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LLM HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA
REPORT OF THE HUMAN RIGHTS IMPLEMENTATION
CLINIC 2018

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1. Introduction

This Report details the mandates fulfilled by the Human Rights Implementation Clinic (the Clinic) from February 2018 to June 2018. The Clinic was made up of three students namely, Samuel Ade Ndasi, Susan Mutambasere and Jonathan Obwogi. The Clinic coordinators were Dr. Willem Gravett and Ms. Henrietta Ekefre.

To accomplish the assigned tasks, the Clinic adopted a work approach which entailed equal division of tasks among the Clinic members. The Clinic members met for two hours every week as provided for by the academic calendar. These meetings included the coordinators, who would provide further directions and guidance needed for the accomplishment of the assigned tasks. Cognisant of the importance and magnitude of the task to be accomplished, the Clinic members met regularly to take stock of the progress being made; to discuss the challenges and finally to re-strategise on how to effectively accomplish the assigned tasks well ahead of the timeframe within which the members were expected to make a final presentation on the accomplishment of the mandate.

In the course of the execution of the assigned tasks, particularly Mandate one, the Clinic members realised that it would be of significant advantage to the overall goals and objectives of the Centre for Human Rights (the Centre)'s advocacy work to include cases which were decided by the Southern Africa Development Community (SADC) Tribunal and seek ways by which the SADC Heads of State or Government could decide on the fate of decisions taken by the SADC Tribunal before it became defunct, particularly the decisions which were not implemented. This meant an expansion of the mandate of the Clinic and additional workload for the Clinic members.

The tasks assigned were implemented through extensive desktop research, contacts with the African Commission on Human and Peoples' Rights (the Commission), meetings with local partner NGOs in Zimbabwe and exchange of information between the Centre and other stakeholders. Draft documents were

submitted to the Clinic coordinators for review, comments and recommendations, following which the Clinic members would incorporate the comments into the final outputs and re-submit the documents to the coordinators.

This Report covers all the major activities undertaken by the Clinic members and provides a detailed account of the tasks accomplished by the Clinic members in the fulfillment of the overall mandate of the Clinic. The report comprises 5 major parts: an introduction; a detail outline of the Clinic's mandates; the challenges encountered in the execution of mandates; termination of the tasks of the mandate and recommendations.

2. Overview of mandates assigned

This part presents the mandates of the Clinic for the year 2018 and details the major activities carried out by the Clinic members towards the fulfillment of each of these mandates.

The 2018 Implementation Clinic was assigned the following mandates:

- (i) Devise and implement a strategy to facilitate Zimbabwe's engagement with and implementation of its obligations arising from decisions by regional human rights mechanisms;
- (ii) Report on the implementation of the core UN human rights treaties in 3 selected countries to be used to update the book *The impact of the United Nations human rights treaties on the domestic level* (Kluwer 2002) C Heyns and F Viljoen. The monitoring reports would contribute to a baseline study for 20 countries around the world from 1999 to 2019;
- (iii) Devise an advocacy strategy to revive the SADC Tribunal as well as lobby for implementation of decisions of the Tribunal before it closed down;
- (iv) In the form of opinion pieces for the African law blog <https://africlaw.com> or Press release for the Centre's website, consolidate the efforts of the Centre in the Talibe' case (from inception to current state, whilst highlighting the status of implementation, especially measures the state may have taken post the implementation hearing and what is yet to be accomplished).

3. Mandate 1

The accomplishment of mandate one required the Clinic members to:

- Identify all cases concluded on the merits against Zimbabwe from both the UN and AU human rights mechanisms, particularly on individual complaints submitted to these human rights adjudicating bodies;
- Highlight the findings of these bodies and the provisions violated by Zimbabwe;
- Highlight the specific recommendations / remedial orders or actions issuing from these decisions and the arising obligations;
- Highlight the organisation(s) and victim(s) involved in the litigation of these cases;
- Determine the level / status of implementation of the highlighted decisions by searching through the Activity Reports of these bodies; through Zimbabwe's state reports, concluding observations from these bodies, shadow reports, NHRIs reports, authentic media reports, literature review among other sources;
- Draft a document with all the findings from the above; and finally
- Devise and implement a strategy to ensure Zimbabwe's engagement in cases of non-implementation. This includes among other things: planning / contributing to a national dialogue and participating in a capacity building workshop for national implementation actors in Zimbabwe.

