

19 Conclusion and Way Forward

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1 Conclusion

This anthology has analysed the fundamental principles upon which the country is founded. The analysis encompasses, among others, the scope of founding principles such as the supremacy of the Constitution, democracy, accountability and openness. Apart from this, the book examined the significance of national objectives, international law and foreign in the interpretation and application of human rights to concrete disputes or allegations of violations of rights. The book also discussed the rules governing the limitation of rights and the centrality of proportionality in this exercise. Apart from these preliminary chapters, the anthology analysed the different types of rights that are protected under the Constitution. However, the analysis was largely biased towards two sets of rights: first, the socio-economic rights protected in the Constitution, and, second, the rights of persons in situations of vulnerability. While the areas covered by the anthology are crucial in advancing democracy and promoting a human rights culture, there are significant gaps in the areas covered. Going forward, efforts should be directed at not only expanding the types of rights examined in the anthology, but also on highlighting some of the practical issues that must be addressed to ensure that people have access to rights and the resources required to exercise them.

2 Way Forward

2.1 Literature on the Role of Independent and Other Commissions

Looking into the future, it is important for the academia, practicing lawyers and independent think tanks to build evidence and knowledge resources on constitutionalism, the rule of law and human rights in Zimbabwe. This anthology is just an introductory attempt to examine the inherent link between the basic tenets of the country's nascent constitutional democracy, the enjoyment of human rights and some of the systems established to enforce human rights. Even so, there are important fields of study that were not discussed in the book. These include the role of other independent commissions in fostering the culture of human rights across the country. The Zimbabwe Gender Commission, the Zimbabwe Media Commission, the National Peace and Reconciliation Commission and the Zimbabwe Electoral Commission all play monumental roles in advancing different sets of rights and fostering tolerance between people or entities with divergent views in their spheres of activity.

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In addition, there are other key players – that are not necessarily independent – such as the Zimbabwe Anti-Corruption Commission, the National Prosecuting Authority, the Auditor General, the Police Service, and many others. These institutions are largely responsible for ensuring that other players are held accountable for their actions, including through prosecution in the domestic courts or producing the evidence needed to secure a conviction for criminal violations of rights. Going ahead, it is vital to have knowledge resources clarifying not only the roles of these institutions in promoting human rights but the legal status of reports that are produced by them and independent commissions. For instance, while the Auditor General has revealed countless cases of mismanagement of public finances by government departments and functionaries, it remains unclear whether the evidence in the reports produced by this important office can be used to secure a conviction in separate proceedings arising from the misuse of public funds.

2.2 Spotlighting Freedom Rights

This book has not discussed any of the freedom rights protected in the Constitution. The preceding chapters analyse the scope of freedom rights, particularly the broad array of civil and political rights that are protected in the Declaration of Rights. Going forward, it is vital to put the spotlight on these rights, especially given their role in promoting democracy, making the government accountable to the people and enhancing responsiveness by state functionaries. There is dire need for knowledge resources explaining the ambit of such rights as: the freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from slavery or servitude; freedom from forced or compulsory labour; freedom of assembly and association; freedom to demonstrate and petition; freedom of conscience; freedom of expression and the media (including journalistic and academic freedom); freedom of profession, trade or occupation; freedom of movement and residence; the right to personal liberty; the right to privacy; the right of access to information; freedom to make political choices; and the right to stand for election for public office and, if elected, to hold such office.

These freedom rights are expressly protected in the Declaration of Rights, but there is lack of clarity on what they mean for the vertical relationship between the state and citizens; and for the horizontal relationship between private persons. That these civil and political freedoms perform an integral purpose in fuelling the optimal functioning of a democratic state is beyond question, but it remains to be seen whether state institutions will create the requisite space to allow the general public to enjoy these constitutional promises and guarantees. Given that civic space has been shrinking since the adoption of the Constitution in 2013, it seems that government respect for these rights will be limited as time unfolds. During the COVID-19 pandemic, civil rights and political freedoms have been severely infringed by rules restricting freedom of movement and prohibiting gatherings of relatively limited numbers of people.

The freedoms of assembly, demonstration and petition, the freedom of movement, the freedom of expression and many others have been negatively affected by stay

at home orders and the prohibition of mass gatherings during the pandemic. Even though there are many vacant seats in local authorities and the House of Assembly, bye elections have never been conducted since the pandemic began. Some sections of society have argued that this constitutes a violation of citizens' right to choose their representatives, creates space for authoritarian tendencies and, accordingly, undermines the legitimacy of the government, especially given that other countries in the region and across the world have arranged for elections to take place even at the height of the pandemic. For our purposes, it is concerning that the negative impacts of some of the restrictions that have been introduced to respond to COVID-19 are likely to remain intact well beyond the life of the pandemic.

