

Christof and mooting

Frans Viljoen, Keketso Kgomosotho,**
Thompson Chengeta*** and Nyambeni Davhana*****

Introduction

'We are accused of trying to fix all the world's problems through moots', Christof would sometimes say in gentle self-deprecation, to some laughter. This statement underscores his combination of seriousness and lightness, and reflects his determination and optimism in the face of adverse realities. For him, mooting was indeed a means to an end: to spark in law students' (and learners') minds the acute understanding that human rights law can be a transformative tool to turn 'human wrongs' into 'human rights'. Mooting is a vote of confidence in human right education and youth.

Christof's mooting footprint is left on the global, regional, subregional and national levels. After 30 uninterrupted years, the African Human Rights Moot Court Competition (African Moot) is a continental landmark and institution. Starting off in 1992, with a subregional scope, as the Southern African Human Rights Moot Court Competition, it has in 2021 been renamed after its initiator, and is now known as the 'Christof Heyns African Human Rights Moot Court Competition' (Christof Heyns Moot). Christof's outstanding ability to identify gaps in legal education was not limited to the African continent. While the African Moot was founded to simulate an African Court on Human and Peoples' Rights (African Court) that was yet to be established, Christof like others contemplated the establishment of a world human rights court, a court that is yet to exist. Reflecting on such a world court, Christof came up with the idea of the Nelson Mandela World Human Rights Moot Court Competition (World Moot). Mirroring his own journey towards a greater focus on the local, bringing international human rights 'home', Christof also cultivated mooting at the national level, involving not law students at tertiary institutions but learners. The idea was to reach a much wider audience and to inculcate a constitutional culture at secondary school level. Turning the moot into an instrument of broad-based education at school level was perhaps the most significant innovation that Christof brought to the notion of mooting. It is telling that in the last years, the ownership of the National Schools Moot evolved onto the South

Africa's Departments of Basic Education and the South African Human Rights Commission, thereby providing an institutional anchor to this lofty ideal. The radiating effect of this innovation has, with Christof's resolute support, been extended beyond South Africa, to countries as far afield as Ghana and Nepal.

Christof Heyns African Human Rights Moot Court Competition

The Christof Heyns Moot, established as the Southern African Human Rights Moot Court in 1992, and expanded to the (All) African Human Rights Moot Court Competition in 1995, was the first initiative on the continent to bring together law students from across the African continent to engage pressing human rights issues that plague the region, in the spirit of community and collaborative sportsmanship – and fun. Christof spurred this into action. Throughout his life, Christof remained a key pillar to the Moot, providing direction, leadership and support in innumerable ways – often at his personal expense.

The African Moot celebrated its 30th anniversary in 2021. The African Moot is a creative way to engage the imagination of the next generation of leaders, judges and law lecturers. During its 30-year run, an estimated 1 610 teams from 50 African countries have participated in the African Moot. This means that around 3 220 law students and 1 610 law lecturers have participated in the African Moot, making it the largest gathering of law students, lecturers, researchers and experts of human rights in Africa

Beyond his imaginative conceptualisation of the African Moot, Christof also had a magnetic capacity to energise the often-fatigued organising team and the sleep-deprived law students who would have worked for months preparing the case; he was able to mirror back to us the bigger picture – the reason why the Moot exists in the first place. Thirty years ago, already, Christof had understood that 'the continuation of human rights as the global normative framework will depend on whether future generations will see it as a useful paradigm',¹ and that its acceptance must come from the ground level as well.

Participating students engage in simulated proceedings of the African Court, by arguing both sides of a set hypothetical case. The case involves a human rights issue topical to the continent, and requires the application of the African Charter on Human and Peoples' Rights and other African human rights instruments for its resolution. Academics, human rights lawyers, and members of the judiciary – including, subsequent to its establishment in 2005, actual Judges of the African Court – act as judges of the 'African Court' in these simulated proceedings. The presiding judges engage the students in the same way

as the judges would in the actual African Court. The teams from each African law faculty compete in a weeklong knock-out tournament, with the highest-scoring teams proceeding to the final round.

Of course, in 1992, the African Court did not yet exist. By postulating the possibility of this Court, which six years later in 1998 became a real prospect through the Protocol establishing the African Court on Human and Peoples' Rights, the African Moot's early history has a prophetic quality. To date, the African Moot remains the largest meeting on the topic of human rights in Africa.

