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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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Socio-Economic Rights under International and Zimbabwean Laws

By Frank Hwenhira, Edzai Edson Matika and Admire Chikwayi¹

Introduction: Political economy of socio-economic rights

Socio-economic rights fall into the category of rights, which is known as the second generation of rights, the first generation being that of the civil and political rights. These are the rights that the state has to fulfill. They require positive action, forward planning and the expenditure of resources on the part of the state to make their enjoyment a reality. Socio-economic rights are incapable of immediate application. They cannot simply be enforced through the courts of law in the same manner as civil and political rights. Article 2 of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the ICESCR) even obliges state parties to take reasonable steps to ensure the enjoyment of such rights, "including particularly the adoption of legislative measures."

All human rights are universal, indivisible and interdependent. The international community must treat all human rights globally in a fair and equal manner on the same footing and with the same emphasis.¹ It seems though that the international community has subdivided the rights into categories that depend on the status of the rights. The people have also been made to believe that there are certain rights that are more superior to others. The Vienna Declaration of Programme of Action clearly recognizes the interrelationship and the interdependence of civil and political rights and the socio-economic rights. Notwithstanding this interaction, there have been divisions over the status of socio-economic rights. Civil and political rights are believed to be more superior to socio-economic rights since they are said to form the basis for the protection of all other human rights.²

The assumption of the superiority of civil and political rights to the socio-economic rights has led to gross violations and neglect of the socio-economic rights.³ It has been noted that the community seems to blame local authorities and other officials for deaths due to hunger or thirst or diseases or for arbitrary evictions but no one imputes liability for such on the state. The same assumption has also led to the exclusion of socio-economic rights from various constitutions in the world. The belief underlying the exclusion of the said rights in many constitutions the world over is that such rights are not justiciable - in other words, they are not enforceable in the courts. Under civil and political rights, the state is required to abstain from certain activities yet under socio-economic rights the state is required to take certain positive measures to ensure the enjoyment of the socio-economic rights. There is need for the expenditure of resources under socio-economic rights. The fulfillment of socio-economic rights depends on the "available resources" and they are realized "progressively" and that is the main reason why states do not classify them as rights. In the Zimbabwean scenario, the rejected Constitutional Commission Draft Constitution of 2000,⁴ and the Kariba Draft Constitution⁵ classify the socio-economic rights as "national objectives" and not as "fundamental human rights".

Be that as it may, socio-economic rights are also human rights. There is no right, which is more fundamental than the other since there is no human being that is more human than the other. To ensure the enjoyment of socio-economic rights, there is also need on the part of the state to desist from certain acts such as the arbitrary evictions of citizens. For example during Operation *Murambatsvina* the government simply rendered hundreds of thousands of people homeless in violation of their right to housing and their right to health.

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² Vienna Declaration and Programme of Action (New York: UN Dept of Public Information 1993). See also Art. 13 (1) of the Constitution of Bolivia.

³ Leckie S, *Another Step Towards Indivisibility: Identifying the key features of the Violation of Economic, Social and Cultural Rights*, (1998) p.82

⁴ Ibid p.82

⁵ Departmental Draft Constitution rejected in the 2000 Referendum (also known as the Chidyausiku Constitution)

⁶ Annexure B to the Power Sharing Agreement of 15 September 2008

⁷ S.16 of the Constitution of Zimbabwe (Lancaster House Constitution)

⁸ General Comment NO.3 (1990) on the Nature of the States Obligation (Art 2(1) of the Covenant). Paras 3 & 7. Report of the Committee on Economic, Social and Cultural Rights, UN doc E/1991/23, pp83-87

In Zimbabwe one cannot talk of a claim or an entitlement being a right unless it is enshrined in law. Under the current constitution there is only one socio-economic right that is fully provided for, i.e. the right to property,⁶ though it only protects those who are property-full and not empowering those without property or wealth. Article 2(1) of the ICESCR provides that the state must adopt all "appropriate means, including particularly the adoption of legislative measures" with a view to achieving progressively the rights provided for in the Covenant. These other means include financial, administrative, and educational as well as social measures⁷. The state has tried to implement these provisions but to no avail. This can be evidenced by the state promulgating a number of legislation in line with the socio-economic rights. Some of the promulgated legislation includes the Education Act [Chapter 25:04], the Public Health Act [Chapter 15:09], National Social Security Act and the Housing and Building Act [Chapter 22:07] among many other enactments. These Acts however do not provide for adequate protection of socio-economic rights in the same manner in which a constitution does. There are also other measures which the state has tried to implement in an attempt to enforce socio-economic rights, for example the formulation of the Infrastructure Development Bank, Agricultural Development Bank of Zimbabwe, Operation Maguta, the Basic Commodities Supply-Side Intervention (BACOSI) and such other projects yet they are open to great abuses especially the mismanagement of funds and the politicization of all these programs.

