

KEMPTON MAKAMURE LABOUR JOURNAL
No. 2: 2009

Constitutional Reform in Zimbabwe: Labour, Gender and Socio-Economic Rights



**Zimbabwe Labour Centre and Kempton
Makamure Labour Lecture Series Board -
University of Zimbabwe**

KEMPTON MAKAMURE LABOUR JOURNAL

NUMBER 2: 2009

SPECIAL ISSUE

**CONSTITUTIONAL REFORM IN ZIMBABWE:
LABOUR, GENDER AND SOCIO-ECONOMIC RIGHTS**

PUBLISHED BY

ZIMBABWE LABOUR CENTRE
AND
KEMPTON MAKAMURE LABOUR LECTURE SERIES BOARD
UNIVERSITY OF ZIMBABWE

SUPPORTED BY: ROSA LUXEMBURG FOUNDATION

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© Zimbabwe Labour Centre P. O. Box 6758 Harare, 2009

ISBN 978 0 797437 791

Published in 2009 by:
Zimbabwe Labour Centre
Box 6758 Harare
Zimbabwe

And

Kempton Makamure Labour Lecture Series Board
Faculty of Law
University of Zimbabwe
P.O. Box MP 167
Mount Pleasant
Harare
Zimbabwe

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Printing and Binding

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Table of Contents

Page

Acknowledgements	i
Legacy of Kempton Makamure	i
Editorial Note	1
Welcome Remarks	3
Solidarity Remarks	4

PART ONE: NEO-LIBERALISM AND THE CONSTITUTIONAL AND POLITICAL CRISIS IN ZIMBABWE

1. Neo-liberalism, the constitutional and political crisis in Zimbabwe, L Matombo	6
2. Ideology, capitalism and the crisis in Zimbabwe, M. Sambo Sozinyu	10
3. Regional perspectives on working people and the constitutional crisis in Zimbabwe, D McKinley	18
4. Sown on good soil: Political, economic and social factors which gave birth to the Constitution of the Bolivarian Republic of Venezuela, T. S. Mombeyarara	20

PART TWO: HISTORY OF CONSTITUTIONAL REFORM IN ZIMBABWE

5. Constitutional reform in Zimbabwe: History and way forward, Muinyaradzi Gwisai	26
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PART THREE: OUTLINE OF FUNDAMENTAL RIGHTS

(A) Fundamental Socio-Economic Rights under International, Regional and Zimbabwean Laws and Norms

6. Know your social-economic rights, G. Kanyenze	46
7. Socio-economic rights under international and Zimbabwean laws, F. Hwenhira E. Matika and A. Chikwayi	52
8. The informal sector, trade justice and constitutional reform, A. Tawanda	68

(B) Fundamental Labour Rights under International, Regional and Zimbabwean Laws and Norms.

9. An outline of fundamental labour rights under international laws, national constitutions and Zimbabwean constitutional norms, M. Gwisai, R. Matsikidze, S. Ushewekunze and K. Musoni	71
10. The struggle for labour rights requires a struggle against capitalism, C. Gwiyo	84

(C) Fundamental Gender Rights under International and Zimbabwean Laws

11. An outline of fundamental gender rights under international and regional and national constitutions, S. Mombeyarara and S. Barangwe	88
12. Defence, enforcement and funding of socio-economic, labour & gender rights	99

PART FOUR CONSTITUTIONAL REFORM IN ZIMBABWE: WAY FORWARD

13. Why the NCA says: We will die for a people-driven constitution, L. Madhuku	108
14. Zimbabwe People's Charter, Constitutional Reform	114
15. Reaffirmation of ZLHR's position on the process of constitutional reform	115
16. What does "people-driven constitutional reform" mean? M. Gwisai	118

ANNEXURES:

Conference Report	127
Consolidated Bill of Rights	133

PART THREE

(A) Fundamental Socio -Economic Rights under International , Regional and Zimbabwean Laws and Norms

“Know your Social Economic Rights”

Dr Godfrey Kanyenze¹

Introduction and Socio-Economic context

I want to thank you very much for inviting me to give a talk on social and economic rights and constitutional reform. We from LEDRIZ very much identify with the theme I have heard being constantly referred to here of – “Nothing for us without us.” LEDRIZ has been very much involved in research and advocacy work on socio-economic rights including labour rights, and the talk I will give today is based on some of that work.² The necessities of life such as food, health, education, housing, basic public utilities (such as water, electricity and sanitation), transport and decent work are socio-economic rights, but this is seldom known by many. These rights are entrenched in international law instruments such as the African Charter of Human and Peoples' Rights and the UN Charter among others. In South Africa they are enshrined in the Bill of Rights section of their constitution.

