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



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

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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

(B) An Outline of Fundamental Labour Rights under International Laws, National Constitutions and Zimbabwean Constitutional Norms

By Munyaradzi Gwisai, Rogers Matsikidze, Shingirai Ushewekunze and Kiven Musoni

Introduction

Amongst the most important rights provided for in democratic societies and constitutions are labour rights. At the foundation of these is the right to just and dignified work for every adult person. A key component of this is the right to social justice and democracy in the workplace, including the right to fair labour and work relations. Such fundamental labour rights are guaranteed in various international human rights treaties and international labour law instruments.

Some of the more important ones are found in the International Covenant on Economic Social and Cultural Rights (ICESCR), 1966; the United Nations Universal Declaration of Human Rights (UDHR), 1948; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; African [Banjul] Charter on Human and Peoples Rights, 1981; the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003; the SADC Declaration on Gender and Development, 1999 and various conventions of the International Labour Organisation.

Zimbabwe has ratified these international treaties. A summary of the most important labour rights include:

- The right to work
- The right to just and favourable conditions of work and right to democracy and social justice at the workplace
- The right to just and favourable remuneration ensuring adequate and dignified existence
- The right to equal pay for equal work
- The right to social security and social welfare
- The right to protection from unfair dismissal and the right to an effective and equitable dispute resolution system
- The right to protection from discrimination and right to protection from sexual harassment
- The right of women to equal and full participation in the process of work
- The right to protection from slavery, servitude and forced labour
- The right to organize, trade unionism and collective bargaining
- The right to strike.

Below we highlight some of the most important labour rights under international law and progressive national constitutions and compare these to the position under Zimbabwean documents including the current Constitution of Zimbabwe; the Draft Constitution

of the Constitutional Review Commission of 2000, the Chidyausiku Draft Constitution, the Kariba Draft Constitution agreed to by the three; the NCA Draft Constitution and the Zimbabwe Peoples Charter.

Right to Work

The process of work is central to any society as it is through such process that all human societies produce the necessities of life like food, shelter, clothing, energy and so forth. Work is also central for most individuals as this is the process through which they earn their livelihoods as well as that of their families and make friends and other social partnerships. It provides a platform for workers to develop social institutions like trade unions which have historically played a critical role in the struggle for democratization of society by working people. It is also a primary means through which most individuals find self-fulfillment if their work is valued by others in society. Work therefore has vital economic, social, physiological and political functions in society. Hence any civilized and democratic society and constitution places at the fore of its Bill of Rights the right of everyone to dignified and adequate work including just remuneration ensuring dignified existence and social security in cases of inability to work. This principle is recognised in various international human and labour rights laws and in progressive national constitutions.

The right to work is recognized in the following international law instruments:

- Universal Declaration on Human Rights - Article 23 (1), which states –
"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment"
- The UN International Covenant on Economic, Social and Cultural Rights - Article 6 which states that the State Parties – "recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) - Art. 11 (1) (a) places a duty on states to ensure that– "The right to work as an inalienable right of all human beings."
- The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa – Art. 13 recognizes the freedom of women to choose their occupation, including "economic activities within the informal sector" and places a duty on states to –
 - ♦ establish a system of protection and social insurance for women working in the informal sector."
 - ♦ take the necessary measures to recognize the economic value of the work of women in the home.

The right to work is recognized in some progressive national constitutions and in Zimbabwe:

- See: Art. 40 (2) Uganda Constitution; Section 29 Malawi Constitution states: "Every person shall have the right freely to engage in economic activity, to work and to pursue a livelihood anywhere in Malawi." Art. 87, Venezuela Constitution provides as follows:
"All persons have the right and duty to work. The State guarantees the adoption of the necessary measures so that every person shall be able to obtain productive work providing him or her with a dignified and decorous living and guarantee him or her the full exercise of this right. Measures tending to guarantee the exercise of the labour rights of the self-employed shall be adopted by law."
- In Zimbabwe see: Section 4 of the People's Charter providing for the right to - "decent work, employment and the right to earn a living;" and partially Section 28(1), NCA Draft. The Kariba Draft makes some reference to this right, but as a "national objective" in Section 25 (1) which states –
"The State must adopt reasonable policies and measures, within the resources available to it, to provide everyone with an opportunity to work in a freely chosen activity, in order to secure a decent living for themselves and their families."

Right to Just and Favourable Conditions of Work and the Right to Democracy at the Workplace

The right to work has certain basic essentials to make it a meaningful right. International human rights instruments and progressive national constitutions recognize that the right to work includes the right to just and favourable conditions of work. This includes the right to what are termed fair labour practices. It also includes what is termed as the right to democracy and social justice at the workplace, whereby workers and their organisations have the right to be involved in decision-making at the workplace and to be consulted and involved in major work-decisions that affect them.

