

Christof Heyns as visionary, teacher, mentor and independent human rights expert

*Danwood M Chirwa**

Introduction

I wish the University of Pretoria (UP) were to rename its Centre for Human Rights the Christof Heyns Centre for Human Rights in recognition of the immense work he had done in promoting human rights in Africa and globally, and in recognition of the inseparable bond between Heyns and the Centre. No legal scholar I know has managed to fuse his own personal values into an institution and projected them on to the world stage as Christof Heyns has done with the Centre for Human Rights. With the Centre and other institutions he helped found, Heyns taught and inspired numerous young Africans from across the continent whose work in human rights will continue to reflect and execute his vision, goals and values. He remains a model legal scholar to be emulated by current and future generations of legal scholars.

In this short essay, I pay homage to Christof Heyns by highlighting some of the ways in which he impacted on students, alumni, colleagues, institutions and states. In doing this, I draw on my direct encounter with him as a teacher, mentor, legal scholar and independent human rights expert.

The inspiration of the Moots

My first encounter with Christof was via a letter dated 27 October 2000 (and sent by fax 30 October 2000). It was the first time I had received a letter from a professor. It contained two messages: first, of admission to the LLM programme in human rights in Africa offered by the University of Pretoria and, second, of a scholarship. Apart from the unspeakable joy the letter brought about, I was fascinated by the name of the author. I looked unusual for someone raised in the English colonial tradition. That letter changed everything for me, immediately; it brought about marriage, precipitated my resignation from legal practice, and marked the beginning of my academic quest. This is the testimony of many young Africans who have over the last 21 years received a similar letter from Christof Heyns and his successors at the Centre for Human Rights.

Later, I realised that I had seen Christof Heyns as an undergraduate student two years before I received the admission letter, in Maputo, Mozambique, at Eduardo Mondlane University, where the 1998 All-Africa Human Rights Moot Court Competition took place. The Moot brought together young students from across the continent to hone their legal and advocacy skills. The legal problem we were expected to resolve was cast in a wholly African context, complex and multi-layered, reflective of the human rights challenges prevalent on the continent at the time.

There were the first three days of intense competition. Each law school had to argue before four courts, presided by law professors from across the continent, two times as applicants and another two as respondents. The competition introduced to us a field of law then not taught at the undergraduate level by many of the participating universities. Within a space of a week, students were exposed to human rights at the level of detail and practicality that their own LLB programmes had not managed to do. The horizon of our small legal worlds was smashed, and from its shards was built a much larger world, we discovered, within which local legal problems could be understood and resolved.

Outside the moot court room, a cultural transformation was taking place almost simultaneously as the academic explosion was. In attendance at this event were also students from parts of Africa whose countries were still under military dictatorships or civil war. Maputo itself was a curious place to host the event, having just emerged from more than a two decades of civil war, the evidence of which still in plain sight throughout the city. I was particularly curious about Tanzania and Mozambique, Malawi's neighbours, about which Dr Kamuzu Banda's government had nothing good to say. I was astonished to hear from Tanzanian and Mozambican students the propaganda that their governments spread to their respective populations about Malawi and Banda. But all that propaganda could not prevent us from garrulously engaging in discussions. The interaction between students and professors went into overdrive on an excursion to Xai-Xai beach, which provided a relaxed and jovial atmosphere after tense three days of highly competitive oral arguments. There was just so much exposure, learning and growth that took place during one week in Maputo. Many of us came back from the Competition empty handed in terms of silverware, but teeming with inspiration and animus to strive for greater heights academically.

The man behind this unique cultural and academic transformation was Professor Christof Heyns. As Director of the Centre for Human Rights, he expanded what was a limited Southern African Moot Competition to a vibrant and now universally respected regional human rights moot

competition, at which the best students from law schools across the continent compete, connect and learn. No other region has such a long-running and widely participated academic competition. I have had the privilege of coaching and preparing University of Cape Town (UCT) students for the Jessup International Law Moot Competition. In 2006, my team went all the way to the semi-finals in Washington DC.¹ It was all about cut-throat competition, nothing more. Student and academic staff interaction ranged from minimal to non-existent, nor were there opportunities for inter-faculty student-student interaction. The African Human Rights Moot Competition – since its renaming in 2021, the Christof Heyns African Human Rights Moot Court Competition – is by far the richest and most profound in terms of exposure, learning and social interaction.

Professor Heyns believed absolutely in the infinite potential of young people from the continent. That potentiality, he believed, could be unleashed by moments of inspiration, brief as they may be. The Moot Competition, one of his favourite activities, has been hosted in all corners of the continent, defying all logistical complications of travel in Africa, exposing students and academics to the diverse legal and political systems of the continent. If Kwame Nkrumah is the father of political Pan-Africanism, Heyns can be seen as the founder of academic Pan-Africanism, understood as the belief that Africans can produce legal thinkers and legal knowledge that is responsive and relevant to their socio-political realities and that engages in dialogue with legal knowledge from elsewhere in the world. Indeed, throughout his life, Heyns promoted legal scholarship on Africa and worked untiringly to identify, nurture and inspire young talent on the continent. He did all of this without propounding any political doctrine or dogma.

