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**LLM HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA**  
**REPORT OF THE HUMAN RIGHTS IMPLEMENTATION**  
**CLINIC 2017**

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## 1. Introduction

This Report details the mandates fulfilled by the Human Rights Implementation Clinic (the Clinic) from February 2017 to June 2017. The Clinic is made up of three students namely, Ulrike Kahbila Mbuton, Tresor Muhindo Makunya and Fungai Paul Mudau. The activities of the Clinic were coordinated by Victor Ayeni and Henrietta Ekefre.

The work methodology of the Clinic was largely based on the equal division of tasks among participants. While the Clinic had two hours of meetings every Wednesday, the Clinic members and the coordinators came to the realisation that the Wednesday meetings alone did not suffice in the effective and efficient execution of the Clinic's mandates. Therefore, both the participants and coordinators opted to meet on weekends and other days of the based on the nature of the tasks, targets and deadlines set by the Clinic coordinators.

In cognisance of the language barrier and while dealing with some cases which were written in French as well as other relevant documents which were only available in French, the coordinators assigned tasks to participants in strict consideration of the language proficiency. This was informed by the fact that not all participants could

Since the first and second mandates pertained to cases, participants were assigned specific cases to work on and would exchange ideas and thoughts, and ultimately combine their outputs in order to bring about a good working relations that enhanced the work of all the Clinic members and expedited the achievement and fulfillment of mandates within the specific timeframes.

The tasks assigned were implemented based on both desktop and library research. Drafts were usually sent to the coordinators for proofreading and comments, after which the valuable comments would be incorporated into the final outputs by the participants. Following the incorporation of the inputs the final outputs were submitted to the coordinators.

The Report covers all the major activities which were undertaken by the Clinic. This report also attempts to provide a more detailed account of the tasks accomplished by the Clinic members with a view to fulfilling the mandate of the Clinic.

The Report will be structured in five sections: Section one provides an introduction, section two outlines the Clinic's mandates, section three covers the challenges encountered in the execution of mandates, section four deals is the conclusion and section five sets out the recommendations.

## 2. Overview of mandates assigned

This section presents the mandates of the Clinic for the year 2017 and discusses in detail all of the activities carried out by the Clinic members towards the fulfillment of each of these mandates.

The Implementation Clinic was assigned the following three mandates:

- i. Follow-up in the case of *Shumba v Zimbabwe (African Commission)*; *CHR v Senegal (Talibe case, African Children's Rights Committee)* (Analyse the decisions; take stock of and assess existing attempts at ensuring domestic implementation; and devising and implementing a strategy to enhance implementation of the remedial order in the Shumba and Talibe cases, with the 60th session of the African Commission/ next session of Committee on the Rights of the Child in mind);
- ii. Desk review of the implementation of the decisions of all UN treaty bodies, the African Commission and African Court on Human and Peoples' Rights in respect of Zambia and Burkina Faso; development of strategy, including questionnaires for interviews to be conducted on-site, to supplement information obtained by way of desk review;
- iii. Updating of the publication on the impact of the African Charter and the Maputo Protocol in selected African states. However, due to technical issues identified, it was established the mandate was not achievable within the given time period as it was beyond the Clinic's reach. The initial mandate was duly replaced. The new mandate required the Clinic to update, review and restructure the web portal for litigation page within the African Human Rights Case Law Database of the Centre's website.

### 2.1. Mandate one

This mandate dwells solely on the *Shumba* and *Talibe* cases, which had already been decided. The task of the Clinic therefore was to follow-up on the implementation and the development of strategies to enhance implementation. Basically, the Shumba case is an individual complaint filed by David Padilla, against the Government of Zimbabwe, on behalf of Gabriel Shumba - a Zimbabwean citizen - under article 55 and 56 of the African Charter on human and peoples' rights (African Charter). Upon consideration of this case, the African commission found the Government of Zimbabwe to be in violation of some provisions of the African Charter, hence some recommendations were made that need to be implemented by the Government of Zimbabwe.