There is no doubt that in Zimbabwe we do not have socio-economic rights. Some post-colonial constitutions do have socio-economic rights as part of their bill of rights notably the South African constitution (1996) and more recently the anti-neoliberal constitutions coming out of Latin America, Venezuela (1999) and Bolivia (2009). Other African examples, though of lesser impact, include: Namibia, (1990); Mozambique, (1990); Malawi, (1994); Ethiopia, (1995); and Uganda, (1995). There is also need to explore the states obligations and duties under international human rights law in respect of the economic, social and cultural rights. These can be found in treaties, conventions, declarations, and covenants and in various bi-lateral or multilateral agreements internationally. Under international law states are chief promoters, protectors and upholders of human rights. The United Nations member states have got the duties to promote, respect, protect and fulfill human rights.⁸The United Nations Charter in setting out the purposes of the United Nations states the duties of states as including, *inter alia*: "promoting and encouraging respect for human rights and for the fundamental freedoms for al."

The duty to respect entails that the state must refrain from interfering with the enjoyment of all fundamental human rights. The duty to protect means the state must ensure through deliberate positive action that human rights are not infringed or abused even by private individuals who are not state agents such as companies, banks, hospitals or trade unions. The duty to fulfill requires the state to undertake steps or measures with a view to achieving the full realization of the rights. The failure by the state to perform any one of the obligations of duties mentioned above amounts to a violation of the rights. It is also expected that the state should not allow, nor should it create a situation where there is retrogression in the enjoyment of human rights.

Zimbabwe has grossly violated socio-economic rights in every respect particularly its obligations under the key international human rights instruments. Zimbabwe is a signatory and has ratified the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Discrimination against Women; Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; the SADC Declaration on Gender and Development; Convention on the Rights of the Child; African Charter on Human and People's Right and African Charter on the Rights and Welfare of the African Child among many other international, continental and regional agreements. However, because of outmoded constitutional provisions, the ratification of these instruments does not automatically give them the status of law on the domestic arena as is the case in progressive constitutions like those of South Africa and Venezuela.

The status of international law in Zimbabwean law is set out in s.111B of the Constitution which states that any convention, treaty or agreement acceded to, concluded or executed by or under the authority of the President, shall be subject to approval by the Parliament and shall not form part of the law of Zimbabwe unless it has been incorporated into law by an Act of Parliament. Socio-economic rights are recognized internationally, and such countries like Venezuela, Namibia and the Republic of South Africa have entrenched socio-economic rights in their Bills of Rights. These countries are said to have the most progressive constitutions in the world and one of the reasons is the provision relating to social, economic and cultural rights.

Socio-economic rights in Zimbabwe must also be provided for in the Bill of Rights as fundamental human rights. Below we highlight some of the most important socio-economic rights recognized under international human rights laws and their expression in national constitutions and the Zimbabwean arena.

⁶Article 1(3) of the United Nations Charter

The right to education

This is the perfect right for it can potentially empower the lower classes to extricate themselves from the cycle and circle of poverty. Historically education has been the primary vehicle by which economically and socially marginalized groups have been able to lift themselves from poverty and obtain the means to participate in their communities. Education is the basis needed by a human being to develop his or her personality.⁹ The deprivation of this right from the masses means that they will always remain of the lower oppressed and exploited classes, to the benefit of the exploiting bourgeois ruling classes. Thus the elites do not allow the exercise of this right to the fullest because of the fear that their class might end up being undermined and overtaken.

International and regional laws and comparative national constitutions

The right is provided for in a number of international laws and progressive national constitutions:

- One of the most important sources is the ICESCR, Articles 13 and 14. These provide that education must be both economically and equally accessible to all. The right to education encompasses *inter alia* the availability of schools and the physical and economic accessibility of schools. The Covenant states that with a view to achieving the full realization of this right, primary education shall be compulsory and available free to all whilst secondary education shall be generally available and accessible to all by every appropriate means and that higher or tertiary education shall be made progressively accessible to all on the basis of capacity.¹⁰
- Articles 28 and 29 of the Convention on the Rights of the Child provide for the right.
- Regionally the right is enshrined in Article 11(1) of the African Charter on the Rights of the African Child, which provides: *"every child shall have the right to education."* Article 11(3)(d) of the Charter states that the state must *"take measures to encourage attendance at schools and the reduction of drop-out rates."* The right to education is also provided for in Article 12 of the Protocol of the African Charter on Human and People's Rights on the Rights of Women in Africa.
- In relation to comparative national constitutions, the right to education is provided in:
 - ◆ Art. 30, Uganda Constitution; Section 25 Malawi Constitution; Arts. 52 & 92 Mozambique Constitution; Section 29 of the Constitution of South Africa which provides that "Everyone has the right – (a) to a basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible."
 - ◆ Articles 81, 82 and 92 of the Constitution of Bolivia provide for free state funded primary and secondary education and for the right to academic freedom for colleges and universities.
 - ◆ The Constitution of Venezuela provides for a much more extensive and deeper right to education in Articles 102 to 110, including:

Article 102: Education is a human right and a fundamental social duty; it is democratic, free of charge and obligatory. The State assumes responsibility for it as an irrevocable function of the greatest interest, at all levels and in all modes, as an instrument of scientific, humanistic and technical knowledge at the service of society. Education, is a public service, and is grounded on the respect for all currents of thought, to the end of developing the creative potential of every human being and the full exercise of his or her personality in a democratic society based on the work ethic value and on active, conscious and joint participation in the processes of social transformation embodied in the values which are part of the national identity, and with a Latin American and universal vision. The State, with the participation of families and society, promotes the process of civic education in accordance with the principles contained in this Constitution and in the laws.