3.1. Tasks accomplished

In the execution of this mandate, the Clinic members researched extensively and identified six cases concluded on the merits against Zimbabwe by the Commission. The six cases were then comprehensively represented in a table, detailing the identity of the complainant(s) / victim(s), the alleged violations, the findings of the Commission, the recommendations / remedial orders issuing from the findings, when the decision was taken, whether the Respondent State (Zimbabwe) was notified of the decisions, which Activity Report of the Commission contains the decisions, the status of implementation / compliance with the decisions

by Zimbabwe and any correspondences addressed to the Commission by Zimbabwe (see *Annexure 1*). The Clinic members also drafted case summaries on each of the six cases, detailing the same information as in the table.

The six cases that the Clinic tabulated are as follows:

- *Noah Kazingachire and Others v Zimbabwe*
- *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe*
- *Zimbabwe Lawyers for Human Rights and IHRDA (on behalf of Andrew Meldrum v Zimbabwe*
- *Zimbabwe Human Rights NGO Forum v Zimbabwe*
- *Scanlen and Holderness v Zimbabwe*
- *Gabriel Shumba v Zimbabwe*

Still in line with this mandate, the Clinic members drafted the concept note in preparation for the proposed national dialogue in Zimbabwe. The national dialogue aims to build the capacity of local NGOs in monitoring implementation of decisions from human rights bodies and to engage the government to honour its implementation obligations under international treaties it had ratified.

On 24 May 2018, the Clinic members facilitated and participated in a planning meeting organised by the Clinic with the support of the Centre, and comprising of representatives from Zimbabwe Lawyers for Human Rights (ZLHR), Zimbabwe Human Rights NGO Forum (ZHRF) and the Zimbabwe Human Rights Commission (ZHRC). See *annexure 2* for a link to a press release on the Centre's website on the meeting and some pictures of the meeting. At the end of the planning meeting, the Clinic members drafted a detailed report of the deliberations and the recommendations issuing from the meeting. The report is also herein attached and marked *Annexure 3*. All necessary documents relating to the proposed dialogue are completed. This task is completed, pending the holding of the national dialogue in October 2018.

3.2. Actual impact

The execution of this mandate opened up dialogue with Zimbabwe civil society on issues of implementation, and for further collaboration between the Centre and its local Zimbabwean partners on the ground. The planning meeting facilitated information exchange between the Centre and local partners in Zimbabwe in the context of implementation. Collaborative partnership has been created between the Centre, ZHRC and other local NGOs on the ground in Zimbabwe.

3.3. Potential impact

The proposed national dialogue tentatively scheduled for October in Zimbabwe has the potential to result in action on the part of the Zimbabwean government implementing the decisions in the six cases identified. The dialogue could also result in consolidated efforts to get an implementation hearing before the Commission on all the six cases. The Centre's local partners on the ground in Zimbabwe will benefit from capacity building in the domain of monitoring compliance / implementation of decisions arising from cases they and others litigated. This is to ensure that litigation is not abandoned at the stage of obtaining a favourable decision from a human right adjudicating body, but to ensure that the victims reap the benefits from the decision.

4. Mandate 2

The book *The impact of the United Nations human rights treaties on the domestic level* (Kluwer 2002) C Heyns and F Viljoen is an assessment of the domestication of UN human rights treaties in 20 countries. A first study was concluded in 1999 and the findings published in 2000 in the book cited above. 2019 marks 20 years since the research was concluded. Given the changes that have occurred in the different countries, including in the UN itself¹, the authors are updating the book by re-visiting the same 20 countries to measure the domestication of the treaties in the past 20 years. Under this mandate, the Clinic was assigned the task of reviewing three

¹ The adoption of additional treaties like the International Covenant on the Rights of Persons with Disabilities which was adopted in 2006

countries to create templates to be used in updating the book. The countries were Senegal, Jamaica and Colombia.

The task consisted of the following:

- Scanning all the treaties that Senegal, Colombia and Jamaica have ratified under the UN;
- Sifting to determine whether state reports to the treaty bodies were made on time
- Tracking feedback from the state parties on progress made to implement the recommendations by the UN treaty bodies.
- Drafting a template

4.1. Tasked accomplished

The templates attached hereto as *Annexures 4-6* were completed. They consist of a table of the ratification of treaties done by a particular country and includes any reservations or declaration it might have made. It also has a narrative on the reporting habits to each treaty body, noting any delays in reporting and the recommendations made by the treaty body.

4.3. Observations

It was interesting to track the human rights reporting habits for Colombia, which only came out of a 52-year armed conflict in 2016 and has the world's largest internally displaced persons of 7.7million. Despite the gross human rights violations recorded in the country over the years, it has ratified all the 9 UN treaties and is up to date on all its reports. Some of the reports have been filed late, at times by 4 years, but they have all been filed and the state party has even engaged with the treaty bodies by providing feedback on implementation of the recommendations. It will be interesting to note therefore how far this translates to domestication on the ground, given the country's human rights track record. The Clinic supervisor, Dr. Willem confirmed that the task was satisfactorily completed.