In the *Talibe* case, the African Children's Committee, based on a communication submitted to it, considered the issue of forced child begging in Senegal and held the Government of Senegal accountable for multiple violations of the African Children's Charter. Consequently it made a number of recommendations to be implemented by the Government Senegal of in order to remedy the violations found.

### **2.1.1. Tasks accomplished**

In a bid to do justice to this mandate, the Clinic set out to prepare a case review document of the *Shumba* case decided by the African Commission and the *Talibe* case decide by the African Children's Committee. Each case review includes: a summary of the facts of the case; admissibility procedure; consideration on merits; decision; recommendations; significance of the case and status of implementation. The Clinic also sent official communications to the African Commission and the African Children's Committee to follow-up on the implementation of the *Shumba* and *Talibe* decisions respectively. These communications equally made a request for the Centre to participate in the upcoming sessions of both the African Commission and the African Children's Committee.

With respect to developing and implementing strategies to enhance the implementation of the *Shumba* and *Talibe* decisions, the Clinic drafted flyers to advocate for the implementation of these decisions. The Clinic equally produced an advocacy video featuring interviews with Prof. Frans Filjoen, Prof. Padilla, Mr. Gabriel Shumba and one member of the Implementation Clinic. Gabriel Shumba is an alumnus of the Centre for Human Rights who was tortured by agents of the Zimbabwe government. In 2013, the African Commission found the government in violation of the African Charter and directed the government to carry out an investigation of the individuals responsible for the torture and pay adequate compensation to Gabriel Shumba. Decisions of the African Commission are generally not implemented by the government of Zimbabwe. The *Shumba* case is a stark reflection of this sad reality. This advocacy video is one of the several other efforts by the Implementation Clinic of the Centre for Human Rights to put pressure on the government of Zimbabwe to comply with the decisions of the African Commission in the *Shumba* case. The video calls on the African Commission, Civil Society Organisations and all other stakeholders to engage all possible measures to

ensure that this decision is implemented. This video was posted on the Centre's website and was equally shared within various social media networks.

As part of the Clinic's strategy to enhance the implementation of the African Children's Committee's *Talibe* decision, the Clinic received financial and logistical support from the Centre through which the Clinic Coordinator and one member represented the Centre at the first implementation hearing on the *Talibe* decision. At the recently concluded 29th Session of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Rights Committee) held in Lesotho, the Clinic and RADDHO, an NGO based in Senegal, participated and presented a joint submission on the implementation of *Talibe* decision. The Centre for Human Rights and RADDHO submitted the case as far back as 2012. In its decision, delivered in 2014, the Committee held Senegal responsible for the activities of these schools and directed the state to take measures that the best interests of children are respected. According to the African Children's Committee's Rules of Procedure a State Party to a Communication is required to report on the implementation of its decisions. The Government of Senegal therefore submitted its report on the implementation of the *Talibe* decision and this report was considered during an implementation hearing held within an open session of the African Children's Committee.

During this implementation hearing the African Children's Committee noted that it is not enough for Senegal to argue that it has adopted laws making 'forcing a child to beg' a criminal offence when government has done only little in practice to effectively implement these laws. In its report submitted to the Committee during the implementation hearing, the government of Senegal acknowledged that most of its interventions are still in a pilot phase, and that it has been engaging with various ministerial departments, Koranic teachers, Islamic traditional leaders, civil society organisations and other stakeholders to address the issue. Government also reported that it has entered bilateral agreements with some neighbouring countries to address the issue. In its presentation before the Committee, the Centre (together with RADDHO) noted that interventions by the Senegalese government are still limited to Dakar (the capital), despite the *Talibe* issue being a national problem that goes beyond the capital. Government interventions are also

ineffective as many *Talibe* children are still on the streets. A draft law meant to address this problem is taking too long to be adopted by the Senegalese Parliament.