Article 103: Every person has the right to a full, high-quality, ongoing education under conditions and circumstances of equality, subject only to such limitations as derive from such person's own aptitudes, vocation and aspirations. Education is obligatory at all levels from maternal to the diversified secondary level. Education offered at State institutions is free of charge up to the undergraduate university level. To this end, the State shall make a priority investment in accordance with United Nations recommendations. The State shall create and sustain institutions and services sufficiently equipped to ensure the admission process, ongoing education and program completion

⁹Article 13(1) of the ICESCR

¹⁰Article 13 (2)(a), (b), & (c) of the ICESCR.

in the education system. The law shall guarantee equal attention to persons with special needs or disabilities, and to those who have been deprived of liberty or do not meet the basic conditions for admission to and continuing enrollment in the education system.

Article 104: Persons of recognized good moral character and proven academic qualifications shall be placed in charge of education. The State shall encourage them to remain continuously up to date, and shall guarantee stability in the practice of the teaching profession, whether in public or private institutions, in accordance with this Constitution and the law, with working conditions and a standard of living commensurate with the importance of their mission.

Article 107: Environmental education is obligatory in the various levels and modes of the education system... Spanish, Venezuelan geography and history and the principles of the Bolivarian thought shall be compulsory courses at public and private institutions...

Article 108: The communications media, public and private, shall contribute to civil education. The State guarantees public radio and television services and library and computer networks, with a view to permitting universal access to information.

Article 109: The State shall recognize the autonomy of universities as a principle and status that allows teachers, students and graduates from its community, to devote themselves to the search for knowledge through research in the fields of science, humanistic and technology, for the spiritual and material benefit of the Nation... Autonomy of universities is established in the planning, organization, preparation and updating of research, teaching and extension programs. The inviolability of the university campus is established...

Zimbabwean Laws and Constitutional Norms

Zimbabwe has failed in respect of providing constitutional and practical guarantees to the right to education. At best it is to be found in legislation, particularly in section 4 of the Education Act, which provides - "notwithstanding anything to the contrary contained in any other enactment, but subject to this Act, every child in Zimbabwe shall have the right to school education." Section 6 provides for minimum fees, grants and subsidies. The state has however in practice failed to do directed in the Act including failing to pay teachers adequate remuneration, so it remains a right on paper but useless in reality. Education is now for the elite following the introduction of the payment of fees in foreign currency. This has seen massive dropouts since many cannot afford the fees being demanded for. There is absolutely no free education at any level in Zimbabwe whilst schools in the rural areas are not even physically accessible.

However, the right to education has been provided in some draft constitutional documents:

- Article 36 of the National Constitutional Assembly Draft Constitution (NCA Draft) provides – " Every person has a right to state funded education from pre-school to tertiary level."
- Article 4 of the Zimbabwe People's Charter provides for the right to "Free and quality public education from crèche to college and university levels."¹¹
- The Kariba Draft Constitution does not provide for a legally enforceable right to education but provides under Article 28 for a non-enforceable "national objective" obligation on the state to:

"take all practical measures to promote free and compulsory basic education for children" and ... to "take appropriate measures, within the resources available to it to-
(a) afford adults access to basic and continuing education; and
(b) afford equitable access to higher education."

⁹Article 13(1) of the ICESCR

¹⁰Article 13 (2)(a), (b), & (c) of the ICESCR.

Thus Zimbabwe has failed to deliver the demanded quality education, with currently long strikes by teachers and lecturers due to low if not starvation wages and virtual absence of any real state funding of schools, colleges and universities. The inclusive government has promised to deliver much in terms of this right: "Education is a priority of this government and I commend the work already undertaken by the relevant ministries in these sectors to get an understanding of what is required and set about finding resources and implementing policies that are both practical and viable."¹² However, its sincerity is questionable when one recognizes that it failed to provide for such right in its Kariba Draft Constitution whilst its economic programme, STERP, is based on neoliberal and free-market policies hostile to the realization of such right.

The right to human rights education

This right is closely linked to the right to education. There is no way in which one can demand that which she or he does not know. The knowledge of human rights is the pre-requisite for an individual and groups so that they can reasonably expect and demand respect of their human rights. It is provided for in a number of international instruments and progressive national constitutions:

- Article 13(1) of the ICESCR states that education shall be directed to *“strengthen the respect of human rights and fundamental freedoms.”*
- The right is also provided in: Article 26(2) of the Universal Declaration of Human Rights (UDHR); Article 7 of CEDAW; Article 29(1) of the Convention on the Rights of the Child (CRC).
- Article 25 the ACHPR establishes the duty of the states *“to promote and ensure through teaching the respect of rights and freedoms contained in the Charter.”*
- Article 3 of the Constitution of Venezuela recognizes the right wherein it states that education is the key to the guaranteeing the right and the objectives set out in the constitution. See also Art. 17 of the Constitution of Bolivia.