The right is recognized under the following international laws:

- UDHR Art 23 (1) which provides - *"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment"*
- The African Charter on Human and Peoples Rights Art. 15 provides that everyone has - *"the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."*
- The International Covenant on Economic, Social and Cultural Rights, Art. 7 lays out the fullest components of the right, namely -
 - ♦ The Right to a remuneration which provides all workers with a minimum of fair wages and equal remuneration for work of equal worth and a decent living for themselves and their families.
 - ♦ The Right to safe and healthy working conditions.
 - ♦ The Right to equal opportunity of every worker to be promoted in his or her employment to an appropriate higher level subject to seniority and competence.
 - ♦ The Right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays

This right is recognized under various progressive national constitutions and Zimbabwean constitutional documents.

- See: Art. 40, Uganda Constitution; Art. 42 (2) Constitution of Ethiopia; Art. 89, Constitution of Mozambique; Section 30, Malawi Constitution; and Section 23(1) Constitution of South Africa
- The Constitution of Venezuela provides for such right in various articles, including:
 - ♦ Art 87: All persons have the right and duty to work. The State guarantees the adoption of the necessary measures so that every person shall be able to obtain productive work providing him or her with a dignified and decorous living and guarantee him or her the full exercise of this right... Every employer shall guarantee employees adequate safety, hygienic and environmental conditions on the job.
 - ♦ Art 89: Work is a social fact and shall enjoy the protection of the State. The law shall make the necessary provisions for improving the material, moral and intellectual conditions of workers. In order to fulfill this duty of the State, the following principles are established:
 - ✓ No law shall establish provisions that affect the intactness and progressive nature of labour rights and benefits. In labour relations, reality shall prevail over forms or appearances.
 - ✓ Labour rights are unrenounceable: any action, agreement or convention involving a waiver of or encroachment upon these rights is null and void.
 - ✓ When there are doubts concerning application or conflicts among several rules, or in the interpretation of a particular rule, that most favourable to the worker shall be applied. The rule applied must be applied in its entirety.
 - ✓ Any measure or act on the part of an employer in violation of this Constitution is null and void, and of no effect.
 - ♦ Art 90: Working hours shall not exceed eight hours per day or 44 hours per week. Where permitted by law, night work shall not exceed seven hours per day or 35 hours per week. No employer shall have the right to require employees to work overtime... Workers are entitled to weekly time off and paid vacations on the same terms as for days actually worked.
- In Zimbabwe, the right is recognized in the following constitutional documents:
 - ♦ The NCA Draft Constitution, Section 28 provides a shortened and partial version of the right stating - *"Every worker has the right to fair and safe labour practices and standards and to be paid at least a living wage consistent with the poverty datum line... Women workers are entitled to fully paid maternity leave."*
 - ♦ The Peoples Charter Art 4 provides for *"Fair labour standards including – safe working places and adequate and state and employer funded compensation for injury or death from accidents at work; protection from unfair dismissal; full and paid maternity and paternity leave and decent work."*

- ♦ The Kariba Draft Constitution Art 25 provides a fairly extensive duty on the state to endeavor to secure the national objective of "just, equitable and satisfactory conditions of work, particularly with respect to –
 - ✓ Adequate remuneration;
 - ✓ Equitable opportunity for promotion;
 - ✓ Safety at work;
 - ✓ Maternity leave; and
 - ✓ Rest, leisure, limitation of working hours, periodic holidays with pay and remuneration for public holidays."

Right to Just and Favourable Remuneration

For the right to work to be meaningful it must include the right to be paid a just and favourable remuneration. This incorporates two notions. Firstly the remuneration or wages the worker receives must be sufficient to cover her or his necessities of life and those of their family, what is normally referred to as a living wage. Secondly, it includes an equitable share of the product of the worker's labour. Without human labour there can be no creation of wealth and profits and it is therefore only fair that workers receive a proportionate share of the profits or surplus value created out of their work, over and above the wages. However, capitalists and employers and their states seek to resist this vigorously, limiting workers only to wages and the capitalists taking all the profits. In limited circumstances where "bonuses" are paid this is at the discretion of the employer. Aspects of this right are recognized under a number of international laws and national constitutions.

The right to adequate and just remuneration is recognized in the following international laws.

