
Foreword

We live in a world where rights, enshrined in international human rights conventions and national constitutions, find little translation in reality – entombed in legal documents, they often never see the light of day. As judicial officers and lawyers, it is incumbent on us to understand and recognise the inequalities prevailing in our society and to promote remedies that protect and promote the rights and freedoms enshrined in our constitutions. In many cases, we are the custodians of citizens’ rights and the last bastion of hope for many.

Various international human rights instruments and national constitutions recognise that certain groups, often defined as vulnerable, require protection. Such groups include women; children; persons with disabilities; older persons; refugees; internally displaced persons; persons belonging to national, ethnic, religious and linguistic minorities; migrant workers; persons living with HIV; and lesbian, gay, bisexual, and transgender persons. This list is not exhaustive and over time new groups are identified that require special attention if they are to realise their rights and receive equal treatment.

This publication – a selection of papers presented at judicial colloquia held in Botswana, Zambia, and Malawi in February and March 2014 – has two main objectives.

Firstly, it is intended to serve as a resource for judicial officers in southern Africa, when they are confronted with cases that concern human rights and, in particular, the rights of vulnerable groups.

Secondly, it is intended to enrich discussion on the need for the development, in the region, of a constitutional jurisprudence which recognises the universality of human rights and the importance of courts in protecting the rights of the most vulnerable and marginalised within our societies.

Highlighting this need, Lesetedi J stated in the recent Botswana Court of Appeal case of *Ramantele v Mmusi and Others*:

It is well established that in interpreting provisions of the Constitution more particularly with regard to the fundamental rights the Court must adopt a generous and purposive approach in order to breathe life into the Constitution having regard to its liberal democratic values and (where necessary) with the aid of international instruments and conventions on human rights to which Botswana has subscribed.¹

This publication examines that statement, exploring options and modalities, with different judges and lawyers providing valuable insight into what exactly it means to breathe life into a Constitution. Each of us plays a unique and important role in upholding the constitutions of our respective

1 CACGB-104-12, at para. 69.

countries and in securing well-functioning justice systems that protect the human rights of all. This publication prompts us to examine our existing jurisprudence and to develop our understanding of what different rights mean and how we might realise them in practice.

Judge Sanji Mmasenono Monageng
First Vice-President, International Criminal Court