

An Analysis of Socio-Economic and Cultural Rights Protection under the Zimbabwe Constitution of 2013

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Abstract

This article discusses certain provisions of the Zimbabwe Constitution Amendment Act 20 of 2013 that deal with the protection of socio-economic and cultural rights in Zimbabwe. The purpose of the article is to investigate the adequacy, flaws, challenges and prospects of these provisions in relation to the protection and affording of basic socio-economic and cultural rights to all citizens of Zimbabwe.

Keywords

Cultural rights, flaws, Zimbabwe Constitution 2013, socio-economic rights, protection

INTRODUCTION

Socio-economic and cultural rights¹ are recognized and protected under various international instruments and treaties, including the Universal Declaration of Human Rights,² International Covenant on Economic, Social and Cultural Rights (ICESCR),³ Convention on the Elimination of All Forms of Discrimination Against Women,⁴ Convention on the Rights of the Child,⁵ International Convention on the Elimination of Racial Discrimination,⁶

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1 Socio-economic and cultural rights are also referred to as “socio-economic rights” in this article.

2 Adopted on 10 December 1948, GA res 217A (III), UN doc A/180 (1948) at 71.

3 Adopted on 16 December 1966, GA res 2200A (XXI), 21 UN GAOR supp (no 16) at 49, UN doc A/6316 (1966), 993 UNTS 3; came into force on 3 January 1976; signed by Zimbabwe on 13 August 1991.

4 Adopted on 18 December 1979, GA res 34/180, 34 UN GAOR supp (no 47) at 193, UN doc A/54/49 (vol 1) (2000); entered into force on 22 December 2000; acceded to by Zimbabwe on 12 June 1991.

5 Adopted on 20 November 1989, GA res 44/25, annex, 44 UN GAOR supp (no 49) 167, UN doc A/44/49 (1989); entered into force on 2 September 1990; ratified by Zimbabwe on 11 October 1990.

6 Adopted on 21 December 1965, GA res 2106 (XX), annex, 20 UN GAOR supp (no 14) at 47, UN doc A/6014 (1966), 660 UNTS 195; entered into force on 4 January 1969; ratified by Zimbabwe on 12 June 1991.

African Charter on the Rights and Welfare of the Child,⁷ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,⁸ and African Charter on Human and Peoples' Rights.⁹ Other related rights, such as civil and political rights, are enshrined separately in the International Covenant on Civil and Political Rights.¹⁰ Nevertheless, in this article, socio-economic and cultural rights are defined as universal and indivisible fundamental human rights that may generally give rise to the legal protection and realization of other basic and necessary economic, social and cultural interests and / or entitlements for all persons.¹¹ In relation to this, socio-economic and cultural rights are fundamental human rights, which must not be discriminated from other related rights, such as civil and political rights.¹²

Socio-economic and cultural rights have been recognized and constitutionally protected for several years in other countries, including the United States of America (USA),¹³ Malawi¹⁴ and South Africa.¹⁵ However, in Zimbabwe, these rights were granted further recognition and constitutional protection in 2013. Given this background, this article discusses certain provisions of the Zimbabwe Constitution of 2013 (Zimbabwe Constitution)¹⁶ that deal, inter alia, with the protection of socio-economic and cultural rights.¹⁷ The purpose is to investigate the adequacy, flaws and prospects of these provisions in relation to the protection and affording of basic socio-economic and cultural

7 OAU doc CAB/LEG/24.9/49 (1990); entered into force on 29 November 1999; ratified by Zimbabwe on 19 January 1995.

8 Adopted by the second ordinary session of the Assembly of the African Union in Maputo on 13 September 2000, CAB/LEG/66.6; entered into force on 25 November 2005; ratified by Zimbabwe on 5 September 2008.

9 Adopted in Banjul on 27 June 1981, OAU doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982); came into force on 21 October 1986; ratified by Zimbabwe on 30 May 1986.

10 Adopted on 16 December 1966, GA res 2200A (XXI), 21 UN GAOR supp (no 16) 52, UN doc A/6316 (1966), 999 UNTS 171; came into force on 23 March 1976; signed by Zimbabwe on 13 August 1991.