So far, I have hinted at the great exposure that the Moot Competition offered to students. Of course, this had an impact on the performance of the participating students when they returned home, because they understood the law in different light. I certainly did. Many took this occasion as a springboard for further studies post-LLB. From the 1998 moot alone, Evarist Baimu from Tanzania became a member of the pioneer class of the Human Rights and Democratisation LLM programme at the Centre for Human Rights, from where he also obtained his LLD before joining the World Bank. William Olenasha, a Tanzanian of Masai heritage, also obtained an LLM from the Centre and later became Deputy Minister of Education and Member of Parliament in Tanzania. Leopordo de Amaral, from Mozambique and a member of the winning combined team of the 1998 Moot, worked for a considerable period at the Open Society Foundation for Southern Africa after he obtained his LLM at the Centre. These are just a few of scores of examples.

For academics, the Moot provided a rare opportunity for establishing links among law schools in Africa. The Centre itself drew upon these links to enhance its academic programmes and research agenda. Speaking for myself, some of my long-time academic friends and colleagues, such as Dr Tom Ojienda from Moi University, Professor Laurence Juma of Rhodes University, Professor Oyelowo Oyewo from University of Lagos, Professor Pierre de Vos, now my colleague at UCT, I met for the first time at the 1998 Moot or later African Moot Competitions.

Apart from the African Moot Competition, Christon Heyns played a central role in conceiving and marketing the Nelson Mandela World Human Rights Moot Competition. All law schools in the world are invited to participate, but only the top 10 teams, representing two from each United Nations (UN) region, compete in the finals held in Geneva. This is perhaps the most ambitious project Christof was involved in, where the Centre for Human Rights organises the Competition in collaboration with the Academy on Human Rights and Humanitarian Law of the American University, Washington College of Law, the Commonwealth Secretariat, and the United Nations Human Rights Council Branch (UNHRCB) at the UN Office of the High Commissioner for Human Rights.²

A senior human rights officer in the UNHRCB once told me that no one in the OHCHR took Heyns seriously when he was selling the World Moot Court Competition. Everybody thought it the project was too grand to work. They were pleasantly surprised when the first moot court took place within a year, presided by a most eminent panel of judges including then UN High Commissioner for Human Rights, Judge Navanethem Pillay.

The Competition is held in honour of Africa's most well-known and admired hero of freedom, Nelson Mandela. It is the first and, thus far, the only world-wide human rights competition. It exposes students to the workings of the international mechanisms for the protection of human rights, while also giving them an opportunity to establish international links that are critical to developing their careers in human rights. Above all, this Competition has shown the world that Africans can conceive, lead and sustain projects on a global scale.

Teacher and mentor

Although Heyns was involved in many regional and international projects and assignments, he was a teacher of law at heart. As a student of his I remember him teaching his favourite human rights topic, the struggle approach to human rights. He was not a traditional teacher. Heyns expected students to read tough material and engage with it. He loved and encouraged critical views from students. The academic

programmes he was involved in setting up all tended to encourage critical thinking, hard work and engagement with diverse views. Well before the decolonisation debate became fashionable in South Africa, Heyns had already challenged the European way of teaching human rights by creating an African focussed regional human rights programme which drew upon the resources on the continent and beyond. This had the effect of exposing students to a diverse array of views, unleashing their imagination far beyond parochial or dogmatic cleavages.

Many alumni of the Centre for Human Rights and other research centres associated with Professor Heyns have lost a hugely inspirational figure. I can personally testify to the support that Professor Heyns gave me throughout my career and offering advice whenever I needed it. Even when I became Dean, he was a constant source of support and advice. His counsel will remain a source of strength and direction for years to come.

Not many teachers of law have had so many outstanding graduates. Professor Heyns counts among his graduates many full professors of law at many universities in Africa and beyond, several Deans of Law, Ministers and Deputy Ministers, Judges of the High Courts and Supreme Courts, senior government officials, members of regional and international human rights monitoring bodies, leaders of civil society organisation, and a Judge of the International Criminal Court, to mention a few. This shows that to be a legal scholar and teacher is not just to be single-minded in publishing as much of one's own research as possible. It is also about inspiring and nurturing others and producing the next generation of researchers and teachers of law.

Independent human rights expert

The UN human rights system relies much on independent experts such as legal scholars and former state officials for it to work effectively. Unremunerated, such experts serve as special rapporteurs or as members of thematic working groups or committees.

