

World Human Rights Moot Court Problem

to be held at the Centre for Human Rights, University of Pretoria, Pretoria,
9 and 10 December 2013

in collaboration with the UN Office of the High Commissioner for
Human Rights

(final version, incorporating **amendments and additions in bold**, in response to
requests for clarification)

- 1 Sambo is a developing country located in the centre of Mukoba continent, with a GDP of \$1 000 *per capita* registered for 2012. Sambo shares borders with the Republic of Mutapa, which is in the south, and Ascot, located in the west. All three states are members of the United Nations. **They are** also members of the Mukoba Union (MU), a regional intergovernmental organisation of which all states on the Mukoba continent are members. In 1975, MU committed itself to the protection of human rights by adopting the Mukobian Human Rights Convention (MHRC) (**ratified by Mutapa in 1980**), which provides for the establishment of the MU **Human Rights Commission (MUHR Commission)** and the MU Human Rights Court (**MUHR Court**). In terms of article 36 of the MUHR Convention, a state needs to make a declaration accepting the jurisdiction of the **MUHR Court** for it to be brought directly before it (**that is, allowing individuals or non-governmental organisations (NGOs) to by-pass the MUHR Commission**). **Mutapa made the article 36 declaration** on 1 January 2010. **The MUHR Court's** subject jurisdiction encompasses any claim based on the violation of any human rights treaty ratified by a state party. The admissibility criteria **of the MUHR Court are the same as those set out in article 35 of the European Convention on Human Rights. Non-governmental organisations (NGOs)** registered with the **MUHR Commission have locus standi** before the **MUHR Court to bring cases in the public interest.**
- 2 **Sambo has a population of about 5 million people.** There are three major ethnic groups in Sambo. These are the Sasambos, whose source of livelihood is agriculture; the Mazhets, who control the business sector; and the Madhiris, who constitute a huge percentage of the population in the towns of Sambo. There is a high illiteracy rate in Sambo, with an estimated 35% of the inhabitants of Sambo (Sambians) unable to read or write. Since its independence from the state of Lovedale in 1961, Sambo has been ruled by Major Taranga, who has been described by the *Ascot Herald* as 'Mukoba's worst dictator since independence'.

- 3 In contrast, the Republic of Mutapa is an economically-thriving state, with a GDP of \$11 000 *per capita* in 2012. Mutapa has a population of about 50 million people. Its budget was allocated as follows in 2012: Health: 25%; Military and Security: 35%; Social Grants: 10 %; Public Enterprises: 5%; Education: 15%; and the remaining for other sectors: 10%. In 2011, the spending on Health was 26%, on Military and Security 33%, on Social Grants 10% and 5% on Education. In 2010, the spending was 27% on Health, 32% on Military and Security, 11% on Social Grants and 5% on Education.
- 4 Mutapa is committed to human rights and has ratified the following international human rights instruments: the 1951 Convention relating to the Status of Refugees (**ratified in 1954**) and the 1967 Protocol to the Convention (**ratified in 1970**); the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (**ratified in 1993**); the 1960 UNESCO Convention against Discrimination in Education (**ratified in 1963**); the 1966 International Covenant on Civil and Political Rights (ICCPR) (**ratified in 1969**); the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) (**ratified in 1969**); and the 1989 Convention on the Rights of the Child (CRC) (**ratified in 1992**). Mutapa has signed (**on 1 January 2007**) but **did not** ratify the UN Convention on the Rights of Persons with Disabilities. Mutapa has also ratified MHRC and made a declaration in terms of article 36 of MHRC. **Mutapa has not made any other reservations or declarations in terms of the above-mentioned treaties or protocols.**
- 5 Mutapa has been a constitutional democracy since 1959, when it gained independence. It has received exaltations from the international media as one of the most peaceful nations on the continent of Mukoba. Fair News Network (FNN) in 1992 described Mutapa as the ‘beam of hope’ for Mukoba. Every successive president in Mutapa has sought to maintain this legacy. Mutapa’s 1959 Constitution is the supreme law of the land, protecting the rights of individuals on its territory. The Constitutional Court of Mutapa is entrusted with interpreting the Bill of Rights. The Bill of Rights in the Mutapa Constitution is similar in content to the rights recognised in the ICCPR and ICESCR. **Under the legislation of Mutapa, the minimum age for criminal liability is 15 years.** There are also other courts, namely, the Magistrate’s Court, the High Court and the Supreme Court. The Constitutional Court is the highest court in all constitutional matters. It may be approached by way of appeal from the High Court or Supreme Court. The Constitutional Court only allows direct access in instances of ‘pressing urgency’ or ‘national interest’.
- 6 Notwithstanding this background, Mutapa guards its national security jealously. It is known for its army of over 2 million soldiers. Mutapa’s National Security Act reads as follows, in section 11:

In a state of emergency, the jurisdiction of Mutapa courts to review executive actions shall be suspended. **However**, the courts shall retain the power to assess whether a situation constitutes an emergency and whether the actions taken by the executive are within the bounds of necessity and proportionality.

7 Mutapa is very mindful of who can stay on its territory. Section 35 of the Mutapa Illegal Immigration Reform and Immigrant Responsibility Act provides as follows:

- (a) A person convicted of a particularly serious crime is an ‘undesirable person’ and shall not be eligible to apply for asylum or refugee status.
- (b) Where a person has been granted refugee status and commits a serious crime, the court has discretion, after appropriate consideration, to revoke the refugee status and such individual shall be required to leave the country.

8 Inspired by the economic prosperity in Mutapa, a strong trade union, known as Movement for a Better Economy (MBE), was founded in Sambo during the 1980s under the leadership of Jazzy Jazz. Its main objective was to persuade the government to commit to a better economy and living conditions. In 1985, Major Taranga outlawed MBE **under section 13 of the National Security Act, which allows the head of government to ‘outlaw’ any organisation ‘acting detrimentally to the national interest’**. **Acting under section 14 of the same Act**, he also declared Jazzy Jazz an ‘enemy of the state’. The banning of MBE made both the economic and political situation in Sambo volatile. MBE started **widespread** violent campaigns against the government of Taranga. These campaigns were met by ruthless armed responses from the Sambo Armed Forces (SAF). By 1986, MBE had been hardened into a militia known as Operation Destroy (OD). OD received most of its military support (in the form of weaponry) from Ascot. Jazzy Jazz and the president of Ascot, Zekk Mukoko, had been friends from childhood, and maintained a life-long close relationship.

9 The main challenge to OD was beefing up its manpower. This challenge owed much to the fact that, by culture, the Sambians are not violent. Faced with that situation, Jazzy Jazz resorted to invading boarding schools in Sambo and kidnapping pupils, forcing them to join OD. Some of the children who were kidnapped were as young as six years old. As a process of initiation into OD, children were forced to commit various heinous crimes such as murder, torture, maiming and rape, sometimes against their own families.

10 As the civil war intensified in Sambo, there was an ‘exodus’ of Sambians into

neighbouring countries. On account of the economic status of the Republic of Mutapa, it has become the preferred destination of many Sambians. By 1993, there were so many Sambians in Mutapa, especially in Malisa City, that Malisa City came to be known as the 'City of Sambians'. According to the mayor of Malisa City, Toby Fobbs, 150 000 Sambians are currently living in Malisa City. Not all Sambians staying in Mutapa are there legally. With the intensification of war in Sambo, Mutapa became 'the beam of hope' to many Sambians, who take the risk of reaching Mutapa through border jumping, bribery or any possible evasion of border authorities.