Since then, the Moot boasts an impressive list of alumni who now hold key leadership positions in their home countries. These alumni include judges, prosecutors, legislators, and a range of advisors. This is the legacy of the Competition, and in many ways that of Christof as well. Considering complex human rights problems from both sides, a key feature of the Moot, trained many alumni the invaluable skill of being more open in their thinking.

The African Moot is a prime example of Christof's big ideas that have taken on a life of their own. This Moot revolutionised human rights education on the African continent;² it prepared the next generation of jurists to engage with the African human rights system, and to carry human rights values in their work in other areas of the law, too. What started as a simple, yet distant, idea, became a powerful force for human rights on the continent, leaving an indelible mark on the face of human rights education in Africa.

Nelson Mandela World Human Rights Moot Court Competition

Through the World Moot, students – both undergraduates and postgraduates – from across the globe move beyond abstract and theoretical human rights concepts to active, cooperative, affective and problem-based learning in human rights. Indeed, the World Moot captures the imagination of the next generation to bring new life to the human rights project in a way that enables it to withstand the current challenges it is facing globally. As a firm believer in the educational philosophy that acknowledges the link between human knowledge and human experience, Christof envisaged the World Moot as a critical and unique tool in global human rights education where students, lecturers, judges and human rights experts not only exchange knowledge on human rights but experience beautiful exchanges in culture, traditions, values and cuisine.

The first edition of the World Moot took place in 2009, and was held in at the University of Pretoria, presented by the Centre for Human Rights. Over time, it grew into a broader collaboration involving the

United Nations (UN) Human Rights Council Branch at the Office of the High Commissioner for Human Rights (OHCHR), the Academy on Human Rights and Humanitarian Law, American University, Washington College of Law and the Commonwealth Secretariat. When the World Moot was launched, it was simply called the World Human Rights Moot Court Competition and was held annually in South Africa between 2009 and 2013. In 2014, Christof was part of the team that strategised the moving of the World Moot from South Africa to Geneva, Switzerland, where it is held at the UN Headquarters, the *Palais des Nations*. Given that the Geneva is known as a global city and centre for diplomacy, with numerous international organisations, moving the World Moot there was a master stroke. Christof initiated the renaming of the Competition after Nelson Mandela, a renowned human rights champion known across the globe. The renaming coincided with the relocation of the World Moot to Geneva. This was a very important step and mark in the history of the World Moot. Indeed, Rolando Gomez, the Spokesperson for the UN Human Rights Council noted as follows: 'What is more fitting is that we host an event (the World Moot) honouring a man (Nelson Mandela) who continues to guide us in our work at the UN Human Rights Office.'³

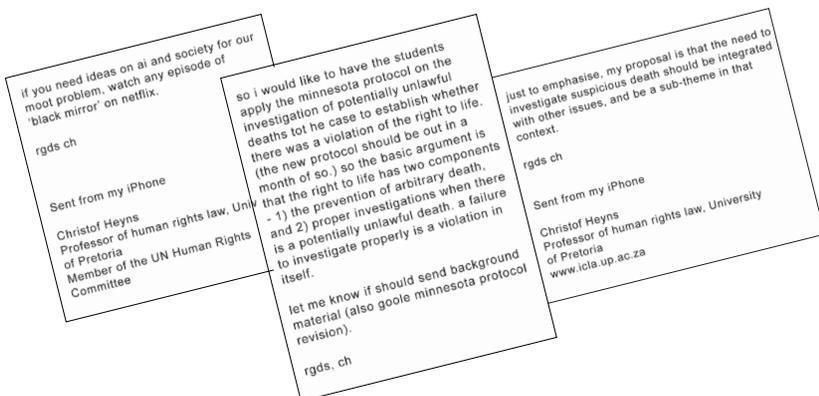
Christof was instrumental in the growth of the World Moot which has become the biggest human rights moot court competition that is open to all law schools from across the globe. There is no other human rights moot that has a global reach like the World Moot. For this and other reasons, the World Moot is sometimes affectionately referred to as the 'Olympic Games of Human Rights'.