Due to the UN requirement for regional representation, Africa has over the years contributed a fair share of independent experts to the UN human rights mechanisms. However, the reputation of African experts within the UN system, even accounting for some degree of racial prejudice in the narratives, is less than edifying. Some experts have not been experts at all, but retired politicians, sponsored by their governments as part of their domestic systems of patronage. Others have been known to miss critical meetings and to show interest only in receiving allowances. Others have gained notoriety for insisting on bizarre travel plans and abusing human rights officers attached to them.

Professor Heyns is one of the outstanding African independent experts who gave everything he had to the mandate he was entrusted with and flew the African flag very high. He enjoys phenomenal respect within the UN and the diplomatic community. Upon completing his term of office as Dean of Law at the University of Pretoria, he was appointed UN Special Rapporteur on extrajudicial, summary or arbitrary executions in 2010 and held the position until 2016.³ Heyns was particularly suited to this position. Apart from having extensive experience in human rights as a legal scholar, he was a gifted diplomat. Naturally soft-spoken, Heyns had the gravitas and negotiation skills to push the human rights agenda among states and state officials much further than other mandate holders could. Both in his relations with staff at the OHCHR and with diplomats, he is remembered as a highly competent professional who was easy to work with and treated everyone with respect and dignity.

One of the thematic areas he took up in his mandate was the implications of the right to life on remotely piloted aircraft, armed drones and autonomous weapons systems.⁴ To date, this remains an under-researched and under-explored area of human rights. As he was conducting research and developing his ideas on this theme, Heyns consulted widely and made presentations at various universities around the world. In doing this, he never forgot South African universities. I remember very well his presentation at UCT, which was both intellectually informative, stimulating and inspiring. In his 2014 report to the Human Rights Council, he highlighted the human rights issues raised by armed drones and autonomous weapons systems.⁵ Aware that many of these issues required further engagement among states, he recommended that the Council develop standards interpreting the applicable international law to the use of remotely piloted aircraft and to engage with other UN bodies on the issue of autonomous weapons. This report elevated the human rights concerns about armed drones and autonomous weapons in the international sphere. Many states have now expressed a view on it and the UN is still working on appropriate responses.⁶

After serving two terms as Special Rapporteur, Christof Heyns was elected a member of the UN Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights.⁷ He served two terms from 1 January 2017 to 31 December 2020. One of the notable achievements of his time on this Committee was General Comment 37 on the right to peaceful assembly.⁸ Considered one of the traditional rights, this has become a neglected right even though it is so critical to democracies around the world. Heyns played a leading role in drafting the general comment and in promoting it around the world. Again, UCT was privileged to host an event at which

he presented the draft general comment and sought input. The General Comment 37 is one of the most lucid and precise of the Human Rights Committee's General Comments.

Conclusion

As his second term as a member of the Human Rights Committee was coming to an end, Professor Heyns told me that his wife had 'instructed' him to reduce his international travel. He agreed with her and was looking forward to spending more time with his family and in South Africa. This is precisely what he was doing at the time of his death, hiking in Cape Town. The entire human rights community, within the academia, civil society, the legal profession, domestic and international, and within the UN system, have lost an intellectual leader, a teacher, a independent human rights expert and mentor. As a consolation, there are so many scholars, activists and practitioners that Professor Heyns inspired, taught, supervised and mentored. The Centre for Human Rights remains a beacon of excellence in human rights regionally and internationally. There is so much more all of us can do in honour of Professor Christof Heyns and in pursuit of our own goals.

* Dean, Faculty of Law, University of Cape Town.

1 See 'The 2006 Philip C. Jessup International Law Moot Court Competition World Cup Championship Round', available at <https://www.ilsa.org/Jessup/Jessup06/2006PhilipCJessupIntlLMoo.2-17.pdf> (accessed 22 December 2021).

2 Information about this moot can be accessed on <https://www.chr.up.ac.za/worldmoot>.

3 See 'Mr. Christof Heyns, former Special Rapporteur on extrajudicial, summary or arbitrary executions', available at <https://www.ohchr.org/EN/Issues/Executions/Pages/ChristofHeyns.aspx> (accessed 22 December 2021).

4 See Christof Heyns 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions', A/HRC/26/36, 1 April 2014.

5 Ibid. See, eg, paras 133-145.

6 See Human Rights Watch 'Stopping killer robots: Country positions on banning killer autonomous weapons and retaining human control' (2020), available at <https://www.hrw.org/report/2020/08/10/stopping-killer-robots/country-positions-banning-fully-autonomous-weapons-and> (accessed 22 December 2021).

7 GA Res 2200A (XXI), 21 UN GAOR Supp (No 16) at 52, UN Doc A/6316 (1966), 999 UNTS 171, entered into force 23 March 1976.

8 HRC General Comment No 37 (2020) on the right to peaceful assembly (article 21), CCPR/C/GC/37, 11 September 2020.