Zimbabwe inherited from colonialism a dual and enclave economy with a developed and diversified formal economy co-existing alongside an underdeveloped peasant-based subsistence rural economy. The formal sector employed only 20% of the labour force, 17% of which were female, with the remaining 80% in the non-formal sector. Overtime with the collapse of the formal economy, starting with the adoption of neoliberal policies in the late 1980s under the Economic Structural Adjustment Programme (ESAP) and subsequently the near collapse of the economy after 2003, this dualism has deepened as the informal sector has expanded tremendously. Formal sector employment declined from 14% of the population in 1980 to 10% by 2004 and 6% by 2006. Now 4 out of 5 jobs are informalised. The levels of poverty increased from 55% of the population in 1995 to 72% by 2003 and an estimated 90% now. Today we face a near collapse of social services, health, education and welfare thereby denying the people their rights. Below I highlight some of the important socio-economic rights that every person is entitled to as recognized under international and regional laws.

The Right to Food

The right to food guarantees all people the ability to feed themselves. It also obliges states to cooperate in the equitable distribution of world supplies of food. It is part of the more general right to an “adequate standard of living” that is necessary for the inherent dignity every human being is entitled to. There are certain minimum requirements of the right to food, namely:

Amount: People have a right to the basic amount of food necessary for survival, and also to food of high enough quality and quantity to live in adequate dignity.

Availability: food must be available either directly or by access to a well-functioning distribution, processing, and marketing system that responds to demand.

Dietary needs: food must satisfy dietary needs. A diet is a mix of nutrients, calories and proteins necessary for physical and mental health and growth.

No adverse substances: food must be free from adverse substances: government must set and enforce health and safety standards for food quality.

¹ Godfrey Kanyenze is the Director of the Labour & Economic Development Research Institute (LEDRIZ) a labour research unit associated with the ZCTU. Kanyenze is the leading expert on labour economics in Zimbabwe and served for over a decade as the chief economist of the ZCTU where he led research and development on the ZCTU's publication, *Beyond ESAP*, which argued for people-centred alternatives to the neoliberal ESAP economic policies that had been adopted by the state.

² See for instance: LEDRIZ, *Do You Know Your Socio-Economic Rights*, (LEDRIZ, 2005)

Cultural acceptability: food must be culturally acceptable – it is necessary to take into account non-nutrient-based values for judging the acceptability of food, including informing consumers.

Accessibility: food must be accessible that is: (i) economically affordable and (ii) physically available.

There are several international instruments and laws that provide for the right to food, including:

- The UN International Covenant on Economic, Social and Cultural Rights: Article 25 decrees: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food."
- Freedom from hunger and equitable distribution of food. Committee on Economic, Social and Cultural Rights (ECOSOC): General Comment 12 on the Right to Food. See also - Convention on the Rights of the Child, Articles 24 & 27.

Similarly there are numerous political commitments by states to achieve the right to food, including:

The Universal Declaration on the Eradication of Hunger and Malnutrition. The Commission on Human Rights Resolution 2003/25 – affirms the right of everyone to access to safe and nutritious food. General Assembly Resolution 155 (2001) reaffirms the right of everyone to have access to safe and nutritious food. The 1996 Rome Declaration of the World Food Summit affirmed states commitment to achieving food security for all.

The Right to Health

Health is one of the components of an adequate standard of living. Every woman, man, youth and child has the human right to the highest attainable standard of physical and mental health without discrimination. The right to health includes access to adequate health care (medical, preventative, & mental), nutrition, sanitation, and to clean water and air. It also includes occupational health. Enjoyment of the right to health is vital to all aspects of a person's life and well-being, and is critical to the realization of many other fundamental human rights and freedoms. The minimum requirements of the right are:

Availability: public health care facilities must exist in sufficient quantity – including safe drinking water, adequate sanitation, hospitals and clinics, trained medical personnel receiving domestically competitive salaries, and essential drugs.

Accessibility: health care must be physically and economically affordable – must be provided to all on a non-discrimination basis. Information on how to obtain services must be freely available.

Acceptability: all health facilities must be respectful of medical ethics, and they must be culturally appropriate.

Quality: health facilities, goods & services must be scientifically & medically appropriate & of good quality – at a minimum, this requires skilled medical personnel, scientifically approved & unexpired drugs & hospital equipment, safe water & adequate nutrition.