- Universal Declaration on Human Rights – Art 23 (3) which states - *"Everyone who works has the right to just and favourable remuneration ensuring for himself/herself and their family an existence worthy of human dignity, and supplemented if necessary, by other means of social protection."*
- The above therefore calls for a minimum remuneration that provides a "living wage." What this means is set out in Art. 25 of the UDHR and Art. 11 (1) ICESCR, namely: –
 - ♦ *"Everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."*

The right is provided for in some national constitutions and some Zimbabwean constitutional documents:

- See: Section 31(1), Constitution of Malawi; Arts. 51 & 89 (1) Constitution of Mozambique states that "Labour shall be protected and dignified... the State shall promote the just distribution of the proceeds of labour." Art 91, Constitution of Venezuela provides for the right to a living wage and to an equitable share of the profits of the business:- *"Every worker has the right to a salary sufficient to enable him or her to live with dignity and cover basic material, social and intellectual needs for himself or herself and his or her family. The payment of equal salary for equal work is guaranteed, and the share of the profits of a business enterprise to which workers are entitled shall be determined... The State guarantees workers in both the public and private sector a vital minimum salary which shall be adjusted each year, taking as one of the references the cost of a basic market."*
- In Zimbabwe the right to a living wage is provided under:
 - ♦ Art. 4 of the Zimbabwe Peoples Charter providing for a "tax-free minimum wage linked to inflation and the poverty datum line and pay equity for women, youth and casual workers."
 - ♦ Section 28 (1) of the NCA Draft Constitution, which provides – *"Every worker has the right to fair and safe labour practices and standards and to be paid at least a living wage consistent with the poverty datum line."*
 - ♦ The Kariba Draft does not provide for the right to a living wage but establishes a non-enforceable national objective on the state to secure a national objective of "adequate remuneration" under Section 25 (2).

The right to equal pay for equal work

The right to just and favourable work includes the right to equal pay for equal work. One of the ways employers and capitalists keep their domination over society is to divide working people through divisions like gender, race, religion, ethnicity, craft and employment status. This stops workers from waging united resistance against their exploitation and oppression by the capitalists. This is particularly true in relation to payment of remuneration. Certain groups of workers are paid less than others even if doing the same work or work of equal value. Globally this has especially been true of women workers who are paid less than males and in this region black workers who are paid less than white workers. And today under ESAP or neo-liberalism workers designated contract or casual workers are often paid less wages and benefits than workers on permanent contracts.

The right to equal pay for equal work is recognized under the following international laws.

- UDHR Art. 23 (2) which provides that - "Everyone, without any discrimination, has the right to equal pay for equal work." See also Art. 7 (1) ICESCR and Art. 15 of the African [Banjul] Charter on Human and Peoples Rights.
- Art. 11 (1) CEDAW requires that women be guaranteed "conditions of work not inferior to those enjoyed by men, with equal pay for equal work," including "the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work."
- Various ILO conventions also elaborate on the right, including ILO Equal Remuneration Convention (No. 100), Art. 2 and ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The ILO Termination of Employment at the Initiative of the Employer Recommendation, 1982 (R166) Art. 2 (3) places an obligation on State Parties to ensure "adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time, the aim of which is to avoid the protection resulting from this Convention."

The right is recognized in various national constitutions and Zimbabwean constitutional documents.

- Art. 42 (1) Constitution of Ethiopia; Art. 40 (1) Constitution of Uganda; and Art. 91, Venezuela Constitution.
- In terms of Zimbabwean constitutional documents the following applies:
 - ♦ Section 28 (4) of the NCA Draft Constitution provides that "Men and women are entitled to equal remuneration for work of equal value."
 - ♦ The right is also provided under Art. 3 of the Zimbabwe Peoples Charter.
 - ♦ The Kariba Draft Constitution is silent on this right

Right to protection from discrimination

A fundamental right of all democratic societies is the recognition of the equality principle, that is that every person is equal before the law and must not suffer discrimination in relation to other persons or groups of persons. The principle is also critical in progressive labour relations because it counters the tendency of employers and capitalists to seek to divide workers on various superficial divisions and thereby perpetuate and strengthen the exploitation and oppression of labour by capital. The freedom from discrimination is recognized in most international laws, national constitutions and Zimbabwean constitutional documents.

The right is recognized under the following international laws:

- Art. 2 of the African [Banjul] Charter states - *"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."*
 - ♦ See also Art. 2 UDHR; Art. 2 CEDAW and Art. 1 ILO Discrimination (Employment and Occupation) Convention, 1958
- Note that the protection from discrimination right does not foreclose, the right of states to adopt laws and measures designed for the benefit of social groups that have suffered unfair historical or social discrimination such as women and black workers. Thus Art. 2 CEDAW Art. 2 provides that the - adoption of "temporary measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination ...but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved."