- 11 There are no camps for refugees in Mutapa. Instead, fleeing Sambians stay in rented apartments or with relations. FNN released a report indicating that, by 2011, about 500 000 Sambian refugees had been registered, or were awaiting registration, with the Mutapa Refugee Determination Office (MURDO), established under the Mutapa Refugee Act. **Under section 22 of the Mutapa Illegal Immigration Reform and Immigrant Responsibility Act, decisions by MURDO may be reviewed and altered by a court of law.** The Mutapa Minister of the Interior, Malvin Brooks, in a radio interview said that the real number of Sambians in Mutapa was almost a million. According to Mr Brooks, the crime rate in Mutapa has increased by about 50%, an increase that he says is related to the influx of Sambians.
- 12 Discontent at the impact of the Sambian presence is growing. Don Moore, the Mutapa Minister of Social Affairs, in Parliament describes the refugee crisis as 'the biggest challenge facing Mutapa and a huge burden on the political, demographic, security and social levels'. There is rising tension between the Sambian refugees and the local communities. Even in areas highly sympathetic of the Sambian situation, people are complaining. In some cases, there have been clashes and attacks against Sambians. In some areas, negative attitudes towards the Sambians have surfaced. **However, no state of emergency has been declared.**
- 13 The Director of a local NGO, Give Refugees a Break (GRB), in GRB's annual report for 2012 contended that the attitudes towards Sambian refugees were akin to racism. She observed that they were being blamed 'only because they're the weakest link'. She further stated: 'People here have always looked down on Sambian workers. But since the start of the conflict in Sambo and the influx that ensued, the Mutapians have wanted to make Sambians pay for taking some of their jobs ... So if the crime rate is high because of loose security or if dire economic conditions drive people to steal, they say that the thieves are Sambians and the rapists are Sambians, and so on.' GRB registered itself with **the MUHR Commission** in 1990.

- 14 Bright Mudiwa is one of the Sambians who sought refuge in Mutapa in the early days of the war. In 1986, he was serving as the Principal of Regina High School in Sambo. One fateful night, 16 July 1986, Bright Mudiwa was warned that Jazzy Jazz and his men were coming to capture some of his pupils to join OD. He hurriedly informed the authorities, who then deployed SAF around the school, without the knowledge of the OD. That night, as OD approached the school, its members met unexpected resistance. This resulted in the death of many OD members, while many others were injured or wounded. In the morning, it was discovered that most of the OD militants killed and injured were children between the ages of 10 and 16.
- 15 The OD declared 'war' against Bright Mudiwa and it was communicated among the militia that anyone who brings his head would be greatly rewarded and promoted. When he became aware of this threat to his life, Mudiwa rushed to the authorities to ask for protection. To Mudiwa's surprise, he was told that the government of Taranga had done a background check on him and had discovered that he had entered Sambo from Mutapa in 1960 under 'suspicious' circumstances and had 'dubiously' acquired Sambian citizenship. As such, the government was revoking his citizenship and declared that it had no resources to protect him. Knowing that his head was wanted by the OD and that the government was unwilling to protect him, Bright Mudiwa joined the Sambian 'exodus' and crossed the border to Malisa City in Mutapa.
- 16 After some struggles in Mutapa courts, Mudiwa was granted refugee status in January 1987. On account of his qualification and experience, he quickly found employment as a teacher with a local school in Malisa City. By 1993, he had risen in the ranks and was the headmaster of Yard Secondary, a government school. He encouraged many of the Sambians in Malisa City to attend this school. By 1996, Sambians at Yard Secondary were at the ratio of 50:50 with the Mutapians (people from Mutapa). The tuition fees for most of the Sambians attending Yard are paid by the GRB.
- 17 **Mutapa has only five special education schools, which have for many years been and are still oversubscribed.** There are a large number of persons with disabilities attending Yard Secondary. This is mainly because many victims of the Sambian war, who are now attending Yard Secondary, had their arms or limbs amputated by the OD militants before they escaped to Mutapa. Many students also suffer from visual and hearing impairments due to the effects of bomb and grenade explosions. On account of the state of infrastructure at Yard Secondary, especially the absence of access ramps and disability rights-friendly amenities, persons with disabilities are facing immense hardships. According to the National Policy on Learners with Disabilities (NPLD), **which was adopted in 1989**, learners with disabilities must, as far as

is feasible, be placed in the same classes as other learners, in all secondary schools (paragraph 2 of the NPLD), and ‘teachers have to adjust their teaching methodologies to include learners with disabilities within their classes’ (paragraph 4 of the NPLD).