Under the Zimbabwean law and norms there is no right to human rights education provided for either in the constitution or in any legislation. Various organizations that try to teach on the subject of human rights are subject to scrutiny by the government or even being accused of trying to overthrow the government in power. In the subject of socio-economic rights, the majority do not even know that they are rights which must be granted unto them simply because they are human. They are led to believe that these are mere entitlements or privileges or favours that are granted to them by the state or the ruling party, ZANU PF.

The right to adequate food, water and basic utilities

The right to food can be generally defined as freedom from hunger and starvation. This right however means more than that. The right to adequate food means that every man, woman and child, alone and in community with others must have physical and economic access at all times to adequate food consistent with human dignity. The right is also defined as *“easy accessibility and availability of food and the means of its procurement.”*¹³ This means availability of food in quality and quantity, which is sufficient to satisfy the dietary needs of an individual. Some of the elements of the right to food are access to adequate food and the accessed food must be adequate in terms of quantity and quality. Access to food has been defined in terms of intake of nutrients, calories and proteins. Hunger and malnutrition (lacking quantity of food intake) are the consequences of food deprivation.

International and Regional Laws and Comparative National Constitutions

The right to food security is recognized in a number of international and regional laws as well as some progressive national constitutions. Some of the important ones include:

- Article 11 of the ICESCR whereby state parties are obliged to ensure that their citizens are free from hunger and to recognize *“the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions,”* and to ensure the improvement in food production, conservation and distribution. See also Article 25 UDHR.
- Article 24(2) of CRC obliges state parties to *“combat diseases and malnutrition including within the framework of primary health care, through inter alia, the application of readily available technology and through the provision of “adequate nutritious food and clean drinking water”* taking into consideration the dangers and risks of environmental pollution.”
 - ♦ The Additional Protocol to the Geneva Conventions and Relating to the Protection of Victims of International or Non –international Armed Conflict states that the starvation of civilians as a means of warfare is prohibited.¹⁴ There is also the prohibition of the attack, destruction, removal, or rendering useless objects indispensable to the survival of the civilian population such as foodstuffs, drinking water installation and supplies and

¹³Committee on the Economic, Social and Cultural Rights; General Comment No. 12 of 1999

¹⁴Article 54(1) of the Additional Protocol.

¹⁵Ibid Article 54 (2)

irrigation works for specific purposes of denying them for their sustenance value to the civilian population or to the adverse party, whatever motive, whether in order to starve out civilians, to cause them to move away or other motive.¹⁵

- Section 27 of the Constitution of South Africa provides that "Everyone has the right to have access to - ... sufficient food and water" and that the "state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights."
- Article 20 of the Constitution of Bolivia provides for the right to universal and equal access to basic human services including water, electricity, heat energy and telecommunications services and that it is the duty of the state to provide such rights and that water shall not be privatized. The constitution provides for the right of everyone to an intergrated, affordable and accessible public transport system.

Zimbabwean Laws and Constitutional Norms

In the Zimbabwean context, the right has no constitutional guarantee, although various enactments have been promulgated which have provisions relating to the right to food. These include: the Food and Food Standards Act [*Chapter 15:04*]; and the Public Health Act [*Chapter 15:09*]. The BACOSI programme of the Reserve Bank of Zimbabwe prior to the inclusive government is an example of the state attempting to secure the right to food, although in the instant case it was done in a partisan manner. Allocation of land to peasants and state-assisted agrarian mechanization are also major ways of ensuring food security, which were partially achieved by the Fast Track Land Reform Programme and Agriculture Mechanisation Programme, but this suffered because of inadequate support for rural agriculture, the siege on the economy because of western sanctions on the economy and the politically partisan nature of the programmes. Neoliberal and free market policies that were previously adopted by the state under ESAP and now by the Government of National Unity under its STERP programme threaten food security by placing emphasis on production of cash and export crops and reduction of government funding of rural agriculture.

In relation to Zimbabwean constitutional norms the following apply:

- Article 37 (2) of the NCA Draft Constitution incorporates the right providing "Every person has a right to ... sufficient food and water."
- Article 4 of the People's Charter provides for the right to "food security and the availability of basic commodities at affordable prices, (and price controls) where necessary to ensure universal access."
- The Kariba draft constitution however does not provide for the right under the Bill of Rights but provides in Section 17 for a "National Objective" of food security under Section 17, but even then one which still falls short of the international definition of the right. It creates an obligation on the state to: "(a) encourage people to grow and store adequate food; and (b) secure the establishment of adequate food reserves; and (c) encourage and promote adequate and proper nutrition through mass education and other appropriate means."

Thus in Zimbabwe only the rich can access adequate food and those without money are left with one option of relying on food aid from the donor community and not the government.

