

Research Brief

No.8 • 30 November 2023

South Africa's Judge's appointment to the ICJ signals commitment to upholding International Law and sustainable ocean governance

¹On the 9th of November 2023, the United Nations General Assembly and Security Council officially announced that Professor Dire Tladi had been elected to serve as a [judge](#) of the International Court of Justice (ICJ) on a 9-year term which begins on 6 February 2024. This marks the first time that a South African Judge will serve on this court. Following this announcement, Daniela Marggraff and David Willima, from the University of Pretoria, interviewed Prof. Tladi to find out more about the significance of this appointment, his journey within international law, and the court itself.

Prof. Tladi, notes that the defining moment in what motivated him to pursue a career in international law was a moot court competition that he took part in. In his second year of studying, he participated in the annual All African Moot Court Competition on Human Rights and also represented the University of Pretoria's team that took part in the Jessup Moot Court Competition. The University of Pretoria's team ended up winning the National round and got the opportunity to travel to Washington DC. Prof. Tladi identifies these opportunities as the moments that really got him



Pictured left to right: Daniela Marggraff, Prof. Tladi, David Willima

¹ This research brief was compiled by Daniela Marggraff and David Willima and edited by Professor Maxi Schoeman within the context of the Ocean Regions Research Programme of the Department of Political Sciences, University of Pretoria. The opinions and findings expressed in this Report are those of the author(s) and the NIHSS accepts no liability in this regard.

interested in international law. In terms of the International Court of Justice, Prof. Tladi identified the ICJ as the place where he would want to end up one day but doubted his chances, given South Africa's position in the international community at that time.

In terms of the importance of representation, Prof. Tladi explained that although he comes from South Africa, he represents not only South Africa but the African continent at large and emphasised that it is important to remember that one's appointment to the court means that one does not specifically represent one's country but rather the discipline and practice of international law itself. This involves ensuring that international law is complied with and properly applied across the board. However, this is not to say that one is not influenced by where they come from. Each judge is, in some way, a product of where they come from and resultantly their approach to international law is informed by the theoretical approach that they have adopted throughout their careers.

Regarding Africa's role in advancing global ocean governance, Prof. Tladi highlighted the fact that Africa played an important role in the process that led to the adoption of the recent Biodiversity Beyond National Jurisdiction (BBNJ) on June 19, 2023, after more than a decade of negotiations. This signals a shift from a previously passive role to a more assertive posture in ocean governance. However, in the post-adoption period, it will be crucial for African states to ratify the treaty to help meet the 60-ratification threshold. This is required to bring the treaty into force and help establish the benefit-sharing mechanism for the continent to benefit from the commons as underpinned by the principle of the Common Heritage of Mankind (CHH) - a point that the African Group of negotiators strongly advocated for. The inclusion of this principle as a core component of the BBNJ is a step in the direction of what Prof. Tladi describes as the need for [international law](#) to "strive for the protection of the weakest and most vulnerable amongst us [...]; this, after all, is the only way that we can truly speak of an international community."

The ICJ is not the only legal institution through which states can utilise to address maritime disputes. The International Tribunal for the Law of the Sea (ITLOS) - where another South African, Judge [Thembile Joyini](#), was recently elected offers another equally viable option. What sets the ICJ apart from ITLOS, however, is that the ICJ has a much broader mandate. In fact, the ICJ has unlimited jurisdiction. This includes issues pertaining to the Law of the Seas and in this sense, there may be overlap with ITLOS. Important to note too, is that even though ITLOS deals specifically with maritime issues, both courts are in reality quite equal in the sense that there is not a hierarchy of one being better than the other. This is pivotal since it compels both courts to ensure that they make sound judicial decisions, making them mutually reinforcing rather than purely competitive.

Further, in terms of states choosing which of the courts to approach, Prof. Tladi noted that before even choosing which court to approach a country will first do a cost-benefit analysis in terms of what its chances are of winning or losing. Once it has decided on whether it would be worthwhile to pursue the issue at a court, a country may then look at the costs involved. While the ICJ and ITLOS are free of charge, arbitration requires a substantial fee since one has to pay the arbitrators. However, the advantage of arbitration is that one gets to pick one of the judges and in that sense, one has slightly more control over the process. Another factor that influences a country's decision to approach one of the courts is trust which necessitates a particular country to determine the extent to which it has trust in the pedigree of the court.

The degree to which states trust international courts, in part, can be linked to the regional seating allocations of the ICJ. Currently, Western Europe and other States have the most seats, with five each, while African states only have three seats, Latin American and the Caribbean states have two seats and Asia-Pacific has three seats. This may lead to scenarios where some regions are favoured over others and necessitate the need for

reform (for more on this see [Tladi 2022](#))². On this issue, Prof. Tladi noted that this distribution is, however, not cast in stone and is subject to change in the context of evolving geopolitical configurations.

For example, in 2019 the United Kingdom lost its seat at the ICJ. It is highly speculated that this could be [linked](#) to the [Chagos Island advisory opinion](#) that ruled that the UK had acted unlawfully in creating the British Island Overseas Territories (BIOT). This points to the role that politics plays in the election of judges. Most recently, a Russian judge lost his bid for re-election at the court to a Romanian nominee (who in fact entered the race quite late), marking the first time in the ICJ's 78-year history that a judge from Russia has not served on the bench. Political commentators [attribute](#) this loss to Russia's ongoing invasion of Ukraine.

In an often politically-charged international system, the ICJ has been criticised from time to time for not being able to ensure that its rulings are not implemented. Prof Tladi elucidated that one of the important aspects to remember about the ICJ is that the Court can only act on matters that are brought to it and that the Court's primary role is to make rulings, not to enforce them. In light of this, it is important to understand what the function of the ICJ is, that is, to decide what the rules are, pass judgements and determine how a case should be rectified. Prof Tladi advanced three necessary steps to ensure that ICJ rulings are enforced: the state that has been found to be guilty has the obligation to adhere to the judgment and recommendations of the court; The UN Security Council also has a critical role to play in the enforcement of judgements although this is not necessarily something that the Council has a legacy of and finally, the international community also have a role to play to set good norms by promoting and encouraging compliant behaviour with the ICJ.

As he looks forward to the next chapter of his career, Prof. Tladi, in closing, advised those who will come after him to always pursue knowledge, and not prestige or financial gain. It is important to work hard and to work hard for the sake of working hard - then things will fall into place. On a personal note, Prof. Tladi aspires to continue being driven by the objectivity that has defined his stellar career as he strives to promote global solidarity for justice and international law that is caring.

² Tladi, D. 2022. 'Representation, Inequality, Marginalization, and International Law-Making: The Case of the International Court of Justice and the International Law Commission'. *UC Irvine Journal of International, Transnational, and Comparative Law* 7(60): 60-90.