

NMMU JISA CHAPTER

# Iustitia



## Inside this issue:

About ILSA

HC on constitutionality of SA's withdrawal from ICC

South Sudan threat of genocide wars

Munch and Mingle

Sandwich and coffee bar

Legal Memo Workshop

Waste paper project

Contact us

## About ILSA

1 The International Law Students Association (ILSA) is a non-profitable organisation of students and lawyers who are dedicated to the promotion of international law.

1 ILSA provides students with opportunities to study, research and network in the international legal arena.

3 ILSA NMMU Chapter falls under the ILSA umbrella body. Our focus is on developing a moot culture at NMMU, focusing specifically on international law.

4 Through ILSA, students will have access to exciting opportunities in the area of international law.

4

5

### *The North Gauteng High Court*

5 *Judgement on the constitutionality of*

6 *SA's withdrawal from the ICC*



The International Criminal Court (ICC) issued warrants of arrest to Sudanese President Omar al-Bashir in the years 2009 and 2010 following his accusations for crimes against humanity and genocide committed in Darfur, Sudan, between 2003 and 2005.

Two factors form the basis of South Africa's obligation to arrest al-Bashir.

The first factor is the country's agreement with the Rome Statute of the ICC on November 27, 2000. This confirmed it to be a state party to the court.

In terms of Article 86 of the statute, state parties are duty bound to "co-operate fully with the court in its investigation and prosecution of crimes within the jurisdiction of the court". To assist the ICC's prosecution, the government had the duty to arrest al-Bashir as soon as he landed in South Africa.

The second factor is that in 2002, the South African parliament passed the Implementation of the Rome Statute of the International Criminal Court Act 27. This law set the ICC Statute in line with the country's constitution. The constitution states that "[i]n international agreement binds the Republic only after it has been approved by resolution" in both houses of parliament.

Section 8 of the Act provides that the Director-General of the Department of Justice and Constitutional Development must, on receiving a warrant of arrest, forward it to a magistrate to have it authorised and executed in any part of South Africa.

The South African government demonstrated an indefensible derogation of its international and domestic legal obligations when it failed to have Sudanese President Omar al-Bashir arrested during the African Union (AU) summit in Johannesburg and ignored a High Court order forbidding his departure from the country.

On 21 October 2016, Justice Minister Michael Masutha announced that South Africa had instigated the process of withdrawing from the ICC by informing the United Nations of its intention to revoke its ratification of the Rome Statute, the ICC's founding treaty. It would take a year for the decision to come into effect. The North Gauteng High Court ruled that to be unconstitutional and invalid. The court also found that the unexplained haste with which the notice was lodged in itself constitutes procedural irrationality.

The Democratic Alliance (DA) asked the court to set aside the decision to withdraw from the ICC. It lodged the application on grounds that parliament was not consulted prior to the notice being issued.

A full bench (three judges) heard the application against the Ministers of International Relations and Cooperation and Justice, as well as against President Jacob Zuma. Interested groups such as the Centre for Human Rights and the South African Litigation Centre also joined.

The Court found that the executive violated section 231(2) of the Constitution and breached the separation of powers doctrine preserved in that section. Judge Phineas Mojapelo held that the national executive simply did not have the power to deliver the notice of withdrawal from the Rome Statute to the United Nations without obtaining parliamentary approval. Government made the decision following an earlier court ruling that it was obliged to arrest Sudanese President Omar al-Bashir when he was in the country. The Court ordered that President Jacob Zuma and senior members of the executive revoke the notification.

During the hearing in December Mojapelo told Jeremy Gauntlett, for Zuma and the ministers of justice and international relations, that the function of the executive was to seek public consultation. He confronted Gauntlett's argument that it was the executive's choice to enter into, and withdraw from, treaties the country had signed and that Parliament only needed to give its approval. "It's expected that the executive go back to Parliament. We have rights, we have obligations, and we have Parliament," he said, adding that decisions executed by the executive must be "on the basis of the expressed authority of the Constitution".

Mojapelo said that if the authority was not expressed in the Constitution, it must go to Parliament.