2.3 Beyond Legal Protection of Rights, Towards Implementation

It is patent that the Constitution has an expansive Declaration of Rights that protects a wide range of rights, including civil and political rights as well as socio-economic and cultural rights. In addition, Zimbabwe is a state party to many treaties and conventions that impose on the state negative and positive duties to respect, protect and promote human rights. Going ahead, it is vital to accelerate efforts to promote the enforcement and enjoyment of all rights protected in the Declaration of Rights. Given that many people living in remote parts of the country are not aware of the rights conferred on them by the Constitution, it is imperative for organs of the state, the Zimbabwe Human Rights Commission, other independent commissions and non-state actors to engage in constitutional literacy awareness programmes across the country. The nature and scope of this duty is spelt out in great detail in the Constitution itself. Under section 7(a)-(c) thereof, the state is legally bound to promote public awareness of the Constitution by carrying out the following positive measures:

- a. translating it into all officially recognised languages and disseminating it as widely as possible;
- b. requiring the Constitution to be taught in schools and as part of the curricula for the training of members of the security services, the Civil Service, and members and employees of public institutions; and
- c. encouraging all persons and organisations, including civic organisations, to disseminate knowledge and raise awareness of the Constitution throughout society.

If these activities are given the full attention and implementation they deserve, many individuals and communities will be capacitated to stand up against violations of their rights and claim remedies for such violations. More importantly, however, the framers of the Constitution recognised the significance of translating the constitutional provisions into all languages. They recognised that human rights and fundamental freedoms should be accessible if they are to make a difference in the lives of the general public who rarely understand the English language. In addition, the multi-sectoral, multi-disciplinary and multi-stakeholder approach that is foreseen and required by the Constitution fosters coordination and collaboration (between key stakeholders) in implementing constitutional literacy programmes in a manner that leaves a genuine mark on communities. Without concerted efforts to enhance public

access of the Constitution and the law, constitutional rights largely remain as ‘paper law’, especially in remote parts of the country where both state and non-state actors are basically absent.

2.4 Budgeting for Human Rights Implementation

To achieve maximum impact and ensure that all citizens live a minimally decent life and have a chance to achieve their full potential, the state should aggressively increase its budgets for key sectors that have a real impact on people’s lives. Without the required money to make the realisation of human rights a reality, discussions about state obligations in fulfilling such rights remain largely abstract. To this end, it is important for the state to adopt reasonable policy and budgetary measures to ensure that the resources required to meet the basic and urgent needs of the poor are set aside as one of the priorities of every government in this country. There is tangible evidence, from budgets at all levels of government, that the funding for education, health care, social security and social assistance, food aid and many other social services have been shrinking over the years, even as the national population continues to grow. This is unfortunate and regrettable.

Given that the majority of the people are poor and look forward to assistance from the state, it is important for policy makers and senior leadership in government to prioritise poverty reduction and service delivery across all tiers of government. While expanding budgets for sectors that are key to human development is important, the state should ensure that independent commissions and other watchdog entities such as the office of the Auditor General and the National Prosecuting Authority are given enough space to perform their functions autonomously. This improves budget accountability by state functionaries and ensures that ‘few dollars fall through’ the cracks of the administrative system. In addition, civil society organisations can play an important function, both in complementing the state’s social provisioning efforts and carrying out budget tracking activities to ‘follow the money’ and expose departments that are not performing their functions effectively and efficiently due to corruption and maladministration.

2.5 Strong Institutions

To deliver human rights to the general public, there is need to build strong institutions that are fully equipped to defend and enforce such rights. At the heart of any functional human rights system are strong institutions that exercise their duties without fear, favour or prejudice. This reality arises from the fact that weak institutions are easily manipulated to make decisions that advance the interests of the politically connected, the rich and the privileged in society. Accordingly, the entire justice delivery system should be administered by men and women of integrity who undergo thorough training and understand the centrality of independence in the way they perform their functions. From traditional courts to the police, the prosecutors, the courts, national human rights institutions and other commissions, all justice delivery actors should be fit and proper persons who behave ethically and respond

professionally to claims of violations of rights. With untrained or unprofessional staff, justice delivery institutions commit secondary victimisations of survivors of violations of rights, discourage survivors from coming forward to report cases and create a culture of impunity for such violations.

At the heart of strong institutions should be courts that are independent, impartial and effective since the courts are the ultimate arbiters on whether or not a violation has taken place and, if so, what the appropriate remedy will be in the circumstances. To this end, the Constitution emphasises that “neither the state nor any institution or agency of the government at any level, and no other person, may interfere with the functioning of the courts”.¹ It emphasises that court orders and decisions must be obeyed and that the state must take legislative and other measures to ensure the independence, impartiality, accessibility and effectiveness of the courts.² These provisions underline the role of the courts in crafting effective remedies for infringements of rights. They also send a message that without effective remedies for their breach, human rights and fundamental freedoms are not worth the paper they are written on. Nonetheless, the same principles of impartiality, independence and effectiveness are equally relevant to the manner in which all public functionaries and entities should function when resolving human rights violations. Going ahead, it is important for all institutions created to enforce human rights, particularly the courts and independent commissions, to be strong to claim their independence to decide disputes without interference from the political organs of the state. Without strong institutions, the Constitution and the rights contained therein will be mutilated and trampled upon at will.

¹ Section 164(2)(a) of the Constitution.

² *Ibid.*, section 164(2)(b) and (3).