

PUBLIC INTEREST LAW MOOT COURT COMPETITION

Information pack for participants



CONTENTS

Introduction	3
Hypothetical case	4
Competition rules	11
Competition timeline	15
Contact details	16

INTRODUCTION

While South Africa has seen significant gains in the last 25 years since transitioning to a constitutional democracy, there is still much work to be done in the social justice arena. The coronavirus pandemic and ensuing lockdown have highlighted for many the ongoing inequality in our country based on race, class, gender, sexual identity, nationality and many other intersecting factors. Now, as ever, South Africa needs a new generation of human rights lawyers with the energy, ingenuity and skill to respond to the ongoing socioeconomic and political fallout from the issues we still face today.

The Public Interest Law Moot Court Competition gives law students the opportunity to showcase these skills by working on a hypothetical case which brings together questions around the treatment of human rights defenders, migrants and incarcerated people during the COVID-19 pandemic. Students taking law courses at any university in South Africa may form teams of between two and three members to enter the Competition by [registering here](#) or by emailing pilmoot@slssa.org.za before 30 October 2020. Thereafter, they have until 10 December 2020 to submit heads of argument for both the applicant and respondent of the hypothetical case.

Teams will compete against one another to progress from the initial two rounds of written submissions to the final two rounds where those who make it through will present oral arguments. The final round of the Competition will see the remaining two teams making their cases before a panel of judges at the Constitutional Court of South Africa on Human Rights Day, 21 March 2021. Members of the winning team will have the opportunity to be preferentially considered for a fully paid internship at CALS.

This information pack provides the official competition rules, competition timeline and hypothetical case. Please read through these documents carefully before entering.

Good luck!

HYPOTHETICAL CASE

1. Xolani Moyo is a national of Zimbabwe. The 38-year-old is an outspoken supporter of the Movement for Democratic Change (MDC). During a wave of state-sanctioned crackdowns that began in May 2020, close political activists associated with Xolani were abducted, beaten and sexually assaulted by plain-clothed law enforcement officers. When the crackdown against activists worsened in the lead up to the protest against government corruption scheduled for 31 July 2020, Xolani feared that he would be next. This led him to decide to gather his belongings, cross the border into South Africa and seek refuge with extended family living in Johannesburg.
2. Xolani entered South Africa on 25 July 2020. He did not enter through an official port of entry nor did he have a valid visa. Under the Immigration Act 13 of 2002, this made him an “illegal foreigner”.
3. Upon entry into South Africa, Xolani was welcomed by his cousin Tendai with whom he travelled to the family's rented home in Diepsloot.
4. On 15 March 2020, the government of South Africa declared a national state of disaster following the first reported cases of the novel coronavirus in South Africa. On 28 May 2020, the Minister of Cooperative Governance and Traditional Affairs published regulations for Alert Level 3 of the Coronavirus Covid-19 lockdown in accordance with section 27(2) of the Disaster Management Act, 2002. These regulations were duly amended on 25 June 2020 and again on 12 July 2020.
5. On 16 August 2020, Xolani was arrested at 21h45 near his residence in Diepsloot by the South African Police Service for allegedly contravening certain sections of the regulations as amended on 12 July 2020. The arresting officers reasoned that Xolani smoking and being in possession of cigarettes were in violation of one or more offences under the lockdown regulations. Xolani's arrest occurred one day before the lockdown alert level 2 came into operation.
6. After Xolani's arrest was processed by SAPS at the Diepsloot Police Station, his migrant status was discovered resulting in the additional charge of being in contravention of Section 49 of the Immigration Act, 13 of 2020, being added. In his statement to the police, dated 16 August 2020, Xolani explained that although it was his intention to acquire refugee status at the Refugee Reception Office in Pretoria, the office was not operational during the lockdown period, and therefore he was prevented from being able to apply for asylum status.
7. Upon his arrest, Xolani was given the option to pay an admission of guilt fine for the charge relating to the contravention of the lockdown regulations and to be released on a warning for the charge of contravening the Immigration Act. Xolani did not have legal representation during this time. However, he declined to take up this offer. As a result of this, Xolani was held at the Diepsloot Police Station overtime until he was remanded to the Leeuwkop Correctional Centre to await the hearing of his bail application.

