

Christof at ICLA

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Introduction

The Institute for International and Comparative Law in Africa (ICLA) was founded in 2011 by its co-directors, Christof Heyns and Erika de Wet. Christof was sole director for the last five years of his life. The fact that, within a decade of its existence, ICLA has become the leading research institute of its kind in Africa testifies to his visionary, creative mind and extraordinary ability to make things happen. Christof saw ICLA as a vehicle to strengthen our Faculty as a global institution. To that end, he tirelessly initiated projects and programmes in collaboration with local and international partners to facilitate research and advance the transfer of knowledge.

This short contribution can provide at best only a snapshot of how, before his untimely death on 28 March 2021, he conceived ICLA and positioned it, in spite of the disruption to his projects caused by COVID-19 pandemic, as a centre for research excellence. I look briefly at the goals that ICLA was set up to achieve, highlight the nature of the projects Christof initiated, and, by way of conclusion, describe how he positioned ICLA to play a leading role in advancing knowledge, research and publications in international and comparative law with an African focus. Other contributors to this volume will elaborate on the projects they undertook with him. Although it is already possible to discern the impact of some of Christof's projects, there is no doubt that the real impact of his work, and the new knowledge it generates, will endure for generations to come.

ICLA's beginnings and its mission

ICLA was conceived, and its establishment approved by the Executive Management of Senate of the University of Pretoria (UP), in 2010, while Christof was still Dean of the Faculty of Law. It opened its doors a year later, when Christof stepped down as Dean, to admit him as one of its two founding directors. To underscore its unique nature, ICLA was launched via an international conference held under the theme, 'African constitutionalism: Present challenges and prospects

for the future'. Professor Yash Ghai, one of Africa's most renowned constitutional scholars and former chairperson of the Constitution of Kenya Review Commission, delivered the keynote address, which was followed by an address by Andries Nel, then Deputy Minister of Justice and Constitutional Development. Later that evening, the dinner speech was delivered by Dr Naledi Pandor, then Minister of Science and Technology.

The mandate of ICLA was spelt out in a memorandum of understanding signed between its co-directors and UP management. The documents that describe ICLA's vision reflect the many grand ideas Christof often spoke of but never had the opportunity to actualise.

In the proposal to establish ICLA, its vision was to 'create new knowledge and develop research capacity across geographical, legal and linguistic divides in Africa, at the highest level, within the fields of international and comparative Law and to help integrate African legal developments with those in the rest of the world'. To achieve this, ICLA is required to do the following:

- develop a community of scholars from a wide range of countries and institutions that will initiate and perform research projects to ensure the effective enforcement of the rule of law in Africa;
- serve as the point of convergence and institutional memory for judicial and legislative reform across the continent;
- constitute a base from which the legal systems of African countries can be accessed by other regions and international organisations; and
- link African legal scholars with those in the rest of the world at the cutting edge of contemporary international and comparative research.

Scope and nature of Christof's work at ICLA

Christof's work at ICLA can be summarised under four loose categories: his global agenda; his African agenda; his international-organisations agenda; and, finally, other aspects. In looking at his work from these perspectives, it must be remembered that he had indicated that one of the purposes of ICLA was to provide technical assistance to African governments and international organisations engaged in legal reform as well as contribute towards stimulating stronger capacity in the field of law at African universities. This is indeed reflected in the various activities he carried out.

Christof's global agenda

Christof's first six years at ICLA coincided with his tenure as United Nations Special Rapporteur on extrajudicial, summary or arbitrary

executions (2010-2016), and this inevitably influenced the nature and focus of his work during this period.