The right is recognized in various national constitutions and Zimbabwean constitutional documents:

- See: Art. 23, Constitution of Namibia; Art. 32, Constitution of Uganda; The Constitution of South Africa, Section 9 provides one of the widest definitions of prohibited discrimination under national constitutions and which has greatly influenced Zimbabwean documents. It provides -
 - (1) *Everyone is equal before the law and has the right to equal protection and benefit of the law*
 - (2) *Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.*
 - (3) *The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age disability, religion, conscience, belief, culture, language and birth."*
- In Zimbabwe the following constitutional documents provide as follows:
 - ♦ The Kariba Draft Constitution Art. 43 provides a progressive enforceable right, modeled on the South African one, although unlike the South African one it does not explicitly include the ground of "sexual orientation." It provides:
 - " (1) Everyone has a right not to be treated in an unfairly discriminatory manner on such grounds as their race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political or other opinion, culture, sex, gender, marital status, pregnancy, age, disability or natural difference or condition.
 - (5) To promote the achievement of equality, legislative and other measures may be taken by way of affirmative action to protect or advance people or classes of people who have been disadvantaged by unfair discrimination."
 - ♦ The NCA Draft Constitution Art. 19 provides even better coverage than either the South African Constitution or the Kariba Draft Constitution by including the ground of class or economic status. It provides, *inter alia*:
 - (2) *Everyone has a right not to be treated in an unfairly discriminatory manner on such grounds as their race, colour, tribe, custom, place of birth, ethnic or social origin, language, class, religious belief, creed, political or other opinion, culture, sex, gender, marital status, age, disability or natural difference or condition or political, economic, social or other status."*
 - ♦ An additional ground which is of critical importance but not included in all the above documents is that of "AIDS/HIV status" but which is included in section 5(1) of the Labour Act [Chapter 28:01].

Right to special measures for women to equally and fully participate in work

The oldest and most intrusive form of discrimination is against women, which predates capitalism and was established with the emergence of private property and the patriarchal monogamous family under the slavery and feudal modes of production. However, capitalism has perpetuated and strengthened such oppression and exploitation.. Under capitalism work is categorized into various segments including paid and unpaid work; formal and informal work and full time permanent work viz temporary part time work. Women tend to suffer the worst effects of such categorisation, suffering from vertical and horizontal segregation as well as double oppression and exploitation. Certain jobs are feminized with women disproportionately located at the lower end of the job ladder or in atypical kinds of jobs such as part-time, casual, contract work and home-work. These types of jobs have the least pay, job security and benefits especially social security in the event of inability to work such as pregnancy, age, permanent disability or death. There is a glass ceiling of management jobs or special skilled jobs beyond which women hardly break through. Work in the paid formal sector especially permanent full time work is dominated by men whilst women overwhelmingly predominate in the unpaid or under-paid areas with the least if any social security such as: temporary, part-time and atypical work, domestic work in the family house-hold including care of children, the elderly, the infirm and other domestic needs of human beings; work in the rural subsistent economy and informal sectors. Women in the formal sector further suffer continuous sexual harassment by bosses and sometimes fellow workers. The work done in these areas is critical for society and individual workers and is in fact used to subsidise the wages paid all workers in the formal sector driving them down below their real worth. Yet divisions between males and female workers fundamentally weakens the working classes in their struggle for a just and equitable process of work, for after all women now constitute over half of the populations in all countries in the region. Thus not surprisingly capitalism and employers place all sorts of obstacles in the way of women fully and equally participating in paid social work. However centuries of struggle by women and workers have won important rights in international laws and national constitutions for women to equally and fully participate in the process of work including protection from discrimination and sexual harassment, affirmative action

provisions, broad provision of social security, recognition of domestic and informal work and socialization of child- domestic care to free women from the burden and drudgery of family domestic work.

There are various international human rights laws that provide for the advancement of women in the process of work:

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides various pertinent provisions:
 - ♦ Art. 2 obliges states to “condemn discrimination against women in all its forms (and) to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
 - ✓ To embody the principle of the equality of men and women in their national constitutions or other appropriate national constitutions ... and to ensure through law and other appropriate means, the practical realization of this principle;
 - ✓ To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
 - ✓ To establish competent national tribunals and other public institutions to achieve the effective protection of women against discrimination;
 - ✓ To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
 - ✓ To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
 - ♦ Art. 11 (2) calls for the elimination of discrimination against women in the field of employment in particular in the following areas: employment opportunities including training; choice of profession and employment; promotion, job security, benefits and conditions of employment including remuneration; to social security particularly in cases of retirement, unemployment, sickness, invalidity and old age, paid leave and health and safety in the workplace.
 - ♦ Art 13 obliges states to “take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights” including rights to family benefits, to bank loans, financial credit and to participate in recreational and cultural life.
 - ♦ Art 14 obliges states to take into account the “significant roles which rural women play in the economic survival of their families, including their work in the non-monetised sectors of the economy” and to “take all appropriate measures to eliminate discrimination against women in the rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development” including participation in the planning and implementation of development programmes; have access to adequate health care facilities and to benefit directly from social security programmes.
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides:
 - ♦ Art 2 obliges states to eliminate all forms of discrimination against women and is modeled on Art 2 of CEDAW.
 - ♦ Art 12 obliges states to “guarantee equal opportunity and access in the sphere of education and training” and in particular to “promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology.”
 - ♦ Art 13 provides a duty on states to “adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities,” in particular to –
 - ✓ Promote equality of access to employment;
 - ✓ Promote the right to equal remuneration for jobs of equal value for women and men;
 - ✓ Recognize and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;
 - ✓ Guarantee adequate and paid pre and post-natal maternity leave in both the private and public sectors;
 - ✓ Ensure the equal application of taxation laws to women and men;
 - ✓ Ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;