One would remember seeing a number of Geneva Public Transport buses moving around the city of Geneva with huge posters about the World Moot. Those in Geneva who had not heard about Nelson Mandela before started asking and talking about him. In human rights education, Christof was not only an academic and practitioner, but also a creative. He mastered the art of capturing attention to critical matters, even attention of those who would otherwise stand aloof. It was in that creativeness that Christof was part of the team that introduced video animations of the World Moot's hypothetical problems, making the World Moot the first and only international moot to use animations for the hypothetical cases.⁴

Christof's contribution to the World Moot was also critical in the drafting of hypothetical cases or problems. A hypothetical problem is the soul of a moot court competition. It is a simulation of real-world problems to which participants are invited to make arguments they would otherwise submit in a real court. Since its inception, the World Moot has explored a number of critical and topical human rights themes such as the impact of artificial intelligence technologies and robotics on freedom from violence, freedom from torture, the right to life, dignity, expression and to freedom of assembly – all themes close to Christof's heart.

It did not matter what time of the day or night, Christof would participate in the discussion of human rights themes to be included in the hypothetical problems of the World Moot. Sometimes, as early as 1 am, younger members of the drafting team would start discussions about possible themes to include in the hypothetical problems. Christof would join in the email exchanges, of course, with the Christof-emailing-style where all words were ever written in lower case, as if to signal his quietness in speech, even so, during heated exchanges on ideas and themes to include in the hypothetical problem.



An example would be an intense discussion about the 2014 hypothetical problem that started one early autumn morning of 2014 and extended to the afternoon of 8 April 2014. One of the themes in the 2014 hypothetical case related to the right to religion and culture in a fictitious nation called Kopjestan. In view of the fact that the World Moot was due to be held for the first time in Geneva, Switzerland, a discussion ensued as to what extent the hypothetical problem should explore and dig into some of the most controversial cultural and religious sensitivities. While acknowledging the role of moots in pushing boundaries, Christof would note the very politicised environment of the UN in Geneva where every word weighs a ton and diplomatic language is the order of the day when exploring certain human rights dynamics when there is no convergence. In approaching such matters, Christof, in his inclusive style, would argue for a gradualist approach.

Christof's office at the Institute of International and Comparative Law in Africa (ICLA) was next to that of Thompson Chengeta, the drafter of the hypothetical problems of the World Moot. They would continue throughout the day, debating and refining the contents of the World Moot. In the drafting of the World Moot hypotheticals, one outstanding character of Christof was his ability to actively listen to other team members, and where convinced, change his positions. After these immense discussions on the 2014 hypothetical case, the former UN High Commissioner for Human Rights, Professor Zeid Ra'ad Al Hussein, would later comment on the final version of the 2014 hypothetical case's exploration of the themes of religion and culture as follows:

The 2014 hypothetical case on the question of Kopjestan's culture and politics is, of course, a fictional argument. But it is also a very serious one. It involves the subjugation of women, of half the human beings on this earth; it involves the domination of a minority people and the outbreak of armed violence resulting in displacement of families. Virginia Woolf said: Fiction is like a spider's web, attached, ever so slightly perhaps, but still attached to life at all four corners. The events of Kopjestan are very solidly anchored in the reality of many countries. Human rights violations are not random, they are not accidents, they are generally the consequence of political, economic, social and cultural inequalities.⁵

Seven years later, in 2021, Professor Zeid's words were also sounded by Rolando Gomez, the spokesperson for the UN Human Rights Council, who noted that while the cases of the World Moot are hypothetical, they explore 'real issues affecting real people in real places, which we address daily at the Human Rights Council and the Office of the High Commissioner for Human Rights'.⁶

Christof's UN work as the UN Special Rapporteur and later as a member of the UN Human Rights Committee placed him at the centre of current and cutting-edge human rights issues. The team tasked with

drafting of the hypothetical cases of the World Moot benefited from Christof's experiences in these fora. A number of times, the World Moot's hypothetical problems explored the current themes that the UN Human Rights Committee and the UN Human Rights Council would be grappling with. For example, commenting on the 2021 hypothetical problem, Christof noted as follows:

