SELECT ESSAYS ON GOVERNANCE AND ACCOUNTABILITY ISSUES IN PUBLIC LAW

EDITORS
HENNIE STRYDOM
JOANNA BOTHA

PREFACE

The contributions in this volume emanated from a joint conference and project by the faculties of law of the University of Johannesburg and the Nelson Mandela University. The range of subject matter addressed at the conference justified the publication of two separate volumes, one containing contributions in respect of maritime law and the law of the sea and the current one focusing on topics in public law featuring mostly governance and accountability issues in the seven chapters this volume comprises.

Chapter 1 is devoted to the explicit and implicit ‘waymarks’ provided by the constitution and considered to be essential for interpreting legislation as an integral part of a reading strategy for the courts to ensure that statutory interpretation is approached with the aim of finding a solution that will fall within constitutional bounds.

Chapter 2 proposes a hate-crime model for the South African context. This issue is the subject of a protracted legislative process whose finalisation is long overdue, given the frequency of this type of crime, the sporadic eruption of xenophobic violence and the harm caused to victims and their communities. The chapter covers issues such as hate crime as a conceptual problem, the different hate-crime models and the regulatory framework that is required in response.

Chapter 3 engages with accountability issues emanating from abuse of power by heads of state, a matter that is known for its fair share of controversy in South Africa and on the African continent. The chapter enlightens the different accountability types at the domestic, regional and international levels for holding heads of state accountable for transgressions of the law.

Chapter 4 deals with an equally problematic topic, namely presidential time limits in Africa and the political turmoil that emanates from their manipulation and abuse by incumbent presidents. The chapter uses Burundi as a case study and, in particular, the country’s constitution of 2005 and its interpretation by the constitutional court of Burundi and the East African Court of Justice in the context of the 2015 presidential crisis and the violence that ensued from it.

Chapter 5 examines the options and obstacles in bringing perpetrators of gender-based violence in the context of the Syrian conflict to justice. The Syrian conflict is one of several current armed conflict situations where gross violations of human rights and international humanitarian law are committed with impunity, despite the existence of volumes of incriminating evidence made available by international organisations and other sources. These included the reports of the Independent

International Commission of Inquiry on Syria, which was established in 2011 by the UN Human Rights Council. On 7 July 2020, the Commission published its twentieth report.

Chapter 6 has, as subject matter, what is commonly known as the Life Esidimeni Tragedy which constitutes one of the most serious examples yet of government intransigence and failure to protect the vulnerable, in this instance mental health care users who were removed from existing facilities in a manner and under conditions that were grossly inhumane by all standards. The chapter applies Fineman's vulnerability theory and explores the need for a responsive state and the relevance of the constitution in considering appropriate remedies for the harm done.

Chapter 7 joins a well-known debate on the African continent, namely the role and future of the still to be established African Court of Justice and Human and People's Rights. This institution, which, once operational, will enjoy criminal jurisdiction over a controversially long list of offences by virtue of the Malabo Protocol, is seen by some commentators as a solution to the African Union's discontent with the International Criminal Court. In this chapter, the focus is on considerations of regionalism as an approach to international criminal justice.

The editors would like to express their gratitude for the assistance and advice provided by Mr Wikus van Zyl of African Sun Media in bringing this project to fruition.

PROF HENNIE STRYDOM
University of Johannesburg

PROF JOANNA BOTHA
Nelson Mandela University