Under what can be classified as Christof's global agenda, there were at least four main research projects. The first of these is the 'Pretoria UN human rights treaty impact study: Making the whole treaty system visible' project. This is a large-scale, long term project aimed at facilitating a better understanding of the dynamics involved in the processes through which the UN human rights treaty system makes, or fails to make, a difference at the domestic level. The project entails the comprehensive study of the impact of these treaties in 20 countries and updates a similar study of these countries which was published in 2002. The 2021 book shows how the system expanded dramatically in the past 20 years.¹

The second project, 'Freedom from Violence in Africa/ SDG 16', is an initiative to establish a collaborative research network that brings together researchers from across the African continent focusing on evidence-based and human-rights-based approaches to the problem of violence. This is an umbrella project that covers a number of other different projects and is essentially a broadening out of Christof's work as UN Special Rapporteur that continues his work on police use of force, accountability, and violence-reduction in Africa. A doctoral programme designed to build a corps of African expertise in this area was incorporated into this project. The programme had 15 students, with most of them registered in the Law Faculty and under Christof's supervision (with Dr Thomas Probert and Prof Stuart Maslen as co-supervisors). Agenda 2030, particularly Goal 16, provided part of the framing for the Freedom from Violence project. In 2019, ICLA played a vital role in the University's broader contribution to the process, led by Statistics South Africa, of producing South Africa's first National SDG Report.

A closely related project is that on the regulation of peaceful assembly. Christof served as the Rapporteur for a new General Comment that the UN Human Rights Committee was developing on article 21 of the International Covenant on Civil and Political Rights (ICCPR) on the freedom of assembly. As a spin-off of this project, Professor Stuart Maslen developed two global online resources: one on the legal frameworks for the use of force by the police² and the other, on the legal framework for the regulation of peaceful assembly.³

Another important project was undertaken from 2014 to 2018 by a research team based at ICLA and closely supervised by Christof. A study of the 'impact of national commissions of inquiry in Africa',⁴ it involved field work across seven African countries. The project was part of a broader research project examining how traditional African moral resources, such as ubuntu, continue to shape contemporary

governance. It was designed to reinforce the work of revising the UN's main resource on investigating suspicious deaths, the Minnesota Protocol on the Investigation of Potentially Unlawful Death. Besides playing a central role in the revision of the Minnesota Protocol, the study provided the basis for ICLA's being invited to take part in an EU-funded project in Kenya working with the country's Independent Police Oversight Authority and involving collaboration with the International Commission of Jurists on related studies.⁵

Christof's African agenda

It is not easy to separate the projects and other activities carried out under the global from the African agenda. Nevertheless, given that legal developments in Africa were at the heart of the establishment of ICLA, some of these important activities need to be highlighted. In fact, in the proposal for setting up ICLA, it was noted that there was currently no research institution on the continent in the areas of international and comparative law on the advanced level required. Hence, ICLA was conceived as a 'vehicle for advancing the rule of law and the role of law through linking the various sub-regions on the continent, each with its own linguistic and legal traditions'. Christof was instrumental in a number of projects designed to bridge the legal and linguistic divide in Africa through intra-continental and cross-systemic legal research.

One example was an arrangement with Oxford University Press (OUP) in 2011, under which ICLA undertook to coordinate African country-reporting for the Oxford Constitutions of the World Online.⁶ Under this special arrangement, OUP allowed ICLA to publish and make available for free all the published reports on African countries.⁷ A 2012-2015 project aimed at rebuilding constitutionalism in post-conflict societies through comparative analysis focused on Ethiopia, Kenya, South Sudan and Uganda. This involved three full-time and two part-time PhD students based at ICLA. Between 2014 and 2017, ICLA (in partnership with the UP Department of Political Science) participated as one cluster of a four-cluster university-wide project, which aimed at, inter alia, building a nuanced theoretical framework to unpack the idea of ubuntu as a viable philosophical concept.

Christof was instrumental in a number of important conferences being organised by ICLA. Some of these led to significant publications. These include a conference on the rule of law in Africa,⁸ another on constitutional implementation in Africa,⁹ and, more recently, one on the implications of COVID-19 pandemic regulations for human rights and the rule of law in eastern and southern Africa.¹⁰

Perhaps Christof's most significant achievement in his pursuit of ICLA's mission to promote a trans-systemic legal dialogue in Africa was his success in persuading the board of the Stellenbosch Institute

for Advanced Study (STIAS) to sponsor the annual seminars on constitutionalism in Africa.¹¹ As a result of his influence, ICLA has since 2013 played a leading role in organising in collaboration with STIAS the Stellenbosch Annual Seminars on Constitutionalism in Africa (SASCA). The SASCA programme has led to the publication by OUP of five major path-setting books on comparative African constitutional law.¹²

A critically important aspect of ICLA's mission was the goal of developing indigenous capacity in the long run. As noted earlier, the freedom from violence programme has, as a key aspect of its design, the aim to build an African knowledge base. This was again evident in the rebuilding constitutionalism in post-conflict societies project. Christof crowned this with a doctoral summits programme. It was initially designed for his freedom-from-violence students, but he made plans to extend it to the wider faculty and use it as a platform for an online exchange between doctoral students at different universities on the continent. In addition, a doctoral exchange programme sponsored by the David and Elaine Potter Foundation made it possible for exchange visits of lecturers and students between UP and the University of Cambridge in June 2012.