Every year we get together around a table and start to think about what should the problem be? – the hypothetical for the moot court for the next year. We try to come up with interesting scenarios and Thompson Chengeta and others eventually draft the moot problem and we all give our inputs. This year, we include an issue that deals with peaceful assemblies. I want to tell you the background to that [choice]. Over the last couple of years, I have worked for the UN. I was a member of the UN Human Rights Committee, the Treaty Body that monitors the International Covenant on Civil and Political Rights. So, as you may know, the Covenant has an Article 21 that protects the right of peaceful assembly. The UN Human Rights Committee every couple of years issue a General Comment, that is, a document that sets out our interpretation of a particular right. Previously, we did it on the right to life. The last one, General Comment 37, deals with the right of peaceful assembly. This turned out to be exactly at the right time as we had Black Lives Matter, and we had a lot of other demonstrations taking place worldwide. And then of course, we decided that we wanted to put this issue of peaceful assemblies in the moot problem because it then reaches you; it reaches students around the world, and [gets] people to take note of the work of the Human Rights Committee.⁷

As part of the organising Committee, Christof initiated the inaugural Annual Nelson Mandela Human Rights Lecture in 2019. This Lecture was delivered by retired Justice Albie Sachs, an apartheid struggle icon and former judge of the Constitutional Court of South Africa; with a reply from Her Excellence Michelle Bachelet, the current UN High Commissioner for Human Rights. In 2021, some months after his passing, the Second Annual Nelson Mandela Human Rights Lecture was held virtually, focusing on contemporary forms of racial discrimination, reflected on the 20th anniversary of the Durban Declaration and Programme of Action (DDPA), its achievements and continued challenges. The co-hosts of the lecture were the African Group of Ambassadors in Geneva and the South African Permanent Mission to the United Nations in Geneva. The panellists were: Ms Navi Pillay, the former UN Human Rights Commissioner; Dr Gay McDougall, former member of the UN Committee on the Elimination of Racial Discrimination; Ms Edna Maria Santos Roland, Chair of the Group of Independent Eminent Experts on the Implementation of the Durban Declaration and Programme of Action; and Ms Mona Rishwami, Chief Rule of Law, Equality and Non-Discrimination Branch, Office of the OHCHR.

It is fair to say that on account of Christof's prominent international profile, endearing personality in the UN community, the World Moot secured a number of critical partnerships. For example, such partnerships came in terms of final round judges who are always prominent international jurists. The World Moot would also not succeed without funding. Christof also played a role in current partnerships with the European Union through the Global Campus of Human Rights, the Permanent Mission of Switzerland to the UN Office and to the other international organisations in Geneva, the South African Permanent Mission to the UN Office in Geneva, and the Regional Office for Southern Africa of the OHCHR.

In view of some of the above-mentioned contributions by Christof to the World Moot, it is to no wonder that, Rolando Gomez, the Spokesperson for the UN Human Rights Council, in his 2021 appraisal of the World Moot said: 'Of course, it would be remiss of me if I did not mention our incredible collaboration throughout the years with Professor Christof Heyns whose energy and passion was the driving force to this important event (the World Moot)'.⁸

Schools Moot

The South African National Schools Moot Court Competition was established in 2011. The competition was founded as a joint initiative between South Africa's Departments of Basic Education and Justice and Constitutional Development, with the support of the South African Human Rights Commission, the Foundation for Human Rights, and the University of Pretoria (UP). This project started off as an idea, and at the centre of this was one man, in particular, Professor Christof Heyns, whose vision was the creation of an awareness of the Constitution of the Republic of South Africa, and the rights encompassed in the Bill of Rights. Christof realised that having a conversation on human rights in the abstract would most likely not mean much to a learner high school. In this regard, he understood it imperative that the content of the Competition speak directly to issues learners would be able to grasp. In ensuring that this was so, he thought it best to have learners engage with the content of the constitutional right to basic education, a right that spoke directly to them.

Having in mind that this would still need to be an academic exercise, he envisaged that the Competition would be composed of two legs: an oral and a written phase. Learners from all parts of the country would need to submit written essays based on a hypothetical case. After having done this, a central marking body would assess the essays and select the highest scoring teams, who would then proceed to the leg of oral arguments. The oral leg would begin at the provincial phase and

culminate in a national round hosted at UP, with the grand finale being held at the Constitutional Court of South Africa.

