

## Conversation with Dr Thompson Chengeta, author of 2020 Nelson Mandela World Human Rights Moot Court Hypothetical Case

On 12 May 2020, the Nelson Mandela World Human Rights Moot Court Competition (hereinafter: the World Moot) held a [live Instagram event with Dr Thompson Chengeta](#), who has been the author of the World Moot's [Hypothetical Case](#) for the past 10 years. This text provides an interpreted transcript of his presentation.

Dr Chengeta began the conversation by presenting his warm greetings to all those joining the event and sent his wishes that all were well despite the difficult COVID-19 times. He welcomed questions from students and faculty members, and without further delay began to speak about the [2020 Nelson Mandela World Human Rights Moot Court Competition Hypothetical Case](#).

He then presented a summary of the four talking points he would address: **first** he shared his personal experience with moot court competitions; **second**, he commented on the process of writing the Hypothetical Case and, **third** he provided tips in terms of structure and sources and responded to questions about the Moot, and the hypothetical case and, **fourth** he would share insights on why he thinks the Moot is a fantastic opportunity for young students to engage with human rights.

In his address of the **first point**, Dr Chengeta identified himself as a “product of multiple moot court competitions”, having participated in almost all the World Moots that were presented at his Faculty of Law, including the [African Human Rights Moot Court Competition](#) presented by the [Centre for Human Rights](#), the Jean Pictet of the National Committee of the Red Cross on international humanitarian law (IHL), Jessup International Moot Court Competition (including the final rounds in Washington DC), etc. For Dr Chengeta, the knowledge acquired in the various moots were special because they “were skills that (..) that I don't think I would have learned in the classroom.”

Proceeding to the **second point**, Dr. Chengeta shared his experience as the official case author since 2010. He told the students that every year, after an initial idea is selected for the Hypothetical Case, various experts among Centre for Human Rights staff and partners contribute with ideas about trending themes concerning human rights. Once there is a final decision on these of 4 main issues, Dr Chengeta begins to transform the legal issues into a story that provides sufficient space for relevant argumentation from both applicants and respondents.

Once he has a first draft of the Hypothetical Case, it is sent back to experts for further contributions.

The process continues until there is an agreement of all experts on the issue. In regard to the 2021 case, he mentioned that the team had already started to discuss on whether to include the impact of COVID-19 in human rights, including aspects of state response. Dr Chengeta also spoke of the frequently asked questions of jurisdiction:

“I usually see questions about jurisdiction (...) because comparatively, when we are looking at other moot court competitions, especially the regional African Human Rights Competition, the European Human Rights Moot Court Competition, or the Inter-American Human Rights Competition, it is usually easier because the jurisdiction of the court is already known (...) there is no creation; you don't have to create any sort of jurisdiction; you just say that the ‘rules of jurisdiction are according to [the European Court of Human Rights](#) or the [Inter-American Court of Human Rights](#) (...) But the issue is a bit different with the World Moot (...) because we try to make it global (...) So, when I'm creating the (..) story line around the court (...) each particular year (..) [I] try and make sure that we incorporate different components from different regions”

Dr Chengeta went on to say that he may, for example, research what the jurisdiction of the [African Court of Human and Peoples' Rights](#) says about a specific issue, to then combine it with different or complementary admissibility, understandings and/or procedures of other courts such as the Inter-American Court of Human Rights or the European Court of Human Rights, ensuring a truly global and inclusive Nelson Mandela World Moot. He advised students to leave their comfort zones and also research for *lato sensu* jurisprudence in other regions. He also remembered that, for him, this was a door-opener for which awakened his interest in comparative law.

In his address of the **third point**, Dr Chengeta first clarified that, in compliance to the rules of the World Moot, he only be able to share hints to certain extent because the very idea of the moot was that students would undertake independent research. He then provided students with insightful information that linked the issues brought up in the case to real-life cases and debates.

Dr Chengeta the mentioned the issue of the use of religious Galapagos robes used by Penguinatics, present in the 2020 Hypothetical Case, which he thought could attract the

majority of questions during the oral rounds at the Palais des Nations in Geneva. He cited the case of [Sonia Yaker v France](#), which concerned the prohibition of the use of religious dress due to alleged reasons of safety, decided by the [Human Rights Committee](#) in 2018. He reminded students that the latter Committee is a semi-judicial treaty body of the United Nations, comprised of 18 experts, of which the founder of the World Moot, [Professor Christof Heyns](#), is a member.

