

FOREWORD

The post-Second World War era has witnessed a steady proliferation of international law instruments dedicated to the protection of human rights. The 1948 Universal Declaration of Human Rights laid the edifice for the universal recognition of the inherent dignity of the equal and inalienable rights of all human beings as the foundation of freedom and justice. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966, significantly advanced the cause of human rights protection by moving beyond a mere declaration of rights to establish clear treaty obligations for states parties.

These covenants have been followed by other United Nations (UN) treaties dedicated to protecting the rights of specific disadvantaged and marginalised groups. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 as a universal instrument for protecting women's rights, is one such example. Regional human rights systems have followed suit. In 2003, the African human rights system emulated as well as amplified CEDAW when it adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) to establish a regional instrument for the protection of women's rights. In terms of ensuring accountability for human rights abuses, the African regional human rights system, which was first established in 1981 with only the African Commission on Human and Peoples' Rights, has since been complemented by a court--the African Court on Human and Peoples' Rights.

But what has been the sum total of these important developments at the UN and African regional levels? How tangible is the promise of human rights in the daily lives of women, men, and children, including those in Africa?

The ultimate objective of human rights treaties is to recognise individuals as repositories of rights that are the subject of enforceable international law. It is all too apparent that the world is no longer short of declarations and treaties that recognise human rights. What the world, and not least the African region, is woefully short of, though, is the realization of human rights. The challenge now is to secure not just the respect and protection, but the fulfilment of human rights guarantees.

Sexual and reproductive health rights remain one of the weakest areas of human rights on the African continent. Africa's unmet contraceptive needs, high levels of unsafe abortion, high incidence of early or coerced marriages, deteriorating access to health-care services (including reproductive health services), prevalence of sexual violence and sexual exploitation, pandemic levels of HIV, and laws and customary practices that discriminate on the grounds of gender and sexual orientation all testify to a failure to effectively realise sexual and reproductive health rights on the continent. Unless rights are fulfilled, they remain rhetoric at best. As Frans Viljoen once wrote about international human rights law in Africa, "The ultimate test of international human rights law is the extent to which it takes root at the national level, and its ability to flourish in the soil of states and to bear fruit in the lives of people."

National courts have a crucial role to play in cultivating this process. With the privilege of dispensing decisions that are unquestionably authoritative in the eyes of national authorities, such courts

can play an august role in contributing towards the fulfilment of human rights if they are able and willing to indigenize human rights. Ultimately, national courts must be able and willing to discharge their constitutional judicial functions as not just impartial arbiters in disputes, but equally, intrepid custodians of the constitutional guarantees of rights enshrined in national constitutions, many of which emulate human rights guarantees in UN and regional instruments.

However, in a democracy, the task of ensuring human rights protections cannot be left to the courts alone. Civil society has a crucial role to play in raising awareness about rights and in giving vitality to the demand for, as well as enforcement of, human rights. The Treatment Action Campaign's successful litigation against intransigent state denial of the rights of persons living with HIV to health care in South Africa, for example, is a testament to civil society's capacity to make human rights come alive. Civil society also represents a necessary component of democracy, for through advocacy and litigation, it can hold governments accountable for their failure to respect, protect, or fulfil human rights.

An important prerequisite for civil society's ability to advocate for and litigate human rights is the accessibility of jurisprudence. Obtaining decisions of national courts and tribunals in many parts of Africa is a challenge, because decisions are not always reported on a regular basis, or they are reported in a manner that is not easily accessible to the public. The *Legal Grounds* series fills a gap in the availability and accessibility of jurisprudence pertaining to reproductive and sexual health and rights.

Like its predecessors, *Legal Grounds III: Reproductive and Sexual Rights in Sub-Saharan African Courts* is a tool for organizations, individuals, and institutions of learning. The scope of this third volume has been widened to include cases from Francophone and other non-Commonwealth countries, while focusing more exclusively on jurisprudence related to reproductive and sexual health. Though the study of reproductive and sexual health as a human rights discipline on the African continent is still at a relatively young stage, a number of countries are developing the discipline in their tertiary institutions. Equally significant, in 2015, the Centre for Human Rights, University of Pretoria, launched a Masters in Sexual and Reproductive Rights in Africa programme. This publication is a compelling resource for students in this field. In addition, it is a contribution towards a knowledge base for jurisprudence that bears directly or indirectly on reproductive and sexual health as human rights, and is conducive towards building and entrenching a human rights culture on the African continent.

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