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## Notes From the Field: Bringing New Life to Human Rights Globally: The Powerful Tool of Schools' Moots

Gift Kgomosotho  
kg.kgomosotho@gmail.com

Christof H. Heyns  
University of Pretoria, christof.heyns@up.ac.za

Bongani Majola  
South African Human Rights Commission, bmajola@sahrc.org.za

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# Notes From the Field

Bringing new life to human rights globally: The powerful tool of schools' moots

By Christof Heyns<sup>\*</sup>, Bongani Majola<sup>\*\*</sup>, and Gift Kgomosotho<sup>\*\*\*</sup>

**T**his year we are celebrating the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights. Much has been achieved, but is the system geared to take on the challenges of the future, or should it be allowed to go gently into retirement?

We believe human rights continue to offer the best prospect of maintaining world peace and development. However, unless the coming generations make human rights their own, the human rights project is doomed to fail. Fortunately, one of the most powerful ways to ensure that young people worldwide experience what it entails to think in human rights

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\* Christof Heyns is a professor of human rights law at University of Pretoria and a member of the UN Human Rights Committee. He holds teaching positions in human rights at Oxford, the American University in Washington D.C., and the Geneva Academy of International Humanitarian Law and Human Rights. He was UN Special Rapporteur on extrajudicial, summary or arbitrary executions during 2010 – 2016. Heyns established the African Human Rights Moot Court Competition; the Nelson Mandela World Human Rights Moot Court Competition; and the South African National Schools Moot Court Competition.

\*\* Bongani Majola is the Chairperson of the South African Human Rights Commission. He served as the Assistant Secretary-General of the United Nations (UN) and Registrar of the UN International Criminal Tribunal of Rwanda from January 2013 to December 2015. He served as Deputy Chief Prosecutor of the Tribunal in the prosecution of suspects indicted for the international crimes of genocide, crimes against humanity and war crimes committed during the Rwandan genocide of 1994.

\*\*\* Gift Kgomosotho is a research advisor at the South African Human Rights Commission. Kgomosotho has been involved with the South African Schools Moot Court Competition since 2009 as a participant, an organiser, a coach and a judge. Kgomosotho has further acted as a judge at the Nelson Mandela World Moot Court Competition, the African Human Rights Moot Court Competition, the South African Child Law Moot Court Competition and the Jessup International Law Moot Court Competition.

terms from an early age is readily available and ready to be deployed on a global scale.

In 1995 Nelson Mandela welcomed participants in the African Human Rights Moot Court Competition with the following words:

*One could hardly think of a better way to advance the cause of human rights than to bring together students, who are the leaders, judges and teachers of tomorrow ... to debate some of the crucial issues of our time in the exciting and challenging atmosphere of a courtroom, where they can test their arguments and skills against one another in the spirit of fierce but friendly competition.<sup>1</sup>*

While law faculties and law schools from many countries have started to embrace the concept of human rights moot court competitions (or moots),<sup>2</sup> this paper will make the case that such moots can also become an integral part of the education of school children in every part of the world, and as such, play a powerful role in securing the future of the human rights project.

A 'moot' as we use the term here is a kind of role play that involves participants in simulated court or dispute resolution proceedings. Participants are required to argue both sides of the hypothetical case involving a typical real-life issue as if they are doing so before a real court. They react to arguments from their opponents and to questions from the

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<sup>1</sup> Centre for Human Rights, (December 2012) 2012 Moot Court information brochure [pdf] Retrieved from

<http://www.chr.up.ac.za/images/files/education/moot/2012/mc%202012%20brochure.pdf>

<sup>2</sup> P. Gerber and M. Castan, *Practice Meets Theory: Using Moots as a Tool to Teach Human Rights Law*, Journal of Legal Education Vol. 62, No. 2 (November 2012), pp. 298-310; C. Heyns, N. Taku and 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, Volume: 3 (2008) p18.

bench. In the case of a human rights moot, the participants are required to engage with a hypothetical case raising human rights questions.

### **Incisive experiences at the university level**

Moots have seen a dramatic rise in legal education on the global university landscape over the last couple of decades and have played a significant role in attracting students around the world to human rights as a discipline and as a value system. The Nelson Mandela World Human Rights Moot Court Competition, for example, was founded ten years ago on a small scale in South Africa.<sup>3</sup> The competition is now presented in collaboration with the United Nations Office of the High Commissioner for Human Rights, in the Human Rights Council Room in the *Palais des Nations*. It attracts a total of 140 teams from each of the five UN regions.

University human rights moots are also thriving on the regional level. The 26-year old African Human Rights Moot Court Competition has attracted universities from almost all countries on the continent at one point or another. Students are given hypothetical problems based on situations that often arise in Africa and have to apply the standards of the African Charter on Human and Peoples' Rights and other African instruments to that situation. More than 2,500 students from nearly all African States have participated in the final rounds of this competition, which are presented in different African cities every year, while thousands more have gone through the knock-out rounds at their home institutions. It has been said that this moot has 'revolutionised' human rights education on the African continent.<sup>4</sup>

The Inter-American Human Rights Moot Court Competition is equally successful. Since 1995, this moot has reached over 3,000 law students from over 310 law faculties from the Americas, and many more further up-stream.<sup>5</sup> Similarly, the Europe-based Renee Cassin Competition,<sup>6</sup>

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<sup>3</sup> <http://www.chr.up.ac.za/worldmoot>

<sup>4</sup> C Heyns *et al*, Revolutionising Human Rights Education in African Universities.