- ✓ Guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognized by conventions and laws;
- ✓ Create conditions to promote and support the occupations and economic activities of women, in particular within the informal sector;
- ✓ Establish a system of protection and social insurance for women working in the informal sector and sensitize them to adhere to it;
- ✓ Take the necessary measures to recognize the economic value of the work of women in the home;
- ✓ To take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.
- ♦ Art 19 provides a duty on states to ensure women "shall have the right to fully enjoy their right to sustainable development" including by taking measures to -
 - ✓ Introduce the gender perspective in national development planning;
 - ✓ Ensure participation of women at all levels in the conceptualization, decision-making, implementation and evaluation of development policies and programmes;
 - ✓ Promote women's access to and control over productive resources such as land and guarantee their right to property;
 - ✓ Promote women's access to credit, training and extension services at rural and urban levels;
 - ✓ Ensure that the negative effects of globalization and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.
- The SADC Declaration on Gender and Development, 1999 resolves to "ensure the eradication of all gender inequalities in the region" including by –
 - ♦ Ensuring the equal representation of women and men in the decision-making of member states and SADC structures at all levels, and the achievement of at least thirty percent target of women in political and decision-making structures by year 2005;
 - ♦ Promoting women's full access to, and control over productive resources such as land, livestock, markets, credit, modern technology, formal employment, and a good quality of life.
 - ♦ Repealing and reforming all laws, amending constitutions and changing social practices which still subject women to discrimination, and enacting empowering gender-sensitive laws;
 - ♦ Enhancing access to quality education by women and men, and removing gender stereotyping in the curriculum, career choices and professions.
 - ✓ See also: African Union Solemn Declaration on Gender Equality in Africa.

National Constitutions and Zimbabwean Constitutional Documents

The right of measures to advance and protect the role of women outlined above is recognized to varying degrees in national constitutions and Zimbabwean constitutional documents:

- The Constitution of South Africa Section 27 provides that "Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social security;" and Section 29 provides for the right "to a basic education, including basic education." Art. 35 (5) Ethiopia Constitution provides for a right to maternity and paternity leave with full pay.
- The Constitution of Venezuela has the broadest realization of gender rights in the process of work of any national constitution including the following provisions:
 - ♦ Art 88 – The State guarantees the equality and equitable treatment of men and women in the exercise of the right to work. The state recognizes work at home as an economic activity that creates added value and produces social welfare and wealth. Housewives are entitled to Social Security in accordance with the law.
 - ♦ Art 87 – All persons have the right to work and duty to work... Measures tending to guarantee the exercise of the labour rights of self employed persons shall be adopted by law.
 - ♦ Art 86 – All persons are entitled to Social Security as a non-profit public service to guarantee health and protection in contingencies of maternity, fatherhood, illness, invalidity, catastrophic illness, disability, special needs, occupational risks, loss of employment, unemployment, old age, widowhood, loss of parents, housing, burdens deriving from family life, and any other social welfare circumstances. The State has the obligation and responsibility of ensuring the efficacy of this right, creating a universal and complete Social Security

system, with joint, unitary, efficient and participatory financing from direct and indirect contributions. The lack of ability to contribute shall not be ground for excluding persons from protection by the system. Social Security financial resources shall not be used for other purposes.

In Zimbabwe the following applies:

- ♦ The Constitution of Zimbabwe Section 23 as amended by Constitution of Zimbabwe Amendment (No 17) Act, 2005 provides: in section 23 (3) (g) that the implementation of affirmative action programmes for the protection or advancement of persons or classes of persons who have been previously disadvantaged by unfair discrimination shall not be unfair discrimination; and in section 23 (3a) that in the implementation of any programme of land reform the Government shall treat men and women on an equal basis with respect to the allocation or distribution of land or any right or interest therein under that programme.
- ♦ The NCA Draft Constitution provides –
 - ✓ In Section 28 that men and women “are entitled to equal remuneration for work of equal value and that women “workers are entitled to fully paid maternity leave.”
 - ✓ In Section 41 that every “woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities” and that women “have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.”
- ♦ The Peoples Charter provides in Art 4 –
 - ✓ Measures to ensure gender equality in the workplace, including equal pay for work of equal worth, full and paid maternity and paternity leave.
 - ✓ A living pension and social security allowances for all retirees, elderly, disabled, orphans, unemployed and ex-combatants and ex-detainees.
- ♦ The Kariba Draft Constitution and Constitutional Review Commission Draft provides –
 - ✓ In Art 25 (2) an obligation on the state to endeavor to secure a legally non-enforceable “national objective” of: full employment and the removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities; equitable opportunity for promotion; maternity leave; and the implementation of measures such as family care that enable women to enjoy a real opportunity to work.
 - ✓ In Art 21 a national objective obligation is placed on the state to ensure gender balance and equity through –
 - ☐ gender balance and a fair representation of marginalised groups on all constitutional and other governmental bodies.
 - ☐ The promotion of the full participation of women in all spheres of Zimbabwean society on the basis of equality with men.
 - ☐ The taking of all practical measures to ensure that women have access to land and other resources on the basis of equality with men.
 - ✓ In Art 43 a legally enforceable right to affirmative action to protect or advance people or classes of people who have been disadvantaged by unfair discrimination.