Provisions of Human Rights Law that guarantee everyone the human right to health include:

- Universal Declaration of Human Rights.
- The International Covenant on Economic, Social and Cultural Rights.
- The Convention on the Elimination of All Forms of Discrimination Against Women.
- The Convention on the Elimination of All Forms of Racial Discrimination.
- The Convention on the Rights of the Child.

Commitments by Governments to ensuring the human right to health include:

- The Declaration of the Earth Summit in Rio.
- The International Conference on Population and Development in Cairo.
- The World Summit for Social Development in Copenhagen.
- The Habitat II Conference in Istanbul.
- The Beijing Platform for Action.

The Right to Education

The right to education is twofold: (i) It requires free and compulsory primary level education, and (ii) It requires equal access to every level of education. The right to education includes:

Availability: there must be adequate school facilities and buildings.

Accessible: education must be available to all and free from discrimination. Schools must be in physical proximity to students, and education must be affordable for all students.

Acceptable: Schools must have trained teachers receiving domestically competitive salaries and good quality teaching materials that respect cultural differences. Discipline must respect a child's dignity.

Adaptable: schools must adapt or change to meet the needs of children from different communities, children who do not speak English in their homes and children with disabilities.

International instruments on the right to education include:

- The Universal Declaration of Human Rights.
- International Covenant on Economic, Social and Cultural Rights.
- Committee on Economic, Social and Cultural Rights: General Comment 13: The Right to Education.
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Right of the Child
- Convention Against Discrimination in Education
- Political commitments: Beijing Platform for Action: Paragraph 80.
- Copenhagen Declaration: Commitment 6.

The Right to Work

The right to work gives everyone the opportunity to earn a living wage in a safe environment. It also provides for the freedom to organize and bargain collectively. However, it does not guarantee that every person will have a job: governments are required to take effective steps to realize the right over time. States violate the right when they fail to take those steps or when they make the situation worse. This right prohibits the use of compulsory or forced labour.

The minimum requirements include:

- Freedom of association: everyone has a right to join trade unions, which have the right to strike and function freely.
- No discrimination: Discrimination in access to employment is prohibited.
- No arbitrary dismissal.
- Equal pay for equal work.
- Adequate minimum wage: there must be a machinery for fixing, monitoring and enforcing minimum wage levels that are based on a living wage (the Poverty Datum Line).
- Equal opportunity for promotion.
- Right to rest: rest and leisure, hence need for reasonable limitation of working hours.

The International instruments on the right to work include:

- Universal Declaration of Human Rights: Article 23 asserts: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

- International Covenant on Economic, Social and Cultural Rights.
- International Covenant on Civil and Political Rights
- Convention on the Rights of the Child
- Convention on the Elimination of All Forms of Discrimination against Women.
- International Convention on the Elimination of All Forms of Racial Discrimination.
- Copenhagen Declaration: commits governments to promote full employment as a priority of economic and social policies.

There are various ILO instruments on the right to work, starting with the ILO Declaration on Fundamental Principles & Rights at work adopted by the ILO in 1998. The 8 core ILO conventions are:

- Convention 87: Freedom of Association & Collective Bargaining;
- Convention 98: The Right to Organise & Bargain Collectively;
- Conventions 29 & 105: The Elimination of all Forms of Forced & Compulsory Labour;
- Conventions 138 & 182: The Effective abolition of Child Labour;
- Conventions 100 & 111: The Elimination of Discrimination in respect of Occupations & Employment.

The Right to a Healthy Environment and Water

The right to a healthy environment requires a healthy human habitat, including clean water, air, and soil that are free of toxins or hazards that threaten human health. The most developed human rights standard-setting in this area involves the right to water. Water is a critical element of health and a healthy environment. The right to water includes the right access to adequate amounts of water, for both consumption and sanitation. Water is also a requirement for the most basic activities vital to sustaining human life, including agriculture, cooking, and sanitation. Violations of the right to water come in many forms, including industrial pollution of water sources, failure to provide purification and sanitation for the urban poor, and pricing of water delivery beyond the reach of the rural poor.

The basic components of the right to water include:

Quantity: Water for drinking, cooking, sanitation (to prevent water-washed diseases), food, and to guarantee the right to development.

Accessibility: water must be within reasonable distance from places of abode, work; accessing water should not put the withdrawer in physical danger; accessing water should not expose withdrawer to threat of violence; water should be accessible to those with disabilities; and access to water must be available to all, with no discrimination.