<sup>5</sup> <https://www.wcl.american.edu/impact/initiatives-programs/hracademy/moot/>

and the European Human Rights Moot Court Competition<sup>7</sup> were created to familiarise future lawyers, professionals and leaders from that continent with the Convention system.

There are a number of key lessons that can be drawn from these moot experiences at university level.

- Moots are highly educational. Students who have participated in moots often say they have learned more from moots than from any of their other prescribed courses – or in some cases from their entire degree programme.
- The students learn matters of substance, and internalise them, but the benefits of moots go far beyond that to a range of other transferrable skills, including oral advocacy; critical thinking; legal writing; interacting with complicated and large volumes of law; structuring an argument; teamwork; problem solving; the discipline of meeting deadlines; following the rules and arguing and assessing both sides of the case.
- It should be noted that many participants in these university human rights competitions do not necessarily see themselves as future human rights lawyers. But through participation in these moots, they enrich their education, the profession and society gain more well-rounded members, and human rights is made part of the professional ethos.

There is one specific feature of moots that is worth emphasizing: moot participants are required to argue different sides of the same case in the various rounds. Participants are required to make the best case that can be made for the side assigned to them, and then to swap sides. This inherent feature of moots (as opposed to, for example, traditional debates) challenges them to find durable, common sense solutions to recurring

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<sup>6</sup> <http://concourscassin.eu/hello-world#more-1>

<sup>7</sup> <https://www.echr.coe.int/Pages/home.aspx?p=court/otherevents>

social problems, with reference to the collective wisdom that lies in the concept of human rights.

It is our contention that moot courts can potentially serve an even greater and, so far, largely unexplored and underutilized role at the high school level, which could have a global impact.

### **Schools moots as a tool for human rights education**

Imagine a world in which the following is true: in every secondary school in every country in the world, it is part of the curriculum that learners engage with a hypothetical human rights problem and prepare a defence for both sides of the case, using their national constitution as the common framework on which they ground their arguments. The teachers, with the help of memorandums, mark the written submissions as they would any other essay. The learners with the best scores are invited to participate in regional oral-rounds, where they argue the case before legal practitioners acting as judges of those courts. The winning teams proceed to the national rounds, with the final round being held in the highest Court of that country. Every 16 or 17-year-old in the world potentially goes through this experience.

Clearly there are significant differences in the level of difficulty and complexity between university-level moots, and that which can happen on the school level. Nevertheless, moots can, in a modified form, be equally powerful tools on the domestic school level. They can, in short, revitalise the human rights project, and engage the next generation in the human rights project in a way that has not yet been achieved and that no other initiative has.

There are several features of a moot which make it an ideal educational tool in a school environment:

- The gaming element is key here. Moots are fun and non-threatening, yet you get to role play an important position. Participants invariably see mooting as “cool”. The competitive element energises the process.

- Moots do not cost much. If you have a classroom, you can have a moot—in very much the same way that you can play soccer if there is an open field. It can be done with equal ease in different parts of the world.
- The benefits are not limited to the learners only. Consider the effect on the parents, who are often newcomers to human rights, when they try to help their children work out the balance between competing constitutional rights. It becomes a case of communities working collectively to solve their problems, as opposed to answers being imported from the outside.
- Regardless of whether participants will study law in the end, a new generation of leaders and responsible, tolerant citizenry will have been created.

Why do we propose that the school moots will be based primarily on the local constitutions, with the international standards playing only a secondary role? It may not have been possible or at least advisable 20 years ago to base schools moots on the domestic constitutions of the many of the countries of the world. Many of the countries at the time did not recognise human rights. The situation has changed. Almost all countries now recognise fundamental rights in their constitutions, at least formally, which is all that is needed.<sup>8</sup>

Basing schools' moots on local constitutions serves to counter the perception that is held in many countries that human rights is a foreign intervention. Instead, it emphasises its local basis as a point of reference to find a common sense and commonly acceptable solution to the problems at hand.

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<sup>8</sup> Oxford Constitutions of the World online. Retrieved from <http://oxcon.ouplaw.com/home/OCW>

## **The South African Schools Moot Court Competition as a case study**

Allow us to share some of the experiences we had with establishing the National Schools Moot Court Competition in South Africa.<sup>9</sup> The South African Law Deans had a meeting in Stellenbosch in 2009 where they reflected on the question how to ensure that the population as a whole knows more about and claims greater ownership of the South African Constitution. The Deans supported the establishment of a national schools moot, based largely on their own exposure to the success of the African Human Rights Moot.

