

Preface

In 2023, Zimbabwe will celebrate the tenth anniversary of the 2013 Constitution. As we draw close to this important milestone, it is imperative to make critical reflections on the legacy, to date, of this transformative document and what lies ahead for the state and the ordinary people in the struggle for the realisation of human rights. The Constitution is transformative in many dimensions. First, it protects the full range of human rights, from the traditional civil and political rights to socio-economic, cultural and group rights. The Constitution is partly grounded on the cultural and historical background of the majority of the people. It is a socially and culturally relevant document in the sense that it embodies the cultural aspirations of the people, not only by claiming that the country is founded on diverse cultural, religious and traditional values, but also by expressly protecting cultural rights, including the rights of linguistic, ethnic and religious minorities. The promise and legitimacy of the Constitution may well depend on these seemingly unimportant rights that put individuals, cultures and communities at the centre of constitutional conversations. Yet, the potential clashes between culture and tradition, on the one hand, and Western values and human rights, on the other, should not be underestimated. The road ahead may require courts to strike a delicate balance between ensuring that individual rights are not trampled upon in the name of culture and ensuring that diverse cultures, traditions and legal pluralism continue to thrive.

Second, the Constitution enshrines the horizontal application of human rights thereby legally binding natural and juristic persons to respect, protect and promote the realisation of human rights and the achievement of equality. This is a first in our context as the fulfilment of human rights obligations has historically been characterised as exclusively a public function. The framers of the Constitution realised that many violations of rights occur in the private sphere and that to fully enjoy rights the Declaration of Rights should regulate relationships that have historically been assumed to be outside the province of the law. This approach breaks the public private divide and brings the state into the private sphere – including the family, school and workplace – to protect weaker members of society, including women, children, the elderly, employees and many more. It follows that very few aspects of life squarely fall into the private realm of life, and no matter how ‘hidden’ violations of rights may be, the state is under a constitutional duty to provide remedies for victims of such violations.

Third, the Constitution protects the right substantive equality in a manner that allows the state to take affirmative action measures to bridge existing inequalities between the rich and the poor. Everyone matters under the current constitutional and legal framework, from the poor peasants in the rural areas to children living in the streets, women, persons with disabilities and many other disadvantaged groups in our society. This claim is codified by the right to equal protection and benefit of the law, and the prohibition of discrimination on the basis of many grounds. Given the prevailing disparities in wealth, power and privilege, affirmative action becomes a

tool for unlocking the system and ensuring that the material, developmental, educational and other needs of the poor are catered for. Accordingly, the Declaration of Rights places disadvantaged groups at the heart of the struggle for social justice and creates space for them to ground their claims in the law and the Constitution. A backward looking approach to analysing the role of rights in achieving social transformation casts the Constitution both as memory and as promise. It is memory in the sense that it seeks to address the injustices of the past by conferring on all people rights that were historically denied to them. In addition, the Constitution is a promise in the sense that it establishes an enabling legal and human rights framework that is required to push the country in an egalitarian direction that addresses historical injustices and allows everyone to thrive and achieve their full potential.

Finally, the Constitution establishes a wide range of independent and quasi-independent administrative, judicial and quasi-judicial institutions that have the mandate to protect, promote and monitor the implementation of human rights. It sets forth the mandates of Zimbabwe's independent commissions that are required to investigate and receive complaints about violations of fundamental by state and non-state actors. The future of the Constitution and human rights may well depend on how equipped and resourced these institutions are to defend the Constitution, protect human rights and give effective relief for breaches thereof. In our context, despite the abundance of constitutional provisions strengthening the role of the judiciary and the emergence of independent commissions, too many victims of human rights violations lack adequate recourse to justice for any number of reasons ranging from discrimination on one or multiple grounds, to costly legal procedures, fear of repercussions or reprisals, lack of rule of law in the communities and the physical distance between the courts and those seeking effective remedies for breaches of their rights. While rights on paper are essential in cementing citizens' rights and spelling out state obligations, actual implementation and awareness of basic rights are indispensable for the Constitution to transform people's lives. If human rights are to be worth the paper they are written on, these challenges must be resolved and the relevant justice delivery mechanisms must be decentralised enough to be easily accessible to the majority of people living in remote parts of the country.

This book is a product of the Zimbabwe Human Rights Capacity Development Programme, financed by the Swedish International Development Cooperation Agency (Sida) and implemented by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) and local partners in close cooperation with the Embassy of Sweden in Harare, Zimbabwe. The Programme is supportive of Swedish priorities for development cooperation with Zimbabwe, by seeking to promote human rights, democratic development, strengthened rule of law and gender equality. Moreover, it seeks to contribute to reform initiatives in Zimbabwe aimed at the progressive realisation of a culture of human rights, where fundamental rights and freedoms, including those of women, children and other vulnerable groups are respected. This is aligned to Zimbabwean national objectives, as set out in the Constitution, to protect constitutional rights and freedoms and promote their full

realisation to establish, enhance and promote a sustainable, just, free and democratic society.

At the time of writing, the main implementing partners of the Programme, in addition to RWI, are: Centre for Applied Legal Research, Harare; College of Business, Peace, Leadership and Governance at Africa University, Mutare; Faculty of Law at Midlands State University, Gweru; Herbert Chitepo School of Law at Great Zimbabwe University, Masvingo; Faculty of Law at University of Zimbabwe, Harare; Faculty of Law at Zimbabwe Ezekiel Guti University, Bindura; Council for Legal Education in Zimbabwe; Zimbabwe Human Rights Commission; Zimbabwe Prisons and Correctional Services; and Zimbabwe Anti-Corruption Commission.

This second edition of the book builds upon the initial steps taken by partners to build evidence and develop knowledge resources on human rights in the country. It revisits the chapters discussed in the first edition to ensure that recent developments are part of the conversation and also adds a number of new chapters in areas that were not explored in the first edition. It is beyond doubt that the book is an important addition to the resources that will shape the theory and practice of Zimbabwean constitutional and human rights law for a considerable time.

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