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Towards good governance: interpreting the right to administrative justice in the Zimbabwean Constitution

Kaseke, Paul

2020
https://hdl.handle.net/10539/30409

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Abstract

In 2013, Zimbabwe adopted a new constitution that replaced the 'Lancaster' Constitution adopted at independence in 1980. Unlike its predecessor, the 2013 Constitution introduced an administrative justice right in s68. This right provides every person with a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.

The focus of this thesis is how courts should interpret the right to administrative justice in a manner that promotes good governance and administration. Good governance in the Zimbabwean Constitution bears a specific meaning that encompasses social justice, economic stability and the orderly transfer of power during elections. The thesis suggests how courts can approach the right in a way that transforms the nature of governance and administration in the country as part of building a progressive constitutional democracy. The s68 right unfortunately, creates tentative legal uncertainty in as far as the content of the right is concerned. The right may be ineffective if no useful guidelines are in place to inform its content and meaning. The challenge faced by the courts when interpreting this right is how it is to be construed and what protection it offers to the people of Zimbabwe.

It will be seen that the concepts of substantive fairness, prompt, efficient and proportionate administrative conduct are new additions to Zimbabwe's administrative law framework and these need to be defined accordingly. Substantive fairness is in fact a new addition to the principle of administrative law and a theory of this is postulated in the thesis to provide a starting point for the analysis of the right. It will also be seen that the realization of the s 68 right depends on a litany of factors. These include the creation of a new law to give effect to the constitutional right, creation of specialist tribunals dealing with administrative justice, institutional reform of the Zimbabwe Human Rights Commission, which is tasked with the protection of rights including the right to administrative justice and the willingness of courts to interpret s68 progressively. The thesis makes recommendations for the practical changes required to ensure that the right to administrative justice is realized and while doing so, enhancing good governance as defined in the Constitution of Zimbabwe.