity building plans, however there was a discussion of possible advocacy strategies that could be employed regarding the cases already decided. It was noted that the main reason why the tribunal was disbanded was political and was hugely influenced by its rulings against Zimbabwe. It would therefore not be easy to engage the government on implementation of cases that were decided by the tribunal as the same officials who were fiercely opposed to the tribunal still hold key positions in government. Recommendations were given that the rulings from different national courts on the SADC tribunal within SADC member states could be used to stage a campaign on the reinstatement of the tribunal. Worthy of note is the 1 March 2018 judgement of Northern Gauteng High Court in the case *Law Society of South Africa and others v The President of the Republic of South Africa and others*, where the Court declared that the decision by former President Jacob Zuma to sign the 2014 Tribunal Protocol ousting individual access was ‘unlawful, irrational and therefore unconstitutional’.

6. **Closing remarks**

Ms Blessing Gorejena, from the ZHRF, gave the closing remarks. She thanked the Centre for hosting the meeting and expressed her enthusiasm for the potential the project has in the implementation discourse in Zimbabwe.