His bail application was ultimately denied on the ground that he was a flight risk. This is the first time that Xolani had legal representation.

8. On 15 September 2020, Xolani tested positive for the coronavirus, after showing symptoms whilst being remanded in custody. He was taken to the Charlotte Maxeke General Hospital, where he received treatment for COVID-19 related complications.
9. At a subsequent bail hearing heard in chambers, the Magistrate ordered that Xolani be released on account of his ill health, coupled with the delay in the prosecution's ongoing investigation. Shortly after this decision, the prosecution dismissed the two charges against Xolani, owing to a lack of evidence.
10. Xolani instructed his legal representatives to launch an action at the High Court for Constitutional damages against the Minister of Justice and Correctional Services, the Minister of Police, the Gauteng Regional Commissioner for Correctional Services, the Gauteng Police Commissioner and the Head of Leeuwkop Correctional Centre. The claim was based on the circumstances surrounding Xolani's arrest and subsequent detention and the State's failure to put in place adequate mechanisms to prevent Xolani from contracting COVID-19 while in detention. In terms of an order made in terms of Rule 33(4) of the Uniform Rules of Court, the issue of liability was separated from the issue of quantum.
11. The High Court dismissed his claim, holding that firstly Xolani failed to meet the burden of proof relating to unlawful arrest by SAPS and secondly that the evidence did not support the claim that the Leeuwkop Correctional Centre by way of either commission or omission factually caused Xolani to contract the coronavirus that causes COVID-19. The Court also declined to declare that the Leeuwkop Correctional Centre had acted unreasonably in failing to put in place mechanisms adequately to reduce the risk of Xolani suffering from COVID-19.
12. Upon appealing to the Supreme Court of Appeal, the SCA denied Xolani leave to appeal to that court, reasoning that his matter held no merits of success.
13. Xolani now seeks to appeal to the Constitutional Court on the basis that the High Court erred on the merits. On the page that follows is the text of the **Statement of Agreed Facts** that the parties filed with the Constitutional Court.

APPLICANT'S ARREST

1. The Applicant was arrested on 16 August 2020. At the time of his arrest, he was 38 years old.
2. At the time of his arrest, the Applicant was healthy, save for a history of active tuberculosis which he was treated for in his twenties. He was not aware of any other co-morbidities.
3. On his arrival at the Correctional Centre, he was processed by a nurse who screened him for COVID-19 symptoms by checking his temperature and asking him a series of questions.

APPLICANT'S INCARCERATION

4. The Applicant was detained at the Leeuwkop Correctional Centre.
5. The Applicant was held in a communal cell which despite having the capacity to house 16 beds, housed 29 occupants at all material times.
6. Detainees such as the Applicant who were remanded in custody, spend up to 23 hours a day in their cells. In the instance of the Applicant, weather permitting they were taken out and into a concrete quad area for exercise for 30 to 60 minutes. The yard was packed with detainees. When they lined up to go outside, they were confined in close proximity to each other in a passage leading to the quad area.
7. The Applicant first appeared before the Alexandra Magistrates Court on 17 August 2020. His bail application was heard on 24 August 2020 but was ultimately denied. The Magistrate reasoned that the Applicant's undocumented status made him a flight risk.
8. On both occasions, the Applicant was transported in a large van which was full beyond its capacity with detainees. At the court, the detainees were placed into cells which were also full beyond their capacity.
9. On 9 September 2020 the Applicant complained to the wardens of night sweats, a painful and tight chest and persistent cough.
10. The Applicant was examined by the prison medical doctor on 14 September 2020. The prison medical doctor recommended that the Applicant be hospitalised based on respiratory distress. He was promptly transported to the Charlotte Maxeke Johannesburg Academic Hospital.
11. Notes from the Applicant's arrival at the hospital indicated that the Applicant presented with Tachypnoea and was awake and alert. He was admitted for further observation and treatment which included a COVID-19 test.