4.2. Potential Impact

There are in-country researchers on the ground in the various countries collecting information on the implementation of the UN treaties. The templates will thus serve to assess whether the information that the state parties are reporting to the treaty bodies is the same as what is on the ground. It will help to weigh if the commitments made at UN level are being translated in the countries through domestication. It will also be used as a comparative tool for the information that is going to be provided by the country researchers to ensure the authenticity of the research.

5. Mandate 3

The aim of this mandate was to initiate an advocacy campaign aimed at the implementation of the cases decided by the SADC Tribunal before it was disbanded as well as lobby for the reinstatement of individual access to the Tribunal. The tasks to be completed were as follows:

- Design a flyer to be used in the advocacy campaign
- Drafting a memorandum to the SADC political arm to reinstate the Tribunal

5.1. Tasks Accomplished

The flyer was designed and contains brief messages on the ‘forgotten cases’ of the SADC Tribunal, some of which are important human rights jurisprudence. (See *Annexure 7*). The memorandum was also completed, and it contains information on the brief history of the Tribunal, an outline of some of the cases it has decided, the dilemma of a discontinued quasi-judicial body and also makes reference to the decision of the Gauteng High Court in the case of *Law Society of South Africa and Ors v The President of the Republic of South Africa and Others*.² The case is a result of a strategy by the SADC Law Societies to each hold their respective countries accountable for denigrating their duties under the SADC Treaty and international human rights law by voting to disband the Tribunal. The court found in favour of the

² Case 20382/2015 decided on 1 March 2018

Applicants. The memorandum is attached as *Annexure 8*. The task assigned was therefore fully accomplished.

5.2. Potential Impact

The advocacy campaign was initiated by this Clinic but it will be an ongoing process. The groundwork that the Clinic has laid has the potential to bring about the implementation of the cases that the Tribunal decided upon before it was disbanded in the different state parties. It is also a way to revive the momentum within civil society on lobbying for the reconstitution of the SADC Tribunal as well as encouraging civil society organisations in SADC to monitor implementation of the decisions.

6. Mandate 4

Under this mandate, the Clinic members were required to write an opinion piece on the Talibe's case for the AfricLaw blog, consolidating the Centre's efforts in the case.

In doing so, the Clinic members were required to highlight the following:

1. The current status of implementation of the decision in the case;
2. Measures that the Senegalese government has taken post the implementation hearing; and
3. What is yet to be accomplished.

6.1 Tasks accomplished

On 31 May 2018, the opinion piece written by the Clinic members for the AfricLaw blog (<https://africlaw.com>) was published on the blog. The opinion piece highlights the current status of implementation; the steps that the government has taken to ensure that the judgment is implemented; and the areas in which the government is yet to accomplish. The mandate was therefore fully implemented.

6.2 Potential Impact

The opinion piece creates and raises awareness on the work of African human rights bodies such as the Committee on the Rights and Welfare of the Child (the Committee), and their ability to effectively promote and protect human rights in the continent.

By tracking Senegal's compliance with the judgment and writing a piece on it, people, especially those who have been critical of the African Union bodies, terming them toothless dogs, would be able to appreciate the work that such bodies are doing in promoting and protecting human rights on the continent.

The opinion piece also generates discussions on the need for Senegal to fully implement its obligations as directed by the Committee. Most countries always want to portray themselves as good global citizens and for them to achieve this stature, they must learn to respect decisions rendered by international judicial and quasi-judicial bodies.

7. Challenges

Based on the complexities of the Clinic's mandate, the Clinic members faced a number of challenges in the execution of the assigned tasks, which were mitigated in the long run, thanks to the support of our zealous coordinators and the concerted efforts of the team.

The major challenge was in gathering information on the actual status of implementation of a number of cases under Mandate 1. This problem stemmed from the fact that the Commission's website is not updated regularly and many information on communications are not found on the website. The Commission's website should have been the first port of call while trying to track the implementation status of any case decided by the Commission.

This challenge was mitigated by linking up with the Zimbabwean human rights organisations that were involved in litigating some of the cases that the Clinic was

dealing with. They were very helpful in providing information and a report on the status of implementation of some of the cases.

8. Recommendations

It is recommended that for the national dialogue to be held in Zimbabwe, the African Commission should be involved through the country rapporteur for Zimbabwe. Through this, there will be an all-inclusive dialogue.

The Centre for Human Rights should also continue to bolster its partnership with the CSOs for collaborative efforts and information sharing.

The Clinic mandate should continue in the following year, particularly building momentum on the SADC Tribunal advocacy which has been initiated.