Affordability: the price of water or water delivery should never put its purchase beyond the means of the poorest sections of society; the price of water or water delivery should not compromise poor people's ability to enjoy other rights, such as the right to food and education.

Self-determination: all peoples should have a right to control their watershed, in keeping with sustainable, ecological practice. Water should never be used as a weapon of war or occupation; trans-boundary watersheds should be shared in a fair and equitable manner.

Women: women's right to water has an interdependent relationship with their enjoyment of other rights. Their political participation is hampered by the labour required to draw water; their right to water is compromised by their political and economic disempowerment. Affirmative steps need to be taken to ensure women's participation in decision-making over water related issues.

Sustainability: usage of water should not compromise the ability of ecosystems to sustain life. Contemporary uses of water should not compromise the right of future generations to adequate supplies of clean water. Subsistence uses of water (drinking, sanitation, cooking or agriculture) should take priority over other uses. Large-scale diversions of water across watershed lines and within watersheds should be avoided.

International instruments on the right to a healthy environment include:

- Universal Declaration on Human Rights.
- International Covenant on Economic, Social and Cultural Rights.
- General Comment No. 4 & 15, Committee on Economic, Social and Cultural Rights.
- Convention on the Rights of the Child.
- International Convention on the Elimination of All Forms of Racial Discrimination.
- Convention on the Elimination of all Forms of Discrimination against Women.
- Political instruments: 1994 Draft Declaration of Principles on Human Rights and the Environment; General Assembly Resolution 45/94 (1990); Stockholm Declaration of 1972.

The Right to Housing

The right to housing means much more than simply a roof over one's head. The right means adequate housing in a habitable space that fulfills the basic needs of humans to personal space, security and protection from the weather. The right to housing means people must have equal access to a safe, habitable, and affordable home. It also means people must be protected against forced evictions.

The minimum requirements include:

Legal security of tenure: This protects people from eviction, harassment, and other threats. The state must enforce security of tenure in consultation with affected groups.

Availability of services, materials, facilities, and infrastructure: there must be safe drinking water, energy for cooking, heating, sanitation facilities, refuse disposal, storage and emergency services.

Affordability: the cost of housing should not compromise the satisfaction of other basic needs.

Habitability: housing must protect its inhabitants from cold, damp, heat, rain, or other health threats and structural hazards. It must also provide adequate space.

Accessibility: all people are entitled to adequate housing, and disadvantaged groups must be accorded full and sustainable access to housing.

Location: housing should be located in areas with access to employment options, healthcare services, schools, child care, and other social facilities in both urban and rural areas. Housing should not be built on or near polluted sites or sources of pollution.

Cultural adequacy: activities geared towards development or modernisation of housing should ensure that the cultural dimensions of housing are not sacrificed, while simultaneously ensuring modern technical facilities.

International instruments on the right to housing include:

- Universal Declaration of Human Rights.
- International Covenant on Economic, Social and Cultural Rights.
- Committee on Economic, Social and Cultural Rights: General Comment 4 & 7.
- Convention on the Elimination of All Forms of Discrimination against Women.
- International Convention on the Elimination of All Forms of Racial Discrimination.

The Right to an Adequate Standard of Living

The right to an adequate standard of living encompasses several more specific rights: the right to food, the right to health, the right to water, the right to necessary social services, the right to clothing, and the right to housing. The right to an adequate standard of living requires governments to consistently improve these rights.

Such 'progressive realisation' means that any legal or political developments that diminish current protections are prohibited.

Legally, this right is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights and Article 25 of the Universal Declaration of Human Rights

Conclusion: Towards a Human Rights Approach to Development

Human rights are universal and indivisible. They are public goods (non-excludable). Hence, human rights should not be put on the market, which discriminates, especially against the poor, but should be in the public domain.

Their enjoyment is facilitated by the adoption and implementation of people-centred and driven development strategies, implying a human rights approach to development is essential. Every human right entails certain obligations on the state, including:

Respect: governments are to refrain from interfering directly or indirectly with the enjoyment of rights.

Protect: governments are to prevent third parties (e.g. corporations) from interfering in any way with the enjoyment of all rights.

Fulfill: governments are to adopt the necessary measures to achieve the full realisation of all rights.

It is therefore a right of all Zimbabweans to participate in decision-making processes that affect their lives ('nothing about us without us'). An economic strategy that empowers the poor through redistribution of the means of production (land, skills, capital, technology) enhances the integrability of hitherto marginalised groups and sectors into the mainstream of the economy, helping to redress the inherited dual economy in Zimbabwe and facilitating broad-based and inclusive growth.

Thank you.



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