12. On 15 September 2020, the Applicant's test results came back as being positive for COVID-19. His medical notes from that date indicate that his condition necessitated being placed on high-flow nasal oxygen. His medical notes also suggested extensive kidney damage which required referral to a specialist nephrologist for management and dialysis.
13. The Applicant must attend dialysis 3 times a week for 4 hours.
14. On 16 September 2020, the Applicant underwent his first dialysis treatment.
15. On 18 September 2020, the Applicant's attorney brought the Applicant's medical condition to the Magistrate and Prosecutor's attention. The Magistrate ordered the Applicant's immediate release based on his medical condition and based on the fact the police were said still investigating. During this time, the National Prosecution Authority decided to no longer pursue the charges against the Applicant due to lack of evidence.
16. On 8 October 2020, the Applicant was taken off high-flow nasal oxygen. He was discharged on 12 October 2020 with instruction to return for dialysis treatment the following week.
17. On the same day, the Applicant returned to Leeuwkop Correction Centre where he was officially released.

CORONAVIRUS

18. COVID-19 is an infectious disease caused by the SARS-COV-2 virus.
19. South Africa reported its first case of COVID-19 on 5 March 2020 and its first locally transmitted cases on 12 March 2020.
20. There are currently no experts on SARS-COV-2. As such, much remains to be understood about the virus, its transmission, prevalence and how the COVID-19 disease clinically presents itself.
21. SARS-COV-2 transmission in humans occurs primarily through the inhalation of small droplets, which are expelled when a COVID-19 positive person coughs, sneezes, or speaks.
22. A secondary source of transmission in human beings occurs when the aforementioned droplets land on objects and surfaces such as tables, doorknobs and handrails. The virus can survive for up to 72 hours on plastic and stainless steel, less than 4 hours on copper and less than 24 hours on cardboard. People can become infected by touching these objects or surfaces and then touching their eyes, nose or mouth.
23. The virus spreads more easily in confined environments which are not exposed to adequate sunlight and ventilation.

24. Currently, there is no vaccine to prevent COVID-19.
25. In order to prevent transmission, the following actions are advised:
 - 25.1. The regular washing of hands with soap and water for at least 20 seconds. Alternatively, the use of a waterless alcohol-based hand sanitizer with at least 70% alcohol.
 - 25.2. Avoiding the touching of the eyes, nose and mouth.
 - 25.3. Regularly disinfecting all frequently touched objects and surfaces.
 - 25.4. Cover your cough or sneeze with a flexed elbow or a tissue, then throw the tissue in a bin.
 - 25.5. Maintaining a social distance of at least 2 metres.
 - 25.6. Self-isolation for 14 days if you have been exposed to the virus or if you are symptomatic.
 - 25.7. The use of a mask may help protect you and people around you
26. The time between exposure to the coronavirus and the moment when symptoms start is commonly around five to six days but can range from 1 – 14 days.
27. Current symptoms reported for patients with COVID-19 have included mild to severe respiratory illness with any or all of the following: fever, cough, fatigue, shortness of breath, myalgia (muscle pain), arthralgia (sore joints), headache, chills and sore throat.
28. Anosmia (loss of sense of smell) and dysgeusia (alteration of the sense of taste) have also emerged as relatively common and early symptoms.
29. Gastrointestinal symptoms such as nausea and vomiting are less common.
30. Musculoskeletal symptoms (myalgia, joint pain, headache, and fatigue) are less common.
31. Symptoms of a COVID-19 infection range from asymptomatic, to mild, severe, and even death. The severity of illness can range from people who are infected without any illness (asymptomatic infection) to mild respiratory illness, to severe illness requiring admission to hospital or death. The majority of patients (approximately 80%) will have mild respiratory symptoms and illness. These symptoms will also depend on whether a person has so-called “co-morbidity” or underlying health issues, or not.

32. Most people infected with the virus will experience mild to moderate respiratory illness and recover without requiring special treatment. It is possible to contract the virus from someone who has just a mild cough and does not feel ill. Some reports have indicated that people with no symptoms can transmit the virus.
33. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness. Men also seem to be more predisposed to death than women.
34. But, as with other diseases, there can be tremendous individual variation in how people respond. There will be people with known risk factors who recover as well as people who develop severe cases for reasons we don't yet understand.
35. Two kinds of tests are available for COVID-19: viral tests and antibody tests. A viral test tells you if you have a current infection. An antibody test might tell you if you had a past infection.
36. The viral test for COVID-19 is diagnosed by a laboratory test, polymerase chain reaction (PCR) molecular test, on a respiratory tract sample (e.g. sample from nose, throat or chest). This test detects the SARS-CoV-2 genetic material.
37. Treatment for COVID-19 is supportive (e.g. provide oxygen for patients with shortness of breath or treatment for fever). There is no specific antiviral treatment available. Antibiotics do not treat viral infections. However, antibiotics may be required if a bacterial secondary infection develops.