# *South Sudan under threat of Genocide attacks*

## *What will the UN do this time around?*

PICTURE: Paula Bronstein



*"It is a tragic measure of the depravity of human existence that genocide is a continuing and prevalent manifestation of violence in the international system, despite the effort following World War II to abolish it through negotiation, and then adoption and ratification of the 1948 Genocide Convention."*

As increasing violence and the threat of genocide attacks rapidly loom over South Sudan, the question arises yet again whether the outlawing of genocide did much to deter and eventually end its practice.

Genocide entails the international killing of a group of people, based on their ethnicity, religious association, nationality or race. Implicit in this definition are the many

human rights violations that accompany this act, however the extent of damage created by such action is far reaching beyond its mere definition. Rape, forceful recruitment of child soldiers and disease outbreaks are one of the many repercussions that accompany such attacks.

Considering how great of an impact such action could have on areas within a country, let alone the country at large, it is self-explanatory why prevention should be top priority. However, the world has seen how the United Nations (UN) and national government were slow to respond to the genocides in Rwanda in 1994 and in Rohingya in Myanmar (Burma). There is allegedly very little evidence to suggest that key role players in the international system, are fully committed to reducing the reoccurrence of these attacks, significantly.

Therefore, as the very evident possibility of the reoccurrence of such events quickly draws near, a question arises as to how quickly will the necessary government bodies respond.

Every day 2,000 refugees flee famine and a devastating civil war in South Sudan across the border into Uganda. Hospitalities have risen in Uganda based on such large numbers of people moving into an already resource-strained land. Flights have reportedly broken-out, aid-convoys ambushed before reaching the refugee settlement and a refugee killed over a fight over water. The UN High Commissioner for refugees stated that they need another US \$1.4 billion to provide "life-saving aid" to refugees till the end of the year. With President Donald Trump planning to stop funding the UN and considering the fact that the US are their biggest donors, things are not looking up. As currently the world's fastest growing refugee crisis, the effects of possible genocide attacks in South Sudan could be exponential if not evaded timeously. The UN is empowered and required by the UN Charter and treaties such as the Kellogg-Briand Pact, to prevent or halt wars. With the consideration of how difficult it is to tackle such situations, we can only hope that the relevant bodies, fulfil their duties.

# ILSA Events

## Munch and Mingle

This was one of the first events the society had organised for its members. The team was excited about this as this function was used as a platform to welcome all ILSA members to the society and also to get to know each other better. Members were introduced to the ILSA executive team and subcommittee and informed of the different portfolios that exist in the teams and what exactly each portfolio entailed.



Members were also informed of all the academic and social events the ILSA team had in store for them during the course of the year. The advantages of joining the society were explained.

## Sandwich and Coffee bar Project



This is one of ILSA's community outreach programmes which takes place every Wednesday. The project is run by Professor Mukheibir of the NMMU law faculty and was initiated with the sole purpose of providing lunch to students regardless of their financial background. The ILSA team has teamed up with the Golden Key International Society in facilitating the project. We assist in buying the bread and making of sandwiches and coffee.

## *Legal Memorandum Workshop*

This workshop was organised to assist first year law students enrolled for the Writing Skills module (JJSV101) in compiling good legal memorandums. Facilitating the workshop was former JJSV101 lecturer and Candidate Attorney at Greyvensteins Attorneys, Ms Buchan. She took the students through a typical legal memorandum and provided tips on how to write a good one. The students could engage with her, giving her the opportunity to provide clarity on any issues the students were uncertain about.



## *Waste Paper Project*



The project is another community outreach project where waste paper was collected for the purposes of recycling and also receiving money in return for the waste paper. The proceeds are then donated to the soup kitchen of a local church, the Evangelical Lutheran Church, in the Northern areas of the metropolitan, a wonderful way of giving back to the community!





## NMMU Chapter

### *Our focus:*

To develop a mooting culture at NMMU and provide to students increased access to opportunities in the field of International Law.

### *Where to find us:*



NMMU International Law

Students Association



Instagram:

ILSA\_NMMU

*For any queries and comments email Sanele at [ILSA@nmmu.ac.za](mailto:ILSA@nmmu.ac.za).*



**President:** Donato Syce, **Head of Oral Advocacy:** Yolisa Nqanqa, **Vice President:** Sikhulule Matshoba, **PRO & Events:** Lesego Khunou, **Community Outreach Officer:** Mhlati Mzileni, **Secretary:** Phumelele Mkhize, **Honorary President:** Dr. Joanna Botha and **Head of Written Advocacy:** Sanele Msibi