The right to health

The World Health Organization Constitution defines health as “*a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.*” The scope of the right to health entails two elements:

- (i) Elements related to health care including curative as well as preventative health care.
- (ii) Elements related to a number of underlying preconditions for health such as safe drinking water, adequate nutrition and adequate sanitation.

The right therefore means that everyone by virtue of being human should be in a state of complete physical, mental or social well-being. It is an indispensable right for the enjoyment of other rights. The health system needs adequate, well-trained and equitably distributed health workers who work in decent working conditions with proper remuneration and benefits. The right also demands for the availability of health institutions such as hospitals and clinics as well as the availability of the resources and medication which can be accessed and afforded by all, rich and poor, male and female. In our country and region where so many people have needlessly died of a manageable sickness like AIDS/HIV, this right means everyone must have the right to access ARVs drugs, treatment and support

International and Regional Laws and Comparative National Constitutions

The right to health is to be found in a number of international laws and progressive national constitutions. We highlight some hereunder:

- Article 12 of the ICESCR obliges state parties to recognize the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health” to the maximum of its available resources.
- Article 25(1) of the UDHR stipulates that “... everyone has the right to a standard of living for the health and well being of himself and his family.” See also Article 24 - CEDAW.
- Regionally every individual has got the right to enjoy the best attainable state of physical and mental health - Article 16(1) of the African Charter on Human and People’s Rights. See also: - Article 14 of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa and Article 3 of the European Convention on Human Rights and Fundamental Freedoms.

In terms of national constitutions the following apply:

- ♦ Arts. 54 & 94, Mozambique Constitution; Arts. 41 (4) and 44 Ethiopia Constitution; the Constitution of South Africa provides everyone with the “right to have access to health care services, including reproductive health care” but subject to “available resources” of the state.
- ♦ Articles 16, 35 and 36 of the Constitution of Bolivia provide for a state funded right to health, including access to traditional medicine.
- ♦ The Constitution of Venezuela provides a much deeper right in Articles 83 – 85, which provide for, inter alia:
Art. 83: Health is a fundamental social right and the responsibility of the State, which shall guarantee it as part of the right to life...
Art. 84: In order to guarantee the right to health, the State creates, exercises guidance over and administers a national public health system that crosses boundaries, and is decentralized and participatory in nature... Public health assets and services are the property of the State and shall not be privatized. The organised community has the right and duty to participate in the making of decisions concerning policy planning, implementation and control at public health institutions.
Art. 85: Financing of the public health system is the responsibility of the State, which shall integrate the revenue resources, mandatory Social Security contributions and any other sources of financing provided for by law. The State guarantees a health budget such as to make possible the attainment of health policy objectives ... The State shall regulate both public and private health care institutions.

Zimbabwean Laws and Constitutional Norms

There is no constitutional provision for the right in Zimbabwe, although there are certain enactments that have been promulgated in relation to the right to health. These include: the Public Health Act; Mental Health Act and the Food and Food Standards Act

¹⁷[Chapter 20:27]

among other enactments. Section 4(1)(a) of the Environmental Management Act¹⁷ makes it clear that enjoyment of the enjoyment of the right to health must be based on the existence of a clean environment that is not harmful to health. Zimbabwe has failed to provide the public with the proper health facilities. This can be evidenced by the outbreaks of cholera, which resulted in the death of thousands of people. Hospitals have been closed and the water supplies are undesirable. There is a massive shortage of medicines in the few hospitals that are functional and there are no resources there. The staff at the public health institutions is being underpaid and they are continuously on strike. Under the new Government of National Unity's neoliberal STERP economic programme hospitals operate on the principle of cost recovery with charges being paid in foreign currency, which the vast majority of the population does not have. The environment in which the public is staying in is a health hazard with waste disposed everywhere and sewerage bursts especially left unattended, especially in the high density suburbs. This situation was worsened by Operation Restore Order / Murambatsvina.

However, a number of draft constitutional norms provide for the right, as follows:

- Section 37 of the NCA Draft Constitution partially provides for the right, stipulating – “Every person has a right to bodily and physical integrity and to access basic health care services ... Every person has a right to a living and working environment that is not harmful to their health or well being ... Every person has a right to guaranteed emergency medical treatment.”
- Article 4 of the Zimbabwe People's Charter provides for the right to “Free and quality public health care including free drugs, treatment, care and support for those living with HIV and AIDS.”
- The Kariba Draft Constitution does not provide a right to health in its Declaration of Rights but provides for a legally non-enforceable “national objective” under Article 30 in terms of which the State is obligated to “take all practical measures to ensure the provision of basic, accessible and adequate health services to the population,” and to take
- “appropriate measures to ensure that no one is refused emergency medical treatment at any health institution.”

The right to adequate housing and decent shelter

The right entails that every human being is entitled to a decent shelter fit for human habitation and safe for the well being of himself or herself and their family. The shelter must be well furnished and provide for proper sanitation including toilets and bathrooms. It means that every person has the right to adequate, safe and comfortable, hygienic housing with appropriate basic services including a habitat such as to humanize family, neighborhood and community relations.¹⁸

The state must move as expeditiously as possible towards the goal of realizing fully the right to decent shelter. This means that the state must refrain from forced or arbitrary evictions, provide for renting houses at affordable rates, construct houses for the people, provide for cheap stands and provide accessible building loans at affordable interest rates to the public.