COVID-19 PREVENTATIVE MECHANISMS AT LEEUWKOP CORRECTIONAL CENTRE

38. Wardens were screened at the start of each shift.
39. Wardens were provided with fabric masks which they were instructed to wear at all time. Only detainees who had kitchen duty were provided with masks.
40. Hand sanitizer canisters were placed at various points on the facility.
41. There was a 14 day isolation for symptomatic detainees. However, this was not possible because there was insufficient accommodation available. The isolation cells of the facility did not provide "isolation" because the solid metal doors were seldom closed.
42. All new detainees were "screened". The nurses who conducted the screening process did not physically examine any of the detainees. They merely noted whether a detainee provided a positive or negative answer to the question as to whether he had any medical complaints; and only detainees who answered affirmatively received medical attention and/or were isolated.
43. The authorities at the Correctional Center relied on self-reporting by detainees

44. There was a lack of free-flowing air in the communal cells of the correctional centre. The communal cells had windows along one of the cell walls with a doorway on the opposite side. The correctional centre ordered all detainee activity to cease at approximately 16h00 daily, and once this occurs there was no cross-ventilation at all until the next morning at approximately 07h00 when the steel door to the cell would be opened.
45. The lack of proper ventilation and sunlight in the cells of the Correctional Centre prison was due to the manner in which the building had been designed and constructed.
46. The approved accommodation at the correctional centre was for 1619 inmates. At one point during the Applicant's detention, the total of detainees at the correctional facility rose to as much as 3052. Single inmate cells regularly housed three inmates and communal cells ranged between 50% to 80% over capacity.
47. For this reason, the President announced on 8 May 2020 the President announced that 19 000 (Nineteen thousand) detainees would be released on parole in order to reduce prison overcrowding. However, implementation has been slow. On 16 August 2020, the day on which the Applicant was admitted to hospital, only 7791 inmates out of 19 000 had been released.

LONG-TERM EFFECTS

48. In the short term, the Applicant must consult a physiotherapist in order to return to normal lung function. In the long term, the Applicant must receive dialysis treatment for 4 hours 3 times a week.

The issues to be argued before the Constitutional Court are as follows:

- A) Whether there was a systemic failure by the officials of the Department of Correctional Services to take adequate precautionary measures in prevention of the violation of the Applicant's Constitutional rights;
- B) Whether the decision by the South African Police Service to arrest the Applicant, and the decision by the Department of Correctional Services to detain the Applicant for 'petty crimes' in the context of a surge in COVID-19 infections, were violations of his constitutional rights which merit the awarding of constitutional damages; and
- C) Whether there was a sustained and systemic failure on the part of the Department of Correctional Services to put in place adequate and reasonable measures to prevent the Applicant from contracting COVID-19 and whether such failure, if any, constituted a violation his constitutional rights to an extent which would merit the awarding constitutional damages.

COMPETITION RULES

1. GENERAL

The Public Interest Law Moot Court Competition will be held at the University of the Witwatersrand and the Constitutional Court on 20 and 21 March 2021. The Competition aims to introduce law students to the practice of public interest litigation and develop their awareness of emergent human rights issues. This Competition is a collaboration between the Centre for Applied Legal Studies (CALS) and the Student Litigation Society (SLS).

About the organisers

The Centre for Applied Legal Studies (CALS) is a public interest law organisation based at the Wits School of Law. CALS is also a law clinic registered with the Legal Practice Council. As such, CALS connects the worlds of academia and social justice. The Student Litigation Society (SLS) advances practical legal education at an undergraduate level with the aim of providing students with the skills required in the legal profession.