### **2.1.2. Impact**

#### ***Actual impact***

The Implementation Clinic highlighted major aspects of the *Talibe* decision that are yet to be fully and effectively implemented, while advocating for the African Children's Committee to follow up more closely in order to ensure that the Government of Senegal complies with its decision. The joint presentation of the Clinic and RADDHO informed the exchanges between the African Children's Committee and the Government of Senegal. Based on the implementation issues identified, the African Children's Committee made further recommendations to accelerate the implementation of the *Talibe* decision.

#### ***Potential impact***

CSO and other stakeholders present during the implementation hearing were also informed of the status of implementation and called upon to engage in the follow-up process. This could potentially be an area for further advocacy by other CSOs. The advocacy video also sparked discussions on the issues of implementation and compliance. This also could potentially be an area for advocacy in order to engage the Government of Zimbabwe on the need to implement the *Shumba* decision.

## **2.2. Mandate two**

Under this mandate, three principal tasks were accomplished. First and foremost, we have conducted a desk review on the implementation of the decisions of all the UN treaty bodies, the African Commission on Human and Peoples' Rights (African Commission) and African Court on Human and Peoples' Rights (African Court) in respect of Zambia and Burkina Faso, and cases on the Economic Community of West African States Community Court (ECOWAS Court) in respect of Burkina Faso. With regards to UN treaty bodies, our attention was limited to findings of the United Nations Human Rights Committee (UNHRC or Human Rights Committee). Second, we have developed strategies of implementation of findings and recommendations taken in the reviewed cases. Lastly, we have developed questionnaires for interviews to be conducted on-site

(in Zambia and Burkina Faso) to supplement information obtained by way of desk review. All the three tasks were successfully achieved by the Clinic.

We have mainly used the desktop review methodology in order to obtain information pertaining to cases and status of implementation. Firstly, we went through different **institutional and media websites** to find papers, interviews and reports that talk about the mentioned case. Secondly, we have analysed **country reports** submitted by Zambia and Burkina Faso including concluding observations where they were available. Thirdly, we have used **publications of scholars** and the Centre for Human Rights whereby these cases were either discussed or mentioned.

### 2.2.1. Tasks accomplished

Cases reviewed as part of this task have been submitted by individuals against states (Zambia and Burkina Faso) part to the African Charter on Human and Peoples' Rights (African Charter), International Covenant on Civil and Political Rights (ICCPR), ECOWAS Treaty. In total, we have reviewed and found 18 cases that fell within the scope of our mandate.

As per human rights body seized, they are divided as follow:

- a) Human Rights Committee: 11 cases
- b) African Commission: Four cases
- c) African Court: Two cases
- d) ECOWAS Community Court: One case

As per country reviewed:

- a) Burkina Faso: Five cases
  - 1. Human Rights Committee: One case
  - 2. African Commission: One case
  - 3. African Court: Two cases
  - 4. ECOWAS Community Court: One case
- b) Zambia: 13 cases
  - 1. Human Rights Committee: 10 cases
  - 2. African Commission: Three cases
  - 3. African Court: None

We have ranged these cases based on three categories: cases that are fully implemented, cases that are partially implemented, which means, the implementation is



on-going or was on-going at the time the report (information) was issued and that no contrary statement has so far not been issued, and cases that have never been implemented. However, we have considered adding a fourth category pertaining to cases whereby states have informed their willingness to abide by findings of the treaty body but did not subsequently report to the body about measures it has taken in order to give full compliance to the decision. Though important and detailed might this category be, we have found that either those cases fall in 'partial implemented' or 'never implemented' at all.

