

Moot Court competition, Yaoundé

A Moot Court is a simulated hearing or trial, in which law students hear a case and negotiate it as in “real life”. They play the roles of prosecuting attorneys, lawyers and judges, depending on the case. Since 1992 the yearly African Human Rights Moot Court competition has been training and inspiring students and legal professionals from Africa, helping to foster a human rights culture on the continent. In 2003 it was held in Yaoundé, Cameroon.

Dorrit van Dalen

“What?” One of the judges interrupts the lawyer for the defence. “Are you saying that the state has enough money to transport ballot boxes by helicopter in the middle of the rainy season, but that it cannot provide for proper healthcare in the north of the country?”

“Your Excellency, in the field of healthcare the state has done what it can as a developing country.” A wave of gentle head shaking passes through the audience.

In August the African Court on Human and Peoples’ Rights met in Yaoundé to consider a series of charges which an NGO was levelling against the state of Tiya. Neither Tiya nor the NGO exists, however. The case was put before a moot court as part of a competition for law students from all over Africa.

The European Union sponsors the competition, both directly and through the Foundation for Human Rights in Pretoria (for 10 to 20 per cent of the costs in many years).

The real African Court on Human and Peoples’ Rights will come into existence as soon as 15 African governments have signed its protocol. So far, 12 have signed. Copying the pre-1998 European system, the African Court will supplement the existing African Commission on Human and Peoples’ Rights based in Banjul, Gambia. The Commission does not issue binding verdicts, but mediates and reports to the political organs of the African Union (AU). In the future it will also refer cases to the African Court, which will issue binding verdicts.

Enhancing human rights law

Paving the way for the African Court has been one of the purposes of the moot court, says Christof Heyns, director of the Centre for Human Rights of the University of Pretoria, and initiator of the competition. “Every year the event brings together not only students and teachers from all over Africa – 140 students from 70 universities in 30 countries this year – but also representatives of the international justice community. The judges in the final round include representatives from the International Courts, the UN and the AU. The whole event enhances the image of human rights law.” It also helps to establish a network of human rights lawyers in Africa. Former participants have stayed in touch with each other and with the Centre in Pretoria.

This time the fictitious case raises the issues of unfair elections, discrimination against women, and the intimidation of Pygmies living in a forest where logging companies (together with the government) also have interests. Some of the circumstances resemble those of Cameroon.

“That is another purpose the moot court serves”, says Professor Boukongou, director of the human rights centre of the University of Central Africa (UCAC), and this year’s host. He was the most important author of this year’s case and explains that it is customary to stay close to the reality of the host country. “The court gives us the opportunity to discuss real problems.”

The participants plead in teams of two students each for the plaintiff and the defendant. They win not on legal grounds, but on the basis of their performance. These are deadly serious, and accompanied by dark suits, ties and straight skirts.

Tawa Jihijela from South Africa is happy to have a chat as a way to calm his nerves. In ten minutes he has to present the arguments for the plaintiff. “I thought that would be the easiest position, because the faults made by Tiya are easy to prove. But it seems that this court,” he says, pointing to classroom A, “is very hard on the plaintiff. The problem is the admissibility of the case. According to the African Charter, every attempt must have been made to deal with the matter at a lower level before referring it to the African Court. For a number of reasons that has not been done in this case.”

From the fictitious to the real

While the sessions often resemble exercises to test the effectiveness of the future African Court, the discussions in between also move quickly from the fictitious to the real. A pessimistic student, who prefers to remain anonymous, believes it is easier to plead for the defendant. “All he needs to

The campus of the University of Central Africa is on a quiet hill on the edge of Yaoundé. Students from different teams discuss their tactics during a break.



do is to show that the case is inadmissible. In human rights cases against states, the person bringing charges is always the weaker party, because the states make the laws. They use human rights only as excuses when other interests are involved. Look at the arguments the US used to invade Iraq.”

“No,” says the veiled Aya El Hilaly from Egypt, “the plaintiff can win this case. But the problem with the real African Court is that it will not have any means of enforcing its decisions. In Europe, states that want to be members of the EU have to sign the European Convention on Human Rights. The AU does not have the same obligation. That should be arranged in the future.”

Wolfgang Strasser agrees. He is deputy to the registrar of the European Court of Human Rights in Strasbourg, and one of the lecturers and judges. He explains: “The African Charter includes more rights than the European Convention, in particular social, economic and collective rights. It can also be invoked more easily – not only by the victim himself, but by an NGO on behalf of a victim as well. But this generosity in recognising rights is counterbalanced by a much less effective implementation mechanism”.

Different backgrounds

Back to the competition. In principle, all the competitors are winners of first rounds that took place within their own universities. But their preparation has been very different. Some spent several hours a week for four months getting ready for the moot court, together with their teachers. Others come from universities which barely function, or could not provide the texts of the African Charter and other relevant documents.

During the first days of court sessions, the English-speaking and French-speaking teams do not meet at the bench, but plead in parallel sessions. The differences in style are striking. The French speakers are good at rhetoric, theory and some theatre. The English speakers keep more to facts, and are articulate and correct. Professor Boukongou, who is taking part for the fourth time, is aware of the differences. “The French teaching systems are not used to working with case studies. I want to use this moot court also to show that we should adapt our teaching methods.”

After two days of pleading, two French- and two English-speaking teams have survived to the final round. A draw determines that the students from the University of Natal (South Africa) and the University of Cocody (Côte d'Ivoire) will form a bilingual team for



After his lecture, students have a thousand questions for Professor Boukongou.

the plaintiff, and the students from the University of Nairobi (Kenya) and the University of Dschang (Cameroon) for the defendant. While the others spend a day on the beach, these eight prepare for the final session with the help of two interpreters. The final round (facilitated by headphones for translations) is attended by virtually all the participants and students from UCAC.

The plaintiff begins, with four lawyers presenting the various grievances. Dohoty Coulibaly from Cocody accuses the state of excluding rural voters by holding the election in a period when heavy rain is likely to make dirt roads impassable. But before this court of professionals, the strongest defense lies in the inadmissibility of the case. The defence lawyers come up with a long list of charters and documents supporting this argument.

Then the lawyers for the plaintiff are given some final minutes to summarise the case. Andreas Coutoudis (Natal University) is not only a fine lawyer who anticipated the arguments of his adversary, he is also a gifted performer who has saved his best one-liners for this moment. “Human rights are absolute. You cannot reduce them by holding up a series of documents and papers.” That simple? A gasp of surprise runs through the audience. “One of America’s founding fathers said ‘it’s useless to examine old documents and dusty files. Human rights are sacred.’” The tension of three days is released. Gone is the decorum. A hundred and forty students applaud and shout their approval. We have a winner. ■

EU support for the Moot Court competition

The European Commission has directly supported the Moot Court since 2000, as part of the grant for the Master’s Programme in Human Rights and Democratisation in Africa, run by the Centre for Human Rights in the University of Pretoria. This LL.M course is taught in partnership with many of the universities that participate in the Moot Court. Each year 30 top students from African Universities receive a scholarship to study human rights and democratisation for six months in Pretoria and the second six-month semester in one of the partner universities. In addition, students are offered internships at major international human rights institutions, as well as the chance to shine at the Moot Court competition. Successful students have developed careers as lawyers, judges, civil servants and law lecturers, as well as in human rights NGOs. In this way, the EU is helping to equip Africa with a skills bank in human rights and democratisation from which its people can build a sound future.

* Peter Ashman, EuropeAid Cooperation Office, Democracy, human rights and thematic support unit.