2. ELIGIBILITY

Institutional Eligibility

Only students from universities that enjoy full LLB accreditation by the South African Council on higher Education (CHE) are eligible to participate in the Competition.

Eligible classes of students

Only students who are in the process of completing an LLB, BCom or BA Law degree at a South African university are eligible to participate in the Competition.

The following people are prohibited from taking part in the Public Interest Law Moot Court Competition:

- Students who are currently employed or otherwise associated with either CALS or SLS;
- Qualified legal practitioners; and
- Students who already hold an LLB or equivalent degree.

3. TEAM COMPOSITION

Each participating team must comprise no fewer than **two (2)** students and must not exceed more than **three (3)** students. All members of the team must be students registered with the same university. If a team is found to be made up of one or more ineligible members, the entire team will be disqualified. The team members may be selected through any appropriate processes determined by their law school, law faculty or student moot society. There is no limitation on the number of teams that a law school, law faculty or student moot society may enter into the Competition.

Each team that makes it to the second round of the Competition will be allocated **a single (1) coach** who will provide guidance and mentorship to the students as they progress in the Competition. Under no circumstances should teams seek the assistance of any other person who teaches or practises law. Failure to comply with this rule will lead to the entire team being disqualified.

4. HYPOTHETICAL CASE

A hypothetical case will be provided by the organisers and will be made available to participants in advance. The hypothetical case will be available on the CALS and SLS websites starting from **18 September 2020**.

5. REQUESTS FOR CLARIFICATION

Teams may request clarifications of the facts. These clarifications must be requested anytime up until end of business on **30 October 2020**.

6. REGISTRATION

Prospective teams should express their interest to participate in the Competition by the close of business on **30 October 2020**. Teams must register by [completing this form](#) or by sending an email to pilmoot@slssa.org.za detailing the university that is represented the team members, the names of each the team members, and the academic level (i.e. first year, second year, penultimate year or final year) of each of the team members.

7. WRITTEN SUBMISSIONS

Heads of Argument

During the Preliminary round, each registered team must prepare and submit two sets of heads of argument, i.e. for both the Applicant and the Respondent. Heads of argument must be written in English, and typed in Arial 12 point font, 1.5 line spacing and justified. All footnotes must be written in Arial 10 point font. The heads of argument must comply with the Rules of the Constitutional Court. All heads of argument must be submitted electronically in PDF format without any passwords or encryptions. The heads of argument must be submitted to the following address: pilmoot@slssa.org.za.

The deadline for the heads of argument is 17h00 on 10 December 2020.

Supplementary Written Submissions

Every team qualifying for the quarter finals will be required to prepare and submit supplementary written submissions. These shall be based on directives to be issued closer to the date. The supplementary written submissions must be written in English, and typed in Arial 12 point font, 1.5 line spacing and justified. All footnotes must be written in Arial 10 point font. The supplementary written submissions must comply with the Rules of the Constitutional Court. All supplementary written submissions must be submitted electronically in PDF format without any passwords or encryptions. The supplementary written submissions must be submitted to the following email address: pilmoot@slssa.org.za.

The deadline for the supplementary written submissions is 17h00 on 26 February 2021.

8. DETERMINATION OF OPPOSING TEAMS

A draw shall be conducted to determine which teams shall represent the Applicant and which teams shall represent the Respondent after the first round of the Competition. The organisers of the Competition may modify the pairings in the best interests of the Competition. The organisers of the Competition may subsequently modify the pairings to account for absent teams or other unforeseeable circumstances. Affected teams will be timeously notified of modifications and the reasons thereof.

9. ORAL SUBMISSIONS

Only teams participating in the semifinals and the final shall be required to prepare oral submissions.

General Procedure

The order of proceedings shall be: Applicant Team, Respondent Team, rebuttal by Applicant Team and surrebuttal by the Respondent Team. Time for rebuttal should be reserved in advance with the Court. Rebuttals may not exceed 5 minutes. The scope of a team's oral pleading is limited to the scope of its written submissions. The scope of the Applicant's rebuttal is limited to the scope of the Respondent's oral pleadings.

Semifinals

The teams that make it through to the semifinals will be required to prepare for oral submissions on points *in limine* based on their supplementary written submissions. Oral submissions for this round are scheduled for **20 March 2021**.