Regarding the implementation status,

- a) Full implemented: Five cases
- b) Partially implemented: Seven cases
- c) Never implemented: Six cases

With regards to implementation by human rights body

**a) Fully implemented**

- 1. Human Rights Committee: Four cases
- 2. African Commission: One case
- 3. African Court: None
- 4. ECOWAS Community Court: None

**b) Partially implemented**

- 1. Human Rights Committee: Two cases
- 2. African Commission : Two cases
- 3. African Court : Two cases
- 4. ECOWAS Community Court: One case

**c) Never implemented**

- 1. Human Rights Committee : Five cases
- 2. African Commission : One case
- 3. African Court : None
- 4. ECOWAS Community Court: None

***Observations***

The above table confirms that the willingness of states to comply with the decisions of human rights bodies is lower than expected. Out of the 18 cases reviewed, only six have been fully implemented, seven are in the process of being implementation and six have never been implemented. A quick look at the Human Rights Committee decisions demonstrate that most old cases have been implemented by the government of Zambia (Kalenga v Zambia, 1988, Mukunto v Zambia, 1997 and Chisanga v Zambia, 2005) while

those that appear to be recent are still under an on-going implementation process or has never been implemented at all. At the African level, combining the three bodies targeted in this report, only one case, *Amnesty International* (on behalf of Banda and Chinula) *v Zambia* (2000) has been fully implemented.

Against this background, it has appeared clear to the Clinic to conclude that the status of implementation of the analysed cases lies on the nature and scope of the violation, quality of perpetrators and the victim, the nature and scope of recommendations and of the obligations they impose to the state vis-à-vis the victim. Scholars have abundantly elaborated on legal, political, economic and social motives that tend to undermine the commitment of states to comply with the decisions. As part of our Clinic work, out of many other reasons that are contained in the annexure on the review of implementation, three reasons can be highlighted in this report.

First, lack of implementation mechanisms and plat-forms available to victims to engage with the government and discuss, for example, on compensation amount and its unwillingness to prosecute perpetrators of alleged human rights violations. Second, absence of national engagement and pressure from the civil society organisations and academics eventually, on cases that have been decided by human rights bodies. Third, vagueness in the formulation and framing of recommendations/findings, states obligations and institutions in charge of implementing findings leading to a misinterpretation by the state of some recommendations in its favour, claiming for example the impossibility to identify victims or the rejection of a proposed amount by the victim.

It is with regard to these obstacles that we have developed our implementation strategies encompassing various actors involving in the implementation process.

### ***Development and division of implementation strategies***

The Clinic has first developed general implementation strategies that may be applied to all the cases and later on, due to specificities of each of the case and the country, we have developed case-by-case strategies. In this report, we will present the general implementation strategies as to provide a broader picture on what needs to be done. An annexure to this report provides the entire strategies developed.

- ✓ Draft leaflets on all the cases per country to be distributed as awareness campaign tools (naming and shaming approach)
- ✓ Conduct media mass campaign (newspaper, Radio and TV and internet campaigns)
- ✓ Liaise with key media houses to include human rights coverage as part of their daily programme in an effort to promote and protect human rights
- ✓ Conferences in University, academic bodies and relevant civil society actors

- ✓ Discussions, exchanges and meetings with government officials so that in order to adopt a general working plan for ensuring on compliance and implementation with of decisions
- ✓ Letters to the President to request pardon as a mean to comply with some of the cases where the state is asked to release arrested persons
- ✓ Create a network of pressure groups (collaboration between victims, civil society and mass media) who constantly call for the implementation of decisions

### ***Interview Questionnaire***

The aim of this questionnaire is to guide interviewers during exchanges and meetings on implementation of selected cases with national government officials and other stakeholders. It is divided into five main parts:

- a) Monitoring the implementation of judgments and decision: the supranational perspective
- b) Implementing judgments and decisions: national perspective
- c) Relationship between domestic and supranational actors
- d) A closer look at our selected judgments and decisions
- e) Summing up

The first and third part have 10 questions each, 22 questions for the second, six for the fourth and two summing up questions as you may see in the annexure to this report.

### **2.2.2. Impact**

Though it is early to assess the overall impact of the mandate two, it is important to mention preliminary impacts we have found. We have assessed the mandate two following the actual impact it may have (1) but also the potential impact (2).