Christof's agenda for international organisations

Other contributors to this volume will deal with aspects of the enormous amount of work Christof did as the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and later as a member of the Human Rights Committee. Here, it suffices to highlight a few of his contributions, first to the UN and secondly, the AU on one particular aspect of ICLA's foundation mission, namely, the provision of technical assistance to international organisations engaged in legal reforms. Both of these endeavours contributed towards advancing the rule and role of law in Africa and in the world at large. In a sense, this section summarises the major achievements in terms of the setting of standards and guidelines (soft law) that Christof directed or was involved in formulating to address a number of contemporary challenges. Many of these documents have been translated into other languages.

The main ones, at the level of the UN are: UN Human Rights Committee, General Comment No. 37 on the right of peaceful assembly;¹³ UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (1017-2019);¹⁴ UN Human Rights Committee General Comment No. 36 on the right to life (2016-2018);¹⁵ UN Minnesota Protocol on the Investigation of Potentially Unlawful Death (2014-2016);¹⁶ and the Human Rights Council's Joint Report of two Special Rapporteurs on the management of assemblies (2014-2016). It should be added that the UN Human Rights Committee is currently

developing a General Comment on article 21 of the ICCPR, on freedom of Assembly.¹⁷

At the level of the AU, Christof worked with the African Commission on Human and Peoples' Rights. This collaborative effort resulted in the African Commission on Human and Peoples' Rights General Comment 3 on the right to life (2014-2015).¹⁸ ICLA coordinated the research for the development of a model law on the use of force in South Africa. This resulted in a Model Law which is regularly used by the African Policing Civilian Oversight Forum (APCOF) in its advocacy.¹⁹ The Model Law was presented to the African Commission on Human and Peoples' Rights, which reached out to ICLA in 2020 to undertake a study on the use of force in law enforcement in Africa. In addition, ICLA has produced a resource pack and in early 2021 submitted a draft of the study.

Other aspects

Christof played a pivotal role in many other projects indirectly linked to ICLA. For example, he was one of the initiators of Pretoria University Law Press (PULP) and, for many years, the coordinator of its management committee. Just before his death, he initiated what the PULP management committee advertised as the 'PULP Thesis Prize.' A few weeks later, when he passed away, the board fittingly renamed it as 'The Christof Heyns Memorial Thesis Award'.²⁰

As pointed out above, one of ICLA's goals was to link African legal scholars with those in the rest of the world at the cutting edge of contemporary international and comparative research. In this regard, Christof displayed his exceptional skills not only as a respected scholar who made it an essential part of his projects to provide opportunities for doctoral scholarships for to students, but also as the provider of an enabling environment for those who worked with him at ICLA. This conducive environment has served attract many outstanding scholars both from the faculty and other universities in the country, as well as from Africa and the rest of the world.

Christof's influence is reflected in the extraordinary research output and contribution to the development of the law by many of the fellows who became part of the ICLA family. One example is the contribution made by Prof Dire Tladi, an ICLA fellow who has been a member of the International Law Commission since November 2011 and who, since 2015, was appointed as the Commission's Special Rapporteur for the topic *jus cogens*. He was responsible for the 23 draft conclusions on *jus cogens* that the Commission adopted in 2019.²¹ Christof brought in one of his former doctoral students, who benefited from the doctoral programme he initiated, Dr Thompson Chengeta, as a non-residential fellow of ICLA. During his tenure as UN Rapporteur extrajudicial, summary or arbitrary executions, he placed the issue of autonomous

weapons on the UN agenda. This has provided Dr Chengeta with an opportunity to become a member of the International Committee for Robots Arms Control and participate in numerous debates in international fora on the issue.²²

Christof initiated the National Schools Moot Court Competition in South Africa and, in spite of its success, unselfishly handed it over to the South African Human Rights Commission to manage. Just before his demise, he made plans for a pilot project that will see similar national moot court competitions being held in other African countries.