All team members must act as oralists during this stage. Each team shall plead for no longer than 20 minutes including rebuttals. No team member shall be allowed to speak for more than 10 minutes. No team member shall be allowed to speak for less than 5 mins. Adherence to time allocations shall be considered when determining the overall performance of a team. Presiding Officers may exercise their discretion in granting extra time to a team. Such extra time may not exceed 5 mins in total. Time for rebuttals and surrebuttals must be reserved in advance.

Final

The teams that make it through to the final will be required to prepare for oral submissions on the merits based on the heads of argument. Oral submissions for this round are scheduled for **21 March 2021**.

All team members must act as oralists during this stage. Each team shall plead for no longer than 30 minutes including rebuttals. The time spent responding to judges' questions are included in the allocated 30 minutes. No team member shall be allowed to speak for more than 15 minutes. No team member shall be allowed to speak for less than 5 minutes. Adherence to time allocations shall be considered when determining the overall performance of a team. Presiding Officers may exercise their discretion in granting extra time to a team. Such extra time may not exceed 5 minutes in total. Time for rebuttals and surrebuttals must be reserved in advance.

10. EX PARTE PROCEEDINGS

Where a team fails to arrive for the semifinals and/or the finals, the organisers, after waiting for ten minutes, have the discretion to either announce a new team against which the other team will argue, or allow the round to proceed *ex parte*. In such a case, the team that fails to arrive for the scheduled round shall forfeit all of the round's points. If good cause is shown, the organisers may arrange for an additional round for the absent team later during the Competition, if time and administrative concerns permit.

11. COMPLAINTS

All teams are welcome to lodge complaints if they believe that a rule has been violated during a particular session. The complaints must be submitted as soon as possible after the session where the rule may have been violated. No complaints of such nature will be entertained if the Competition has reached the finals. The organisers will decide the penalties applicable. The organisers may decide to disqualify a team at any time if any violation of the rules is brought to their attention. Teams are also allowed to submit any other complaint regarding the organisation of the Competition during any stage of the Competition.

12. PENALTIES AND DISQUALIFICATIONS

The organisers may disqualify or penalise a team for:

- Late submission of heads of argument;
- Failure to comply with the requirements for the heads of argument;
- Engaging in poor sportsmanship, dishonesty and misconduct; and
- Frivolous complaints or participating contrary to the spirit and aim of the Competition.

The organisers of the Competition reserve the right to determine appropriate penalties on consideration of the particular infringement.

13. INTERPRETATION

Any dispute that arises during the Competition that concerns the interpretation and application of these rules, or the general administration of the Competition, will be resolved by the organisers. All decisions of the organisers concerning questions of the interpretation and application of rules are final. Any queries relating to the Competition and its administration must be directed to the following email: pilmoot@slssa.org.za.

The organisers, in interpreting the Rules, may promulgate such other measures as may be deemed advisable for the orderly conduct of the Competition, provided that these measures do not violate the spirit of such Rules. The organisers reserve the right to change any rule in the Competition. All participants will be informed in advance of any changes.

COMPETITION TIMELINE

18 SEPTEMBER 2020
Hypothetical facts released
Registration opens
Clarification seeking period begins

30 OCTOBER 2020
Registration closes
Clarification seeking period ends

PRELIMINARY ROUND

10 December 2020
Deadline for written submissions

4 JANUARY 2021
Release of shortlist of top 16 teams
Draw to determine applicants and respondents
Court directives issued

QUARTER FINALS (16 teams)

26 FEBRUARY 2021
Deadline for supplementary written submissions

SEMIFINALS (4 teams)

18 MARCH 2021
Announcement of semi-finalists

20 MARCH 2021
Oral submissions: Points *in limine*

FINALS (2 teams)

21 MARCH 2021
(Human Rights Day)
Oral submissions: Merits

CONTACT INFORMATION

Please feel free to contact us at pilmoot@slssa.org.za if you have any queries.

Stay up to date with the competition and learn more at <https://www.wits.ac.za/cals/moot/>.

Follow [#PILMOOT](#) on Twitter or Facebook for the latest news and developments.

Register to participate at <https://www.wits.ac.za/cals/moot/register/>.