#### ***Actual impact***

For the first time, the Clinic has offered to the Human Rights Implementation Unit of the Centre for Human Rights a clear review of implementation status of 18 cases involving Zambia and Burkina Faso. This is of paramount importance because the litigation of case goes beyond the simple decision/finding taken by a human rights body. Obtain information pertaining to measures (administrative or legislatives) governments have taken to comply with the decision, obstacles implementation process is facing and challenges victims are going through to obtain justice after the decision, facilitates advocacy activities of the CHR.

Also, the availability of these information permits the CHR to understand what has been done, what need to be done and the extent to which it can engage meaningfully with government officials and other state actors to push for implementation. The developed strategies, general and case-by-case strategies will assist the CHR and its partners in planning implementation workshops and meetings. Finally, the list of the cases reviewed can be used as a basis to draft mandates of a future HR Implementation Clinic or pursue the same mandate.

The result of this mandate that includes information and documents gathered have been successfully submitted to the Human Rights Law Implementation Project which the Centre is currently conducting with the University of Bristol. The CHR-Bristol Project has begun using some of the information the Clinic provided.

### ***Potential impact***

The CHR and University of Bristol will use information provided by the Clinic during the forthcoming workshops and meetings with government officials in Zambia and Burkina Faso on the implementation. Furthermore, developed questionnaires will guide interviewers during exchanges and discussions. The envisaged overall impact is the full implementation and compliance of states with the findings and recommendations of these human rights bodies.

## **2.3. Mandate three**

Initially, on mandate three, the Clinic was required to update the publication on the impact of the African Charter and the Maputo Protocol in selected African states. However, due to technical issues identified by Yolanda and others, it was established in the eleventh hour that the mandate seemed to be impossible to achieve immediately or within the given time period as it was beyond the Clinic's reach.

As a result, the initial mandate was duly replaced. The new mandate required the Clinic to update, review and restructure the Centre's litigation page wherein all the cases litigated by the Centre will be specifically arranged and made available and locatable with ease within the African Human Rights Case Law Database of the Centre's website. This entailed the creation of new and separate web portal that contains a list of cases which the Centre has litigated before African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, the African Committee on the Rights and Welfare of the Child, and the ECOWAS Community Court of Justice.

In the beginning, the litigation page was haphazard and the cases were not properly arranged as they were contained in different places in the Centre's website. In addition, the absence of clear cut dates, decisions, and the institutions or regional human

rights bodies which issued recommendations and decisions also necessitated the restructuring of the litigation page.

The actual mandate was to bring together all cases in which the Centre has litigated by providing hyperlinks to all the important and relevant documents pertaining to each and every case. This task was apparently carried out through desktop review and it mainly involved the classification of information contents in each case ranging from complainants communications, letters to the relevant human rights bodies, advisory opinions, case summaries, *amicus curiae* submissions, media statements, recommendations, decisions and judgments.

### **2.3.1. Tasks accomplished**

Thus far, the consolidation of the many different cases has been completed and sent to the Clinic's coordinator Victor. Currently, Yolanda is working on restructuring the litigation page accordingly. Since the participants have consolidated the cases as required, it remains with Yolanda to ensure that the desired web portal for the Centre's litigation page is created, and it therefore indicates that the Clinic's third mandate will be fully completed.

The hyperlinks of cases were arranged in accordance to the human rights bodies as follows:

- i. African Commission on Human and Peoples' Rights: Three cases;
- ii. African Court on Human and Peoples' Rights: Five cases;
- iii. African Committee on the Rights and Welfare of the Child: Two cases;
- iv. ECOWAS Community Court of Justice: One case;

### **2.3.2. Impact**

The completion of this third mandate has the potential to provide a more organized litigation page on the Centre's website. This page would be user-friendly and searching for cases litigated by the Centre would be a lot easier and faster.

## **2. Challenges**

The Clinic has encountered challenges pertaining to time frame, access to information and the planning and execution of the initial mandate three. With regards to time challenges, given the fact that every Wednesday per week the Clinic had only two hours of work which proved to be insufficient when considering the nature and wide scope of mandates the Clinic was entrusted. From the backdrop of officially meeting only on Wednesday afternoon as well as the busy congested and prolonged class schedules, the participants strived that effectively execute their mandates and ultimately produce outstanding results.