Right to social security and social welfare

Work provides the means through which most individuals are able to satisfy their economic and social needs and those of their dependants. However there are various circumstances when contingencies may interrupt the ability of an individual to work, temporarily or permanently and therefore be unable to meet their normal needs. Such circumstances include loss of work, unemployment, maternity, fatherhood, illness, invalidity, disability, old age and burdens deriving from family life. The right to just and favourable conditions of work therefore includes the right to social security to cover such contingencies.

The right is provided in various international instruments and national constitutions, including:

- The UDHR Art 22 provides that “Everyone, as a member of society, has the right to social security” and more particularly
 - ♦ Art 25 provides that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of

livelihood in circumstances beyond his control. Further that motherhood and childhood are entitled to special care and assistance.

- ♦ Art 23 (1) provides that everyone has the right to work "and to protection from unemployment."
- The ICESCR Art 9 provides for "the right of everyone to social security, including social insurance" whilst Art 10 stipulates that "special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits."
- The Venezuela Constitution Art 86 (quoted above) provides the widest national constitutional cover of social security.
- The Constitution of South Africa Section 27 provides for the right of everyone to "access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance" but subject to the resources available to the state.

In Zimbabwe the following apply –

- ♦ The Chidyaisiku Draft Constitution and the Kariba Draft Constitution in Art 31 provides a national objective obligation on the state to "take all practical measures, within the limits of the resources available to it, to provide social security and social care to those who are in need of it, in particular war veterans..."
- ♦ The Peoples Charter Art 4 provides for the right to "a living pension and social security allowances for all retirees, the elderly, disabled, orphans, unemployed and ex-combatants and ex-detainees;" to "adequate state and employer funded compensation for injury or death from accidents at work; and to "full and paid maternity and paternity leave."
- ♦ The NCA Draft Constitution provides somewhat lesser rights, providing: in Art 28 women workers to "fully paid maternity leave"; to special measures for the disabled to live with their families and access medical or functional treatment under Art 42; and to "reasonable social benefits" for all persons who took part in the liberation struggle, "including ex-detainees, chimbwidos and mujibhas."

Right to protection from unfair dismissal

If work is fundamental to the existence of human beings then it is essential that the right to just and favourable conditions of work applies not only to the subsistence of the work relationship but also its termination. Hence a major demand of the working class over time has been to regulate the power of the employer class to terminate the employment relationship arbitrarily and unilaterally. This has found expression in the right to protection from unfair dismissal and that all terminations of employment at the initiative of the employer should be substantively and procedurally fair.

This right is recognized in a number of international labour instruments and progressive national constitutions including some Zimbabwean constitutional documents.

- ILO Convention on the Termination of Employment at the Initiative of the Employer, 1982 (C 158) and ILO Recommendation on the Termination of Employment at the Initiative of the Employer, 1982 (R 166) provide the essential elements of such right, namely:
 - ♦ All dismissals must be substantively and procedurally valid, with a valid reason given for the dismissal "connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."
 - ♦ Certain reasons are inherently invalid or automatically unfair including reasons connected to: the worker's union membership or participation in union activities when outside working hours; the worker having acted in his or her capacity as a workers' representatives; the worker lawfully filing of a complaint against an employer; the worker being absent from work during maternity leave and the race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin of the worker.
 - ♦ There is procedural fairness, whereby an employee is given a fair opportunity to defend themselves before any dismissal.
 - ♦ There are effective remedies for unfair dismissal including making reinstatement the primary and principal remedy for unfair dismissal unless the employee no longer wishes for this.
 - ♦ There is protection of short-term casual workers from continuous and repeated contracts or avoidance of labour laws.