The Competition has now been in existence for more than 10 years and has grown from strength to strength. So massive was this growth that learners from South Africa were invited to the International Moot Court (IMC), held at the Hague, in The Netherlands. South Africa first participated in the IMC in 2012, and has since won it twice, first in 2016 and then again in 2020. This is a feat that would not have been possible without the support of Christof Heyns. He ensured that all learners receive training at the University's campus prior to embarking on their IMC journey. He roped in eminent human rights law experts and students to prepare 'Team South Africa' at every single occasion. He, too, would avail himself for this. All of his efforts speak to the humility he possessed.

Just as we thought that the smooth-running of the South African leg was enough, Christof thought the opposite. In his view, we could always do more. As a result, he pitched the idea of a world schools moot court competition to the Global Campus of Human Rights. This embodied the essence of Christof, he believed one could always do more and improve on any well-oiled machine. He was indeed a visionary. Today, other jurisdictions have adopted the model used in South Africa. These countries are Ethiopia, Ghana and Nepal, with the possibility of expanding the idea to more countries, including Argentina, Kenya, Uganda and Sri Lanka.

Often times people would buy-into the idea of a project aimed at human rights education. However, funding was always the last thing on Christof's mind. He would always place emphasis on the idea itself and believed that somehow the money would come. True to his belief, the money would indeed come. If there was a door to knock on, Christof would make sure that we knock on that door, a million times, if needs be.

For some reason, he possessed the ability of making people commit to a project, this one not being any different. His optimism was unparalleled. Where a potential donor could not make an immediate commitment, Christof would ask if a commitment could be made for the following year, or the year after that. He just never gave up. He always had a sense of urgency about him.

He understood the value of having a project aimed at nurturing a society that would possess a human rights consciousness. Most people will lament the lack human rights education in some parts of the world and stop at that. Not him, he always believed in trying to find a solution. He believed there was always a solution to the problems we currently face, or encounter.

It goes without saying that human rights education was something very close to Christof's heart, and he always made sure that those around him knew that. So magnificent was the impact of this project that some learners who have participated in the past are now young legal professionals. I do not believe that those who have gone on to become young legal scholars and, or professionals, would have done so without having encountered the Competition, and by extension, Christof. This bears testament to the impact that this competition has had in the past, and will no doubt continue to have in the future. More importantly, Christof always envisioned a project without him, something that would still expand without him. It was never about him, but about those who stood to benefit.

Jessup Moot

Jessup is the world's largest moot court competition, with teams from roughly 700 law schools in 100 countries and jurisdictions across the world participating annually. While the African Moot mirrors the African Court, the Jessup simulates the proceedings before the International Court of Justice (ICJ), the judicial organ of the United Nations. Here, students engage a hypothetical international law dispute between countries, by preparing oral and written pleadings, arguing the position of both the applicant and respondent in the case.⁹

One consistent challenge that prospective participating African faculties have in common is a shortage of funding. Competing in the Jessup often requires sending a team to a National Qualifying Round, and potentially to the International Rounds hosted in Washington DC. Participating in these rounds is very costly. Indeed, the prohibitively expensive cost of participation is the key reason why African participation in the Jessup has been inconsistent, and on the decline, as more pressing funding needs arise for faculties.

At the University of Pretoria (UP), Christof became intimately involved in the Jessup Moot at a critical time when the Faculty, largely on account of a persistent lack of funding, was considering a de-escalation of its own participation in the Jessup Competition. This situation was exacerbated by the #feesmustfall demands on Faculty resources. In the years before, the Faculty's participation was often conditioned on students' ability to raise their own funds – a condition which, in Christof's mind, was prohibitive and unjust because it meant that poor students would not be able to participate on an equal basis.

Starting in 2016, Christof 'adopted' the Faculty's Jessup efforts, and took on the seemingly insurmountable responsibility of providing support to the Faculty's efforts to participate in the Jessup. (If you worked at the Faculty during this time, you will recall Christof's annual

email asking for more money for the Jessup.) Year after year, he opened his office, his home and at times, his own wallet, to provide institutional support to UP Jessup teams.