With regard to access to information, the main challenge emanated from the inability to obtain information concerning the implementation status of the *Talibe* case from the official website of the African Committee of Experts on the Rights and Welfare of the Child. Similarly, the African Commission website does not have a clear cut portal where it provides a clear and comprehensive status of implementation of cases it has adjudicated. Even some of its cases could not be found on the website.

Moreover, another challenge to the Clinic was the language barrier. Some of the cases which were reviewed were related to both Francophones (Burkina Faso and Cote d'Ivoire) and Anglophones (Zambia and Zimbabwe) countries. Consequently, some important documents could only be found in French while not every member of the Clinic was fluent in French, thus delaying the process. Strategies which were developed included leaflet and video needed special skills on leaflet development and video editing.

Finally, the framing of the initial mandate three, the updating of the implementation book pertaining to the impact of the African Charter and Maputo Protocol on selected countries was too wide and could not be realised in short period of five months. Even the few strategies which were initially developed, such as creation of a web portal to allow contributors to post information, have been unsuccessful.

These challenges did not overshadow Clinic's commitment to carry-on its mandates successfully. Thus the Clinic developed strategies to overcome these challenges. Firstly, with a plan that allowed to work over the weekend sometimes alone, sometimes together with the supervisor in order to catch-up with the delay. Secondly, we went through different state reports, concluding observations, thesis and papers that elaborated directly or indirectly on the 18 cases in order to obtain implementation information. And where it was difficult to have information online, we have used personal contacts to the African Committee or African Commission to have necessary information. Thirdly, the Clinic was lucky to have two Francophone speakers who have focused on Francophone countries and provided necessary translation to other Clinic members. Lastly, we have used CHR resources in video editing to help us to shoot and edit the Shumba documentary.

### **3. Conclusion**

In conclusion, the participants would like to express their heartfelt gratitude to the Centre for Human Rights which afforded them to be the inaugural participants of the Human Rights Implementation Clinic by being bestowed with the mammoth tasks of implementing the Clinic's mandates. In the process, the participants have gained a thorough knowledge on how to devise and develop implementation strategies in pursuit of securing the implementation of human rights bodies. The participants have also earned a high

standard of work ethic as well as the attributes of distinguishing and dealing with tasks ranging from crucial to peripheral.

#### **4. Recommendations**

Although the Clinic is new, its strategic mandates which were thus far fulfilled resemble a breakthrough in the quest to promote and protect human rights in Africa. With a clear need to effectively bolster the Clinic's scope and ability to be efficient and wholly productive, the following recommendations are submitted:

As regards mandate one, the Clinic acknowledges that the implementation of human rights decisions is not a one-off process and does not end just with an implementation hearing, as was the case for the *Talibe* decision. It is recommended that the Clinic's mandate for next year should still include some an aspect of follow-up on the cases for which follow-up has been commenced this year. The Clinic is certain that such continuity would go a long way to enhance and keep track of the implementation process in the Shumba and *Talibe* cases.

In terms of the initial mandate three which was replaced, it is inevitable to plan ahead and concretise how the updating of the publication on the impact of the African Charter and the Maputo Protocol in selected African states can be given practical effect.

## **Annexures**

Advocacy video for the *Shumba* case

Case reviews for the *Shumba* and *Talibe* cases

Draft leaflets for the *Shumba* and *Talibe* cases

Translation of the draft implementation report presented by the government of Senegal on the *Talibe* case

Presentation to the African Children's Committee during the implementation hearing of the *Talibe* case

Activity report on the Clinic's participation in the 29th ordinary session of the African Children's Committee

Press Release by the Centre on the Clinic's participation in the implementation hearing on the *Talibe* case

Desktop review of implementation of cases against Zambia and Burkina Faso



Proposed Implementation strategies

Interview questionnaire

Template and hyperlinks for the litigation page of the Centre's website