- The Constitution of Venezuela provides for the right stating –
 - ♦ Art 92 provides - "All workers have the right to benefits to compensate them for length of service and protect them in the event of dismissal."
 - ♦ Art 93 provides – Stable employment shall be guaranteed by law, with provisions as appropriate to restrict any form of unjustifiable dismissal. Dismissals contrary to this Constitution are null and void."
 - ♦ Art 94 states – "The liability of the natural or juridical person for whose benefit services are provided through an intermediary or contractor shall be determined by law, without prejudice to the job and severance liability of the latter. The State shall establish ... the liability to which employers in general are subject in the event of simulation or fraud for the purposes of distorting, disregarding or impeding the application of labour legislation."
- For other national constitutional documents see: Art. 89 (3) Constitution of Mozambique; and Section 4, Zimbabwe Peoples Charter, which provides for the right to "protection from unfair dismissal."

Right to protection from slavery, forced labour and servitude

The right to work includes the right to free choice of employment and not to be subjected to slavery, forced labour and servitude. This is a fundamental human right that is recognized in all international human rights instruments and Zimbabwean constitutional documents, including:

- Art 3 Universal Declaration on Human Rights and Art. 3 African Charter.
- Section 14, Zimbabwe Constitution.
- Section 40 of the Kariba Draft Constitution.
- Section 18 of the NCA Draft Constitution.

Right to trade organize, trade unionism and collective bargaining

Communist revolutionary leader, Karl Marx long pointed out that the emancipation of the working class will be an act of the class itself. To successfully resist oppression and exploitation the working class needs to organize and build collective organs of resistance. The right to organize, in particular the right to form trade unions, is therefore one of the most important rights of labour, which the capitalists have been forced to, concede to through centuries of struggle. Invariably linked to the right to trade unionism is the right to collective bargaining.

The right is recognized in various international laws.

- UDHR Art 23 (4) provides that – "Everyone has the right to form and to join trade unions for the protection of his/her interests."
- The ICESCR Art 8; ILO Protection of the Right to Organise Convention, 1948 (No. 87) and ILO Right to Organise and Collective Bargaining Convention, 1948 (No. 98) provide fuller details of the right to trade unionism including:
 - ♦ The right of workers to form and/or join trade unions of their choice subject only to the rules of the organisation concerned. No restrictions may be placed on this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.
 - ♦ The right of trade unions to form national federations and international trade union organisations.
 - ♦ The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.
 - ♦ Excerptions are provided whereby lawful restrictions may be placed on the exercise of these rights on "members of the armed forces or of the police or of the administration of the State."

The right to trade unionism and collective bargaining is recognized in some national constitutions and Zimbabwean constitutional documents including: Art. 40 (3) Constitution of Uganda; Art. 42 Constitution of Ethiopia; and:-

- Section 23 of the South African Constitution providing –

- (2) Every worker has the right –
 - (a) to form and join a trade union;
 - (b) to participate in the activities and programmes of a trade union; and
 - (c) to strike.
 - (3) Every employer has the right –
 - (a) to form and join an employer's organization;
 - (b) to participate in the activities and programmes of an employer's organization.
 - (4) Every trade union and every employers' organization has the right-
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
 - (5) Every trade union, employer's organization and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1).
 - (6) National legislation may recognize union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1)."
- The Constitution of Venezuela also provides for an extensive right to trade unionism in various provisions including –
 - ♦ Art 95: Workers without any distinction of any kind and without need for authorization in advance, have the right freely to establish such union organizations as they may deem appropriate for the optimum protection of their rights and interests, as well as the right to join or not join the same, in accordance with law. These organizations are not subject to administrative dissolution, suspension or intervention. Workers are protected against any act of discrimination or interference contrary to the exercise of this right. The promoters and the members of the board of directors of the union enjoy immunity from dismissal from their employment for the period and on the terms required to enable them to carry out their functions. For purposes of the exercise of union democracy, the by-laws and regulations of union organizations, shall provide for the replacement of boards of directors and representatives by universal, direct and secret suffrage. Any union leaders and representatives who abuse the benefits deriving from union freedom for their personal gain or benefit shall be punished in accordance with law. Members of boards of directors of union organizations shall be required to file a sworn statement of asserts.
 - ♦ Art 96: All employees in both public and the private sector have the right to voluntary collective bargaining and to enter into collective bargaining agreements, subject only to such restrictions as may be established by law. The State guarantees this process, and shall establish appropriate provisions to encourage collective bargaining and the resolution of labour conflicts. Collective bargaining agreements cover all workers who are active as of the time they are signed, and those hired thereafter.
- In Zimbabwe the right is provided in the following constitutional documents:
 - ♦ The Kariba Draft Constitution Section 47 provides an enforceable right to form trade unions and participate in their activities as part of the freedom of assembly and association and modeled on section 21 of the current Constitution of Zimbabwe.
 - √ Section 25 provides a duty on the state to endeavor to secure the national objective of "the rights of employers and employees to engage in collective bargaining ad, where necessary, to engage in appropriate collective job action to enforce their rights."
 - ♦ The NCA Draft Constitution Section 28 provides that -
 - √ "Every person has the right to form and join trade unions or employers associations of their choice."
 - √ "Every trade union, employer's organization and employer has the right to engage in collective bargaining."
 - ♦ The Labour Act [Chapter 28:01] section 35 provides an important right to the rank and file member sof the trade unions to ensure union democracy, namely the requirement that the constitution of every registered trade union must include provisions requiring consultation between the various governing bodies or branches of the trade union before such trade union *inter alia* - (i) enters upon a collective bargaining agreement; or (ii) recommends collective job action.