Concluding remarks

There is no doubt that the enormous achievements of ICLA during the last ten years are testimony to Christof's extraordinary creativity and ability to transform into reality the grand schemes that most scholars only fantasise about. Under his guidance, the Institute has maintained a high national and international profile, one enhanced by strategic collaboration and cooperation with partners in South Africa, Africa and the rest of the world. His legacy has positioned the institution at the forefront not only of comparative legal research in general but of research of an intra-African cross-systemic nature.

On a personal note, Christof was to us at ICLA a generous, supportive and considerate colleague. His work was always characterised by flexibility, pragmatism, and the ability to see windows of opportunities and unselfishly share them with colleagues. His vision and ICLA's achievements leave a daunting task for his successors. Indeed, he was taken too soon, at a time when there is still so much to be shared, so much to learn from his inspirational leadership, and so much to do. Nevertheless, he has left a solid foundation on which ICLA can move forward to the next level.

* Prof Fombad is the current Director of ICLA.

1 See further, 'Pretoria UN human rights treaty impact study: Making the whole treaty system visible', available at <http://www.icla.up.ac.za/research/impact-of-the-un-treaty-system-at-the-domestic-level> (accessed 17 December 2021).

2 See further, www.policinglaw.info (accessed 17 December 2021).

3 See further, www.rightofassembly.info (accessed 17 December 2021).

4 See Impact of national commissions of inquiry in Africa, available at <http://www.icla.up.ac.za/research/impact-of-national-commissions-of-inquiry-in-africa> (accessed 17 December 2021).

5 The study also resulted in an edited book being published. See T Probert & C Heyns (eds) *National Commissions of Inquiry in Africa: vehicles to pursue accountability for violations of the right to life?* (PULP 2020).

6 Available to subscribers at, <https://oxcon.ouplaw.com/home/ocw> (accessed 17 December 2021).

- 7 These are available at <http://www.icla.up.ac.za/african-constitutions-1> (accessed 17 December 2021).
- 8 The papers were published in 18(1) *African Human Rights Law Journal* (2018).
- 9 See Charles M Fombad *The implementation of modern African Constitutions: challenges and prospects* (PULP 2016).
- 10 The papers were published in (2020) 20 *African Human Rights Law Journal*.
- 11 He was, until his demise, a board member of STIAS.
- 12 These are: CM Fombad (ed) *Separation of powers in African constitutionalism* (OUP 2016) CM Fombad (ed) *Constitutional adjudication in Africa* (OUP 2017); Charles M Fombad & N Steytler (eds) *Decentralization and constitutionalism in Africa* (OUP 2019); CM Fombad & N Steytler (eds) *Corruption and constitutionalism in Africa: revisiting control measures and strategies* (OUP 2020); and CM Fombad & N Steytler (eds) *Democracy, elections, and constitutionalism in Africa* (OUP 2021).
- 13 See *The development of international standards and guidelines*, available at <http://www.icla.up.ac.za/international-organisations/development-of-international-standards> (accessed 17 December 2021).
- 14 As above.
- 15 As above.
- 16 As above.
- 17 As above.
- 18 As above.
- 19 See APCOF Annual Report, 2015 available at <http://apcof.org/wp-content/uploads/apcof-annual-report-2015.pdf> (accessed 17 December 2021).
- 20 See further, 'Press Statement: Thesis Prize Promoting African scholarship launched to honour memory of Professor Christof Heyns', available at <https://www.chr.up.ac.za/latest-news/2482-press-statement-thesis-prize-promoting-african-scholarship-launched-to-honour-memory-of-professor-christof-heyns> (accessed 17 December 2021).
- 21 See International Law Commission, available at <http://www.icla.up.ac.za/international-organisations/international-law-commission> (accessed 17 December 2021).
- 22 See *Autonomous Weapons*, available at <http://www.icla.up.ac.za/research/autonomous-weapons> (accessed 17 December 2021).