A group of organizations got together to form a steering committee, led by the Centre for Human Rights of the University of Pretoria. This included the Departments of Basic Education and the Department of Justice, some law faculties, the South African Human Rights Commission (SAHRC) and law firms. Learners received background material: extracts from cases, copies of the South African Constitution, and parts of the relevant laws. The first such competition was held in 2010 and it has been held every year since then.

The competition culminated in the grand final round held in the Constitutional Court where, on a Sunday, judges from the Court itself, as well as some prominent South African human rights figures, such as Navi Pillay, the then UN High Commissioner for Human Rights, served as judges.

The competition is now well established, and from 2019 the organisation will be taken over by the SAHRC. The moot problem will formally become part of the national curriculum, which means that two million learners will write essays in response to a human rights hypothetical problem and participate in the first phase of the national schools' moot.

It inspires hope for the future to experience high school learners from all backgrounds using the Bill of Rights to propose solutions to real problems currently faced by the country. This experience will also help learners to deepen their appreciation of the values embodied by the

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<sup>9</sup> <http://www.up.ac.za/national-schools-moot-court-competitions-nsmcc/>

Constitution and develop their own abilities to help “make a plan”. One can imagine a modern-day young Nelson Mandela or Oliver Tambo getting into law school as a result. This is the story of one country, which can be replicated in countries around the world.

### **Our proposal**

How does one go about making schools moots happen in practice on a global scale? Much of this will depend on who the champions, the drivers, are. We have a couple of proposals about potential players who can make this happen.

On the national level, bodies representing law teachers, law Deans, practicing lawyers, judges and others can take up the cause and make it their own. But who should be the central organiser? It is our view that National Human Rights Institutions (NHRIs) can play a crucial role in this regard. Most, if not all, NHRIs already have human rights promotion and education as part of their core mandates. In many States, the NHRIs play a less than optimal role in terms of the protection of human rights, because they fear confrontation with the government, on whose goodwill they are dependent for funding and, indeed, for their existence. Moots are by their very nature non-confrontational—they are not designed to point fingers in a direct way, but rather to equip participants with the skills necessary to change the situation from within over the long run. NHRIs are ideally suited to take on this responsibility, also in countries where their role is otherwise under pressure.

In South Africa, students from different universities having heard of the moot started to present workshops, coaching teams, and generally supporting the moot on a volunteer basis, often outside the framework of any formal structures. The impact on the students is also important: they get to play the role of mentors and engage with human rights on a very practical level.

On the global stage there are a number of key institutions that can take this further. The NHRIs of the world meet on a regular basis under the auspices of GANHRI, the Global Alliance of National Human Rights

Institutions. If GANHRI makes it a collective priority, accepts the idea that NHRIs should be involved in organising schools' moots and encourages and assists them in doing so, it could become a reality worldwide within a very short space of time.

The OHCHR has a human rights education programme<sup>10</sup>, and UNESCO has a mandate that includes human rights education.<sup>11</sup> They, too, can use their platforms to promote the idea.

A global system of schools' moots will directly address core objectives of the Sustainable Development Goals such as target 16.10,<sup>12</sup> target 16.3<sup>13</sup> and target 4.7, for example, which sets the objective of ensuring that all learners acquire "education for human rights, gender equality, and promotion of a culture of peace and non-violence [and] global citizenship."<sup>14</sup>

There is already a potential international element to schools' moots in existence. Every other year, the International Moot Court (IMC) is hosted in The Hague for high schools from around the world. The competition as it is currently presented is focussed on international criminal law, but it should not be difficult to make the link with human rights stronger.<sup>15</sup> The prospect of participation in this international competition has served to galvanise participation in the schools moot in South Africa.

## Conclusion

The human rights project is currently facing a severe strain, for many reasons which will not be discussed here. What is clear, however, is that the continuation of human rights as the global normative framework will depend on whether future generations will see it as a useful paradigm. The

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<sup>10</sup> <http://www.ohchr.org/EN/Issues/Education/Training/Pages/Programme.aspx>

<sup>11</sup> <https://en.unesco.org/themes/education>

<sup>12</sup> <http://indicators.report/targets/16-3/>

<sup>13</sup> <https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.10>

<sup>14</sup> <http://gem-report-2016.unesco.org/en/chapter/target-4-7-sustainable-development-and-global-citizenship/>

<sup>15</sup> The IMC is organised by the City of The Hague in partnership with the Justice Resource Centre New York. See <https://internationalmootcourt.nl/en/imc>

work done by the UN and others at a central level is crucial in this regard, but in itself it is not sufficient. Ground level acceptance and growth is required. Creative ways to capture the imagination of the next generation need to be found. We suggest that one of the most promising ways to achieve this goal will be a drive to establish human rights moots in schools in countries around the world.

All the constitutive parts of such an enterprise are already in place. It is a question of connecting the dots—some may say of lighting the fire. Mooting in schools is a simple idea, not revolutionary in terms of its execution. However, it is potentially revolutionary in terms of its impact. It can bring new life to the human rights tree in a way that will enable it to withstand the onslaughts that it is facing and that are not likely to recede, and in fact, to grow beyond it into a renewed and resilient force for good.

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