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THE IMPACT OF INTERNATIONAL HUMAN RIGHTS LAW ON CONSTITUTIONAL DEMOCRACY IN AFRICA

Workshop organized by the SARChI Professorship in International Constitutional Law, Faculty of Law, University of Pretoria, the Faculty of Law, University of Namibia and the Konrad-Adenauer-Stiftung (Kenya Office)

Windhoek Hilton, 6-8 March 2019

1. Background and Purpose

The purpose of current workshop is to explore the influence that international human rights treaties have had on judicial practice in some Southern African countries, particularly Botswana, Namibia and South Africa, as well as the lessons that can be drawn from this for other countries in the region. In these three countries the judiciary have played a significant role in fostering human rights and democracy, especially since the adoption of the new constitutions in of Namibia and South Africa in 1990 and 1996 respectively. Frequently, the courts have interpreted the constitution in accordance with international (human rights) treaties in order to solidify a culture in which all branches of government are held accountable in accordance with the constitution.

The current workshop will bring together academics, practitioners and members of the judiciary in order to explore such accountability from different angles. One includes the role of the courts in strengthening the role of parliament in the ratification and withdrawal of treaties. For example, in South Africa courts have recently rebuked the executive for the manner in which it circumvented Parliament in attempts to withdraw from the Statute of the International Criminal Court, as well as during the abolition of the Tribunal of the Southern African Development Community Tribunal.

Similarly, the Constitution has served as a vehicle for enforcing international judicial decisions within the national legal order, thereby inter alia providing a domestic remedy for individuals who suffered an internationally wrongful act. The question arises if and to what extent these developments and other developments found resonance in the courts of Botswana and Namibian.

Also, to what extent have the Constitutions in combination with international law served as a basis for balancing human freedom and dignity with security interests of the State. Pertinent examples include the (potentially different) approaches of the judicial systems in these countries to limitations to the right to life (e.g. in the form of the death penalty as well as euthanasia), as well as the right to asylum.

In answering these questions, various characteristics of the respective legal systems have to be considered. These inter alia include the relevance (if any) of the ‘dualist’ or ‘monist’ legal tradition of the country in question. Also, whether there is any indication of a doctrine taking root of domestic courts testing legislation and national practice directly against international human rights law (rather than against the Constitutions)?

2. Format and Outcomes

During the two-day March 2019 workshop, some of these questions will be explored from the Botswana, Namibian and South African perspectives and complemented by European input. The discussions will take place in a work-shop setting aimed at 25 to 30 participants. The topics identified for exploration include human dignity in combination with the right to life and the right to asylum, as well as national security. In addition, the role of Parliament in providing democratic control over executive decisions pertaining to treaty accession and withdrawal will be explored.

In relation to each of the topics identified, panelists from the three target countries will introduce the state of the law in the country in question, with specific reference to the role of the judiciary in developing the law, as well as key legal challenges facing the current legal framework. These presentations will be complemented by responses from international participants, highlighting the extent to which challenges are present in European jurisdictions. This will be followed by in-depth discussion pertaining to the role of the law (both national and international) in mitigating these challenges.

In so doing, the workshop aims to identify gaps in the legal frameworks of the target countries, as well as obstacles in the enforcement of the applicable legal frameworks. These may range from capacity deficits at universities pertaining to the teaching of international law, to knowledge deficits amongst the judiciary and practitioners about the deployment of international law for the purpose of strengthening parliamentary democracy and human dignity. During the final session the participants will be encouraged to propose short-term and medium-term recommendations for over-coming these challenges.

Panelists will further be encouraged to publish written versions of their presentations as working papers on the website of the SARChI Project for International Constitutional Law (www.icl.sarchi.co.za) and/ or in the peer reviewed and IBSS-accredited African Journal of Human Rights Law.

3. Date and Venue

The workshop is planned for 6 through 8 March 2019 in Windhoek, Namibia for a group of 25 to 30 invited participants.

Conference materials will be made available on www.icl.sarchi.co.za under 'Events 2019', to be downloaded beforehand by participants.