International and Regional Laws and Comparative National Constitutions

The right is provided in various international laws and progressive national constitutions:

- Article 25 of the UDHR provides for the right as well as Article 11(1) of the ICESCR. See also - Article 20 of the CRC and regionally - Article 16 of the Protocol to the African Charter on the Rights of Women provides for the right.
- In terms of national constitutions the following examples apply:
 - ♦ Article 19 of the Constitution of Bolivia provides for the right of everyone to adequate and safe housing.
 - ♦ Article 82 of the Constitution of Venezuela provides - “ Every person has the right to adequate, safe and comfortable, hygienic housing with appropriate essential basic services...The State shall give priority to families, and shall guarantee them, especially those with meager resources, the possibility of access to social policies and credit for the construction, purchase or enlargement of dwellings.”

Zimbabwean Laws and Constitutional Norms

Zimbabwe has failed to fulfill or respect this right as was dramatically shown in Operation Murambatsvina when hundreds of thousands of people had their informal housing destroyed by the state and rendered homeless. The state alternative programme, Operation Garikai, was woefully inadequate. There were also inadequate alternatives provided for tens of thousands of farm workers who were adversely affected by the Fast Track Land Reform Programme. We ask what is the function of the Infrastructure

¹⁸

Article 82 of the Constitution of Venezuela.

Development Bank of Zimbabwe (IDBZ)?¹⁹ Where is the Ministry of Housing and Social Amenities in such a situation where we have more squatter camps than proper houses in Hatcliffe?

The Zimbabwean constitution is silent on this fundamental right, although there are some enactments such as the National Housing Act, the Housing Standards Control Act²⁰ and the Infrastructure Development Bank of Zimbabwe Act. Be that as it may, Acts of Parliament do not protect the right to the extent of a constitutional right.

There are some constitutional norms in Zimbabwe that provide for the right:

- Section 35 of the NCA Draft Constitution provides – “Every person has the right to adequate housing.”
- Article 4 of the Zimbabwe People's Charter provides the right to “Decent and affordable public housing.”
- The Kariba Draft Constitution does not provide for the right to housing in its Declaration of Rights but a legally non-enforceable “national objective” obligation on the state under Article 29 to “take reasonable legislative and other measures, within the resources available to it, to enable everyone to have access to adequate shelter.”

The right to social security

Social security emanated during the industrial revolution whereby the working class and their employers would contribute to the sickness insurance and workers compensation. There is need however to distinguish between social security and social welfare. Through such a distinction one would wish to separate between the earned social security benefits of workers and their families and any individual or group of individuals receiving need based assistance from public funds raised through tax revenue.²¹ The term social security however is used to cover both social insurance and social assistance. There is also a distinction between general and situation based social security. Old- age, disability, unemployment, illness, childbirth or widow-or orphan hood form typical situations in which social security schemes have been created.²²

In terms of international laws the following apply:

- Articles 22 and 25 of the UDHR provides for the right to social security at the international level, stating that “Everyone, as a member of society, has the right to social security... ” in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.” See also - Articles 9 and 10 of the ICESCR.

In terms of comparative national constitutions see provisions on the elderly, the disabled and children in the constitutions of Ethiopia, Uganda and Mozambique. Also:

- ♦ Section 27 of the South African Constitution provides everyone, subject to the resources available to the State, with the right to have access to “social security, including, if they are unable to support themselves and their dependants, appropriate social security.
- ♦ Article 45 of the Constitution of Bolivia provides for the right to a universal, equal and State guaranteed right to social security in circumstances of: illness; maternity and paternity; occupational hazards; disability; orphanage; death and burdens arising from family responsibilities and other inevitable social security circumstances.
- ♦ The Constitution of Venezuela provides for the right in various articles including:
 - ♦ *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 efficiency of this right, creating a universal and complete Social Security system, with joint, unitary... 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 shall not be used for other purposes...

¹⁹ IDBZ is a creature of an act of Parliament i.e. the Infrastructure Development Bank of Zimbabwe Act [Chapter 24:14]

²⁰[Chapter 29: 08]

²¹Martin Scheinin in Economic, Social and Cultural rights; A textbook second revised edition, Eide et al (ed) 2001, p. 211

²²Ibid

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- ♦ *Art. 80*: provides that the pension and granted the social security system shall not be less than the urban minimum wage.

Zimbabwean Laws and Constitutional Norms

In the Zimbabwean context the right to social security has no constitutional guarantee. There is the National Social Security Authority (NSSA), which is a creature of the National Social Security Act, but this provides woefully inadequate benefits including on retirement, invalidity or death for workers. There is also the War Veterans Compensation Fund, which covers the compensation for those injured whilst fighting in the national liberation struggle.