Right to strike

The ultimate weapon of workers to advance and protect their rights and to force employers, capitalists and their state to concede reforms beneficial to the working class or to defend themselves from attacks from such class enemies, is their ability to collectively withhold their labour or to strike. The right to strike is an essential component of the right to trade unionism and collective bargaining. As observed by labour law historian Kahn-Freund, "if the workers could not, in the last resort, collectively refuse to work, they could not bargain collectively. The power of management to shut down the plant (which is inherent in the right of property) would not be matched by a corresponding power on the side of labour. There can be no equilibrium without a freedom to strike." Finally strikes potentially play a key function in developing proletarian consciousness in the working class. As observed by Bolshevik revolutionary leader V I Lenin – "A strike opens the eyes of the workers to the nature not only of the capitalist but of the government and laws as well. Just as factory owners try to pose as benefactors of workers, the government officials ... try to assure the workers that the government is equally solicitous of both the factory owners and the workers as justice requires. Then comes a strike. The public prosecutor, the factory inspector, the police and frequently the troops appear at the factory. The workers learn they have violated the law."

The right to strike is provided under some international laws and national constitutions to varying degrees:

- The ICESCR, Art 8 (4) provides that everyone has the right to strike, "provided that it is exercised in conformity with the laws of the particular country."
- The Constitution of South African, Section 23 (2) (c) stipulates the broadest right to strike with the least restrictions, explicitly and unconditionally stating – "Every worker has the right to strike."
- For other national constitutions see: Art. 42 (1) Constitution of Ethiopia; Section 31 (4) Constitution of Malawi; Art. 40 (3) Constitution of Uganda; Art. 91, Constitution of Mozambique; and Art. 97, Constitution of Venezuela.
- In Zimbabwe constitutional documents provide as follows:
 - ♦ The NCA Draft Constitution Section 28 (3) provides an explicit and unconditional right to strike providing – "Every worker has the right to strike, sit-in or stayaway, or such other concerted action."
 - ♦ The Kariba Draft Constitution Section 25 (2) (f) (quoted above) provides a duty on the state to endeavour to secure a non-enforceable national objective of the right to collective job action.

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This special issue of the Kempton Makamure Labour Journal is a joint effort of the **Zimbabwe Labour Centre** and the **Kempton Makamure Labour Lecture Series Board**. Its focus is on constitutional reform from a working people's perspective. It is based on presentations made at the **Conference on Constitutional Reform in Zimbabwe and Labour, Gender and Socio-Economic Rights** jointly hosted by the two organisations on 30th October 2008 and supported by the **Rosa Luxemburg Foundation**.

The need for constitutional reform in Zimbabwe could not be more urgent. At the end of 2008 the country stands at the climax of an unprecedented political and economic crisis that has been festering for the last decade. As the crisis climaxes consensus has emerged amongst all key sectors of society that central to any effective long term resolution of the crisis is the need for a new legitimate constitutional framework. Yet past experience from Zimbabwe and across Africa shows that unless there is sustained mobilization and intervention by working people and their movements, the elites of society, in business, politics and civic society, will impose constitutions that prioritise their own economic and political interests at the expense of those of the working people, the majority of society. Hence denied and trampled upon are provisions providing for full economic democracy that subordinate private property to the public and social needs of the ordinary people and denial of effective and legally enforceable socio-economic, labour and gender rights in the constitution. Already the three main political parties under the GPA, have agreed to try and impose on society an elitist and political party driven constitutional reform process based on a draft neoliberal constitution, the so-called Kariba Draft, which excludes provisions of economic democracy and socio-economic, labour and gender rights.

The central objective of this special issue of the journal as with the conference is to marshal well-researched theoretical positions that support the demands of working people and the poor, for their demands on economic democracy including socio-economic justice and labour and gender rights to be an integral part of any new constitutional dispensation in Zimbabwe.

The journal attempts to do so by consolidating the intellectual and academic outputs from struggles for progressive constitutional reform from our region and from the Global South, especially from South Africa, Venezuela and Bolivia, all countries where struggles against neoliberalism and dictatorship have gone the furthest in the last two decades. We also draw from the progressive outputs of our own struggles in Zimbabwe, principally as reflected in the NCA Draft Constitution and the Zimbabwe Peoples Charter. We hope the journal will act as an important theoretical and advocacy tool, for the working people's movements in the struggle for a true people-driven constitution.



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