Further, he mentioned the [2014 EctHR case of SAS v France](#) and the dissenting opinions that accompanied its judgement. Despite the similarity between the two cases, Dr Chengeta pointed out that the rulings were very different: while in SAS v France the EctHR found that the prohibition of religious dress presented there was an imbalance to human rights. Four years later, however, in 2018 HRC decided the opposite, and held France accountable. In this sense, Dr Chengeta argued that while one decision is regional and binding and the other is universal yet non-binding, it will be up to students to argue if one or the other should apply to the Hypothetical Case, in accordance to their role as applicants or respondents.

He also drew attention other important issues addressed in the case, such as those of misinformation and disinformation on account of digital technologies. He shed light on the widespread phenomenon of fake news and its possible clashes with the human right to freedom of expression and the prohibition of incitement to violence or discrimination. In this sense, Dr Chengeta recommended students to read the [2012 Rabat Plan of Action](#), which provides guidelines and tests that help differentiate freedom of expression from hate speech because “these are things which we [judges] will be ordinarily (..) questioning (...); expecting [that] you have mastered these points.”

Dr Chengeta also spoke of where the ideas for mother penguin had come from and drew connection between the absence of her statue in the motherland of Penguinatics to the ongoing debate of whether African artifacts currently in museums in European countries should be returned to their countries of origin. Dr Chengeta reminded the audience that the case arouses the issue of artificial intelligence and its implications for the global human rights project. In many cases, he argued, these new developments have far reaching effects in the legal, philosophical and ethical field. He questioned how the increasing ability of machines to perform acts that were traditionally performed only by humans will impact human rights, which are traditionally limited to people. “If a robot uses lethal force, has there been a violation of the right to life? Is physical death necessary for a violation of the right to life?”, he questioned.

Subsequently, Dr Chengeta stated that when the Hypothetical Case brought up the issue of state imposition of medical Artificial Intelligence-based treatment for visually impaired

children, it called for a practical application of the “best interest of the child” principle. For Dr Chengeta, this issue is especially important because he claims that nowadays people are able to protest and demand their rights in ways like never before. An example were the protests that occurred in Spain in 2015, he said, questioning whether those holograms were actual protesters and whether offenses against them were equivalent to offenses against the people they represent?

In addressing the issue of clarification of facts, Dr Chengeta advised students to read the World Moot Rules. He also mentioned that most of the questions he usually receives are answered with a short statement: “this is for parties to argue”. Thus, he sheds light on the fact that precisely that what appears to be a gap at a first glance is actually intentionally left to allow for students to create and develop different, new arguments.

Finally, in addressing the **fourth point**, Dr Chengeta concludes that the participation in the World Moot is not only important because it is the largest human rights moot court competition in the world, but also because it is an unparalleled opportunity for students to network with peers, experts and professors. Further, he states the importance and the opportunities that present themselves because the World Moot is held in Geneva, including chances to dialogue with professors and experts about possible masters thesis, for example.

Dr Chengeta cited a phrase said by Nelson Mandela in reference to moot court competitions: as far as human rights is concerned, what way to better advance human rights than to bring together law students from across the world? “If you are interested at all in the advocacy of human rights or human rights litigation”, Dr Chengeta stated, “participating in the World Moot is a thing to do”

Citing Mr. Al-Zeid-Hussein’s comments in his participation in the 2014 World Moot, he remembers that though the case is fictitious, the issues it raises are real and have sometimes to many mirrored examples in the real world; they are not random, and they are very serious, including but not limited to the subjugation of women, minority rights, etc. He also cited Virginia Woolf and her affirmation that “fiction is like a spider's web, attached ever so lightly perhaps, but still attached to life at all four corners”.

To conclude, Dr Chengeta drew attention to the fact that he concurs with Philip Alston’s affirmation “the human rights movement needs to develop a spirit of introspection and openness. Historically, it has not responded well to criticism forward, it will be highly desirable for the movement to be open to reflecting on its past shortcomings and to involve a broader

range of interlocutors in its reflections than has been the case in the past.” As such “human rights proponents need to rethink many of their assumptions, re-evaluate their strategies, and broaden their outreach, while not giving up on the basic principles.”

In this sense, he stressed that the one thing that can save human rights is open discourse, especially in such a populist world in which human rights are always challenged. Finally, he praised the efforts dedicated to maintaining the World Moot despite the difficult situation and the cancellation of various other events.

“Thank you, and we hope to meet you soon!”

[Dr. Thompson Chengeta](#) studied law at Harvard Law School, University of Pretoria (UP) and Midlands State University (MSU). He is a Fellow at the South African Research Chair in International Law, University of Johannesburg (UJ), Adjunct Senior Lecturer at MSU and a Non-Resident Fellow at the Institute of International and Comparative Law in Africa, UP.

[This is a non-literal brief written by Ana Teresa C. Khatounian, Project Assistant to the Nelson Mandela World Human Rights Moot Court Competition]