- 18 Only a few text books on the prescribed national curriculum are available in Braille at Yard Secondary, and only about 20% of all teachers at Yard Secondary have undergone any form of training on the specific teaching needs of learners with disabilities. In 1999, in a bid to alleviate some of the problems faced by learners with disabilities at Yard Secondary, the school started a fund-raising campaign, in terms of which the school management approached private companies in Matupa for financial support. It requested, in particular, funding for Braille textbooks, and funds to allow teachers to undergo specialist training programmes in the teaching of learners with disabilities. Unfortunately, these efforts have to date not yielded any positive results. The situation of learners with disabilities at Yard Secondary is largely similar to other schools in Mutapa, although Yard Secondary has a higher percentage of learners with disabilities than any other secondary school in the country. In fact, there are learners with disabilities in 50% of the classes at Yard Secondary, while the corresponding average national figure is around 25%. Most private companies replied that they could not assist one particular school, because that would be unfair, and they did not have the resources to assist all schools with learners with disabilities. In 2003, a group of parents of children with disabilities based at Yard Secondary formed an informal association, the Learners With Disabilities Committee (LWDC). **In 2005**, LWDC petitioned the government to look into the issue of learners with disabilities in schools. The Secretary of Higher Education replied that ‘the government could not handle anything with financial implications any more, especially where the beneficiaries are largely Sambians’. The LWDC approached the High Court of Mutapa, arguing that the actual application in practice of the NPLD does not uphold the dignity of learners with disabilities. The High Court dismissed the case on the grounds that only NGOs registered in Mutapa had *locus standi* to bring class actions in courts.
- 19 Meanwhile, in Sambo, Major Taranga died **in 2005** of a stroke after his wife had been captured, raped, mutilated and killed by OD militants while she was shopping in Ascot. It is thought abroad that the Ascot police assisted in the kidnapping of Taranga’s wife by the OD militants. Taranga was replaced by Brigadier Moratoria, who is moderate in his approach. He has been calling for peace talks with the OD and promised the Sambians a democratic constitution modelled after that of Mutapa. In 2006, Moratoria formed the Commission for Sambo Reconciliation. He declared that all OD members who would voluntarily surrender would be granted amnesty. **After the peace talks, the**

confrontations decreased significantly, with only random incidents involving hardliners occurring occasionally.

- 20 Since most of the fighters of OD are child soldiers, Moratoria argues that they are victims and as such should not be treated as criminals. He has urged the community to accept them back into society as their own children. For that reason, Moratoria set up a special fund for them, allowing any child soldier to sign an amnesty certificate, promising never to fight against the government again, in return for which the ex-child-soldier is given two blankets and 500 Sambian dollars (US \$50). This has angered the Sambian population, who view the special fund arrangement as rewarding OD militants, irrespective of being a child or not, for the crimes they have committed against the Sambian community.
- 21 The Chief of Sambian Headmen, Mr Sabhuku Vharazipi, openly vowed that 'if the government is unwilling to deal with the OD criminals but instead sees it fit to reward them, the Sambian community shall take the law into their own hands and deal severely with these murderous scoundrels;. As a consequence, many OD ex-child soldiers, after they had signed amnesty certificates, fled to Mutapa in fear for their lives. Some aggrieved Sambians have followed these 'youths' to Mutapa where they have caused violent disturbances.
- 22 Mutapians continue to protest and demonstrate against the Mutapa government for what they view to be an 'irresponsible tolerant attitude towards the excesses of the Sambians'. Throughout the late 1980s, MURDO was quick to grant refugee status to Sambians fleeing the conflict in Sambo. At that time, about 95% of those requesting refugee status succeeded with their applications within six months. However, **from 1983**, MURDO started to consider 'the effect the citizens of Sambo are having in Mutapa' and consequently dismissed applications on this ground. On average, about 20% of applicants are granted refugee status within one year of being registered with MURDO. A newspaper reported that some Sambian refugees allege having heard the Chairperson of MURDO saying: 'Sambians are undesirable citizens in Mutapa who are causing havoc in the nation; that to legalise their stay amounts to shooting oneself in the foot.'
- 23 On 19 June 2012, the Parliament of Mutapa passed a moratorium **by resolution** on 'the consideration of all asylum applications for refugee status until such time as the government has resources to cater for them'. Many Sambian asylum seekers living in Mutapa, who have not attained refugee status, **are considered to be illegal immigrants and face deportation.** In