Through his office at ICLA, he created a home for the Jessup – a place where students could receive training, support, encouragement, and sometimes food. He often reminded teams that they, too, can perform as well as any ‘Ivy League’ school on the international stage. He often leveraged his international connections to get students some face time with international law experts. When these students performed well at the moot (and sometimes even when they did not perform so well) he would celebrate them, loudly and proudly, as a father would. It was on Christof’s insistence that these teams are now recognised on a Jessup wall-of-fame on campus (Christof’s ordered this in 2016), and on ICLA’s website.¹⁰

When the Jessup dust settled (after the international rounds), Christof would speak to the participating teams about publishing their research, and about scholarships in international law, and about work opportunities they ought to consider. He connected them to the right people, he wrote reference letters for many of these students, found work for many, and encouraged them to in turn teach other young students the skills the Jessup had taught them. Christof managed to create a culture of excellence in moots at the Faculty. He empowered young African students to gain access to the international law community and worked to remove barriers to entry for many.

In his last years, Christof worked tirelessly to establish a more institutionalised Jessup experience for South African teams. Christof secured funding from the law firm White & Case for the South African National Qualifying Rounds, which in 2020 attracted a record number of law faculties in the 60-year history of the Jessup. Christof established a website for the South African Jessup experience to empower, inspire and connect local participants.¹¹ Christof had many more plans for the Jessup; in many ways his work here was interrupted. Yet to have achieved so much in such a short time perhaps best exemplifies Christof and his urgent sense of commitment to empowering and inspiring young people.

Cumulatively, these moots – largely the result of Christof’s vision, leadership and industry – have left significant footprints on the globe, the continent and on many people. is so as. Long may his legacy live.

* Director, Centre for Human Rights, UP.

** Former participant in the African and Jessup Moot Court Competitions.

*** Reader in Law, Liverpool John Moores University; drafter of most of the World Moot hypothetical cases.

**** Former National Coordinator of the South African National Schools Moot Court Competition.

- 1 G Kgomosotho, CH Heyns & B Majola 'Notes from the field: bringing new life to human rights globally: the powerful tool of schools' moots' (2018) 2 *International Journal of Human Rights Education* 1 at 9 <https://repository.usfca.edu/cgi/viewcontent.cgi?article=1037&context=ijhre> (accessed 23 December 2021).
- 2 C Heyns, N Taku & F Viljoen 'Revolutionising human rights education in African universities: the African Human Rights Moot Court Competition in Advocating for human rights: 10 years of the Inter-American Moot Court Competition' (Raoul Wallenberg Institute New Authors Series 2018) <https://www.wcl.american.edu/impact/initiatives-programs/hracademy/moot/> (accessed 23 December 2021).
- 3 UN Human Rights Council 'The Human Rights Council and the Nelson Mandela World Human Rights Moot Court Competition' (2021) available at <https://www.youtube.com/watch?v=bumpP9E6Xfg> (accessed 23 December 2021).
- 4 See 2021 World Moot Hypothetical Case animation available at <https://www.youtube.com/watch?v=WSSZNMfZeA> (accessed 23 December 2021); 2020 World Moot Hypothetical Case animation available at <https://www.youtube.com/watch?v=oawtKtpjFDU> (accessed 23 December 2021); 2019 World Moot Hypothetical Case animation available at <https://www.youtube.com/watch?v=LgSXKDsYgI0> (accessed 23 December 2021); 2016 World Moot Hypothetical Case animation available at <https://www.youtube.com/watch?v=fhZrzshrWKM> (accessed 23 December 2021); 2015 World Moot Hypothetical Case animation available at https://www.youtube.com/watch?v=A_8rtvTYX8I (accessed 23 December 2021).
- 5 Professor Zeid Ra'ad Al Hussein, Former UN High Commissioner for Human Rights, in 2014 at the UN commenting on the 2014 World Moot Hypothetical Case. The 2014 World Moot can be accessed here http://www.chr.up.ac.za/images/moots/world_moot/2014/files/Hypothetical_case_for_the_2014_World_Human_Rights_Moot_Court_revised_23_June_2014.pdf (accessed 23 December 2021). Prof Zeid's video comment can be accessed here: <https://www.youtube.com/watch?v=LALbC3VR50Y> (accessed 23 December 2021).
- 6 UN Human Rights Council (n 3).
- 7 World Moot, video broadcast on World Moot Instagram handle @worldmoot published on 28 May 2021.