There are however, draft constitutional reforms that provide for this right including:

- The NCA draft constitution has a number of social security provisions including: an obligation on the state to take appropriate measures to ensure that disabled persons realize their full mental and physical potential, become self-reliant and to enable them to live with their families and participate in social, creative or recreational facilities (Section 42); to reasonable social benefits for combatants in the liberation struggle (Section 44); and for every child to be entitled to "education, health care services, basic nutrition and shelter." (Section 40).
- Article 4 of the Zimbabwe People's Charter provides for the right to - "a living pension and social security allowances for all retirees, elderly, disabled, orphans, unemployed and ex-combatants and ex-detainees."
- The Kariba Draft Constitution does not provide for an express right to social security in its Declaration of Rights but provides for a legally non-enforceable "national objective" of social welfare under Article 31 in terms of which the State is obliged 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..."

Rights of Persons with Disabilities.

International and regional laws and progressive national constitutions provide various rights for persons with disabilities. Such rights include the rights to social security and necessary treatment equipment and aides, to work, to training, to dignity, to fully participate in decision-making in the economic, educational, political, social and recreational spheres of society and to affirmative action to redress the effects of historical and social unfair treatment.

International laws and comparative national constitutions:

The rights are provided in the following international and regional laws and constitutions:

- Article 18 of the ACHPR stipulating that "the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs." See also Art. 25 of the UDHR.
- Article 23 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa providing for special protection of women with disabilities, including: the "right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity," as well as the duty on the state to "ensure protection of women with disabilities and (to) take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making."

For national constitutions see:

- ♦ Arts. 35 and 32, Uganda Constitution; Art. 41 (5) Ethiopia Constitution; Art. 95 Constitution of Mozambique; Art.s. 70 - 72 Bolivia Constitution; Art. 81 of the Constitution of Venezuela providing for the rights of persons with disabilities, including the use of sign language.

Zimbabwean constitutional laws and norms:

The current constitution of Zimbabwe does not provide for these rights, but some enactments do provide for aspects of the right including the Labour Act [Chapter 28:01] providing for the right to protection from discrimination on the basis of disability and to affirmative action in employment matters;²³ the Disabled Persons Act [Chapter 17:01] and the Mental Health Act [Chapter 15:13]. However, some constitutional norms do provide for the rights of persons with disabilities, including:

²³

- Section 42 of the NCA Draft Constitution provides: "Every person with a disability is entitled to respect and human dignity and the state must take appropriate measures to ensure that disabled persons realize their full rights –
 - (a) To enable them to become self-reliant;
 - (b) To enable them to live with their families and participate in social, creative or recreational facilities;
 - (c) To protect them from all forms of exploitation or abuse;
 - (d) To give them access to medical, psychological and functional treatment."
- Article 4 of the Zimbabwe People's Charter providing for the right to a "Living pension and social security allowances for ... (the) disabled ..."
- Section 24 of the Kariba Draft Constitution under Section 24 provides for a non-enforceable "national objective" obligation on the State and society to "recognize the right of persons with physical, mental or other disabilities to be treated with respect for their dignity as human beings" and subject to the resources available to the State, to assist persons with disabilities to achieve their full potential and to minimize the disadvantages suffered by them including work programmes, consideration of their specific requirements in development plans, encourage the use of sign language and other communications means and to foster the social organizations aimed at improving the lives of persons with disabilities.

The right to an adequate standard of living

International laws recognize the right to an adequate standard of living, with the following examples important:

- Article 11(1) of the ICESCR provides for the recognition of "...everyone to an adequate standard of living for himself and his family including adequate food, clothing and housing and to continuous improvement of living conditions."
- Article 25 (1) of the UDHR mentions that every one has the right to adequate standard of living for health and well being of himself and his family. See also Article 27 of the CRC.

The term "adequate standard of living" has no precise meaning in the international instruments but can be defined contextually. The use of such terms as food, housing, medical care, necessary social services and physical, mental, spiritual, moral and social developments point out to the fact that adequate standard of living means living above the poverty line of the society concerned and living a life that is full of human dignity. This right includes the right to basic utilities such as electricity, water and sanitation and affordable public transport.

Provisions in national constitutions and constitutional norms including in Zimbabwe have been covered in the specific areas, including: Art. 43 (1) Ethiopia Constitution..

Right to trade, earn a living and to be self-employed

The right to work includes the freedom of choice of work including the right to be self-employed and to work in the informal sector and entitlement to decent work including adequate income and social security. Indeed due to neoliberal policies which have led to de-industrialisation and shrinkage of the formal sector, the informal sector, including trading, has become the biggest employer of persons across SADC and Africa. However, numerous obstacles are put by state authorities in the way of the self-employed and work in the informal sector including denial of permits to work, social security and pass-ports and visas. In Zimbabwe, Operation Murambatsvina destroyed thousands of informal trade enterprises such as tuckshops, flea-markets and market stalls, without any compensation by the state whilst the harassment and prohibition from operating has continued.

The right to trade and to be self-employed is recognised under international and regional laws and progressive national constitutions as well as some Zimbabwean constitutional norms. These include:

In terms of international and regional laws:

- ♦ Art. 23 (1) of the UDHR; Art. 6 ICESCR and Art. 11 (1) (a) of CEDAW
- ♦ Art. 13 of the Protocol to the African Charter on Human Rights and Peoples' Rights on the Rights of Women in Africa recognizes the right 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.