July 2012, GRB approached the High Court, arguing that the government's decision of 'arbitrarily refusing applications for refugee status for those already in Mutapa' violated Mutapa's Constitution. After rejecting these arguments, GBR on 30 November 2012 appealed to the Constitutional Court, arguing that 'the High Court's biased approach to refugee applications' was in violation of Mutapa's international obligations. On 31 May 2013, the Constitutional Court rejected this argument, and indicated that it would later give full reasons. These reasons have not yet been provided.

- 24 Mutapa authorities have also become stricter on border entry requirements. At the request of the Minister of Internal Security, the Mutapa government purchased the MX6 Machine Gun Sentry Robots system (popularly known as 'the Merciless') from RoboNagravia, a robot company in the Republic of Nothlea. The Merciless was **tested with armed and unarmed dummies and subsequently** installed along the borders Mutapa shares with Sambo. Every 100 metres along this border, a large and clearly visible bill-board indicating 'Trespassers will be prosecuted' was installed. The installation of a single robot is estimated to cost US \$500 000. The Merciless is a 'smart' lethal autonomous robot which, according to RoboNagravia, accurately detects enemy targets with 'hostile intent' and destroys them without human supervision. It can detect human movement 500 metres away. The Merciless can categorise advancing armed persons as legitimate targets and can automatically fire its machine guns at them.
- 25 FNN and *Human Rights Observer* reported **on 27 December 2012** that over 700 Sambians had perished along the Sambo-Mutapa border. The widely-reported incident happened **earlier that same day**. A group of Sambian women and children were fleeing from the armed OD hardliners who had chased them all the way to the border. The armed OD militants were very close to the fleeing Sambian civilians who were by then approaching the border. The Merciless could consequently only detect that they were a group of people, some of them armed, approaching the border, and automatically fired its machine guns, resulting in the death of both the civilians and the OD hardliners. **After the incident, the government launched an investigation by a team comprising only investigators from the internal investigation division of the Department of Defence. The investigation concluded that the government could not have foreseen the unlikely events occurring on 27 December 2012. A preliminary report of the investigation, including all relevant documentation concerning prior testing, was published for comment. Although the report was criticised by many civil society groups, particularly for the lack of independence of the investigating team, the final report merely confirmed the team's preliminary conclusions.**

26 The Sambian government and many human rights organisations have protested against the use of these robots. GRB joined these protests, and wrote numerous letters to various government officials, including the Minister of Defence. The Mutapa government has maintained that it had installed these robots in good faith for its own security. The Minister of Defence and Internal Security, Major Raila Notoblem, released an official statement in which he said the following:

We regret the death of many Sambian civilians on this border. However, we should not lose sight of the fact that they were not supposed to be there in the first instance. Further, this unfortunate incident was due to unforeseeable technical inability of the Merciless to read the 'confusing volatile situation', otherwise we installed these robots in full good faith that they are able to distinguish legitimate from illegitimate targets; if there are any fingers willing to point, point them to RoboNagravia. The use of these robots has been beneficial to the Mutapa government because in late summer of 2012, there **have been a few** incidents of shoot-outs between Mutapa border guards and OD militants, in their quest of the latter to enter Mutapa, resulting in the death of 10 Mutapa soldiers guarding the border. We have to defend ourselves!

27 In response to criticisms levelled by civil society against the Mutapa government's current approach to the problem of refugees, government officials always cite the story of Mr Rob Ebethe, a Sambian teacher who used to teach at Regina High School in Sambo before Bright Mudiwa invited him to join Yard Secondary in Mutapa. Just like Mudiwa, Ebethe had been granted refugee status in Mutapa. Ebethe was responsible for conducting the choir of Yard Secondary. It is alleged that out of sympathy for Sambian ex-child soldiers trapped in Sambo, he was smuggling them into Mutapa under the pretence that they were entering Mutapa to compete in choir competitions. Once these 'singers' were in Mutapa, it is reported that they were enrolled into Yard Secondary. There are rumours that Mudiwa was aware of such activities. In one of Mr Ebethe's attempts **in 2012**, his bus was stopped by Mutapa officials. He gave the officials his usual version of 'choir competitions'. The officials believed him until they asked the choir to sing them a hymn that would bless them for their night patrol. The choir was completely out of tune, leading the police to suspect chicanery. Upon further inspection, they discovered that one of the purported choir members was the notorious ex- child soldier who had earned himself the name 'TYD' (for 'The Young Devil'). Like most of the child soldiers in Sambo, TYD had signed the amnesty certificate revoking his participation in the armed conflict. Sergeant Arnold Brut of the Mutapa police ordered the bus and its passengers out of Mutapa. Prior to this incident and in an interview with FNN, TYD was asked if he regretted his actions, to which he replied calmly: 'I was doing my job, like anyone else we were doing what we

were told to do.’

28 Mr Ron, a Mutapian, was arrested for driving the bus and was put in detention. Mr Ebethe was caused to drive the bus with Mutapa police escort and was left just outside Mutapa. That same night, a journalist from FNN reported that a bus with its passengers inside Sambo had been burnt by OD hardliners, just a few miles from the border. In an exclusive interview with FNN regarding this incident, the Mutapa Minister of Legal and Parliamentary Affairs, Prince Jure, argued that, as a matter of international law, Mutapa had no obligation to protect ex-combatants from Sambo by giving them refugee status.

29 Meanwhile, in November 2012, the Mutapa Minister of Education, Professor Android Thierry, at a national schools conference, commented on the impact of the problem of refugees in Mutapa schools. He is quoted to have said:

Over the years, the minister’s budget has been stretched to the limit by the unpredictable fluctuations of numbers of students attending our government schools. I am angered with some irresponsible principals whose names you already know, who continue to recruit students into schools by the back door. It is even worse because some of these students have ‘special needs’ and we don’t have such a ‘special pocket’. Such students are parasites to the little we budget for these schools. I am seeing certain principals starting to pay for those students out of their own pockets. And bwana, this is no joke!

The fact that government funds were strained was certainly no joke. Since mid-2012, Mutapa schools noted a remarkable decrease in funds allocated to them. **Over the last five years, the government of Mutapa has set aside around 2% of the education budget for special education.** However, the decrease was more acute at Yard Secondary, which sometimes received no funding. This was worsened by the numbers of students at Yard Secondary which kept increasing. On account of a shortage of resources, Mr Mudiwa was finding it difficult to manage the school.

30 In June 2013, after consulting with various stakeholders in Mutapa, GRB submitted the case to **MUHR Court**, asking the Court to adjudge and declare the following:

- (a) The Mutapa government’s moratorium on refugees is inconsistent with its international obligations.
- (b) The Mutapa government’s refusal to grant refugee status to ex-child soldiers is in violation of international human rights law.
- (c) The installation of the Merciless on the Mutapa-Sambian border and the consequential deaths of Sambians are in violation of international human rights law.

- (d) The Mutapa government's neglect of the rights of learners with disabilities in its public schools is in violation of international human rights law.

The case has been scheduled for an oral hearing before the MUHR Court on 9 and 10 December 2013. Prepare heads of argument for both GRB as applicant and the Republic of Mutapa as respondent. Arguments should cover jurisdiction, admissibility and merits.