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- ◆ Various ILO Conventions establish the right to social security and protection from unfair labour practices of home-workers and informal sector workers including: Home Work Convention, 1996 (C 177); Equal Opportunities and Equal Treatment for Men and Women Workers Convention and the Part-Time Work Convention, 1994 (C 175).

In terms of comparative national constitutions the following apply:

- ◆ Arts. 46 - 47 of the Constitution of Bolivia recognizes the right to choice of work including work in the informal sector.
- ◆ Art. 88 of the Constitution of Venezuela recognizes work at home as an economic activity which entitles housewives to social security and Art. 94 protects casual, contract and home-workers.

In terms of Zimbabwean constitutional laws and norms the following are relevant:

- ◆ Art. 4 of the Zimbabwe Peoples' Charter recognizes the right to "Decent work, employment and the right to earn a living."
- ◆ Section 27 of the NCA Draft Constitution provides every person with the "right to practice any profession, or carry on any occupation, trade or business of his or her choice."
- ◆ The Kariba Draft Constitution does not include this right in its Declaration of Rights, but provides a legally non-enforceable "national objective" obligation in Section 25 on the state to adopt reasonable 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 the "removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities."

Summary of other important socio-economic rights.

International laws and progressive national constitutions and norms recognize other important socio-economic rights that have already been referred to above including group socio-economic rights which we summarise here. National and economic sovereignty rights are covered in the chapter on funding and enforcement of rights.

Rights of the Elderly:

These include the rights to social security, a living pension, to support and protection including adequate shelter, food and care, to respect and dignity including the right to work where still able to do so and to protection from violence, including sexual abuse.

- ◆ The right is recognized in various international laws including: Article 18 of the ACHPR; Article 25 of the UDHR; Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
- ◆ It is recognized in progressive national constitutions including: Art. 32, Uganda Constitution; Art. 41 (5) Ethiopia Constitution; Art. 80, Venezuela Constitution and Arts. 67 - 69 of the Constitution of Bolivia.
- ◆ In Zimbabwe it is recognized in some constitutional norms including: Article 4 of the Zimbabwe People's Charter and as a national objective under Article 23 of the Kariba Draft Constitution.

Rights of Children

These include the rights of children to – be protected from economic and social exploitation and child labour, from maltreatment, neglect or abuse; to be given a name, family name, registration documents and a nationality; equal treatment before the law and to the rights to education, health care, recreation, food and shelter. The rights are found in various international instruments and national constitutions, including:

- ♦ In relation to international and regional laws these include: Art. 25 of the UDHR; Arts. 10 (3) and 12 ICESCR; Arts. 23 and 24 ICCPR; Art. 18 ACHPR; and the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.
- ♦ For national constitutions see: Section 23 Malawi Constitution; Art. 34 Uganda Constitution; Art. 15, Namibia Constitution; Art. 56, Constitution of Mozambique; Arts. 75-79 Venezuela Constitution; Arts. 58 - 61 Bolivia Constitution; and Section 28 Constitution of South Africa.
- ♦ In relation to Zimbabwean constitutional norms the following apply: Section 40, NCA Draft Constitution and Section 54 Kariba Draft Constitution.

Rights of minority or marginalized groups or peoples

These include the rights to:– participate in decision – making at all levels; to use and advancement of their own languages and culture; to equitable access to and control of resources in their areas and to affirmative action and measures for past or current unfair discrimination. The rights are found in various international instruments and national constitutions and norms including:

- ♦ Arts. 2 and 27 UDHR; Arts. 26 and 27 ICCPR; Art. 19 ACHPR;
- ♦ In relation to national constitutions see: Art. 36, Constitution of Uganda; Section 31, Constitution of South Africa; Chapter VIII Constitution of Venezuela; Arts. 30 – 32 of the Constitution of Bolivia; Section 43 NCA Draft Constitution and Sections 21 and 46 and Kariba Draft Constitution.

Right to Cultural Rights

These include the right to participate in the cultural life of one's choice and advancement of the same as well as to recreation and leisure facilities. The right is included in various international instruments and national constitutions, including: Art. 27 UDHR; Art. 27 ICCPR; Art. 15 ICESCR; Art. 17 ACHPR; Art. 37 Constitution of Uganda; Section 26, Constitution of Malawi, Section 30, Constitution of South Africa; Arts. 99-104 of the Constitution of Bolivia; and Section 46 Kariba Draft Constitution.

Right to a Healthy and Sustainable Environment

This includes the right of every person to – “a right to an environment that is not harmful to their health or well being and to have the environment protected for the benefit of present and future generations.” Section 34 NCA Draft Constitution. See also: Section 18 Kariba Draft Constitution; Art. 4 Zimbabwe People's Charter; Art. 24 ACHPR; Art. 12 ICESCR and Art. 39, Constitution of Uganda; Section 24, Constitution of South Africa Chapter IX Constitution of Venezuela.

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