11 AJ Mavedzenge and DJ Coltart *A Constitutional Law Guide Towards Understanding Zimbabwe's Fundamental Socio-Economic and Cultural Human Rights* (2014, Constitutionallythinking, Word press).

12 See the Vienna Declaration and Programme of Action, UN General Assembly, 12 July 1993, A/CONF.157/23, available at: <<http://www.refworld.org/docid/3ae6b39ec.html>> (last accessed 15 February 2017); Mavedzenge and Coltart, id at 23–24; and Zimbabwe Lawyers for Human Rights (ZLHR), National Constitutional Assembly (NCA) and Harvard Law School International Human Rights Clinic (HIHRC) "Economic, social and cultural rights in Zimbabwe: Options for constitutional protections" (2009), available at: <http://hrp.law.harvard.edu/wp-content/uploads/2009/08/Zimbabwe_6.23.09.pdf> (last accessed 15 February 2017).

13 The initial constitution of the USA was reportedly ratified in 1789 and subsequently amended in 1791. See the 1791 Federal Constitution of the USA, as amended.

14 1995 Constitution of Malawi (as amended), secs 22–31.

15 See 1996 Constitution of South Africa, as amended, secs 13, 15 and 22–31, enshrined in the Bill of Rights.

16 Amendment Act 20 of 2013.

17 Zimbabwe Constitution, chaps 2 and 4.

rights to all citizens of Zimbabwe.¹⁸ More specifically, the article examines the adequacy and prospects of these provisions with regard to their enforcement and the affording of social justice and other constitutional remedies and / or damages to the marginalized poor and other prejudiced persons in Zimbabwe.¹⁹ In this regard, the article provides a comparative analysis of Zimbabwe's relevant constitutional provisions and the provisions under the Lancaster House Constitution of Zimbabwe 1979 (SI 1979/1600) as amended by Act 1 of 2009 which introduced amendment 19 of 2009 (Lancaster House Constitution).²⁰ This is undertaken to determine whether the Zimbabwe Constitution has adequately resolved the problems that were associated with the provisions of the Lancaster House Constitution²¹ in relation to the

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- 18 B Maseko and K Ndlovu "Indigenous languages and linguistic rights in the Zimbabwean media" (2013) 2/5 *Online International Journal of Arts and Humanities* 150; R Chinomona "Analysing the rights of women in the new Constitution of Zimbabwe with reference to international law" (LLM dissertation, University of Pretoria, 2013); K Gotosa, M Rwodzi and G Mhlanga "Language in education: A critical review of current proposals for official mother tongue use in Zimbabwean classrooms" (2013) 3/14 *International Journal of Humanities and Social Science* 88; T Masuka "The new Constitution of Zimbabwe and its implications for social workers" (2014) 2/1 *Journal of Social Welfare and Human Rights* 29; and E Manzungu, L Jonker, E Madaka, Z Naka, E Sithole and V Dzingirai "Emerging forms of social action in urban domestic water supply in South Africa and Zimbabwe" (2013) 6/3 *Journal of Sustainable Development* 70; Amnesty International "'Walk the talk' Zimbabwe must respect and protect fundamental freedoms during the 2013 harmonised elections" (2013) *Amnesty International Publications* 5; and the Zimbabwe Human Rights Forum *Zimbabwe Human Rights, Rule of Law & Democracy Report* (2013).
 - 19 Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11; ZLHR, NCA and HIIHRC "Economic, social and cultural rights", above at note 12; P Maguchu "No justice for victims of socioeconomic rights violations in Zimbabwe!" (January 2014) 1 *Oxford Transitional Justice Research Working Paper Series Op-Ed* 1; F Gwenhamo, JW Fedderke and R de Kadt "Measuring institutions: Indicators of political rights, property rights and political instability in Zimbabwe" (2012) 49/4 *Journal of Peace Research* 593; and International Crisis Group *Zimbabwe: Election Scenarios Africa Report No 202* (6 May 2013).
 - 20 N Kersting (ed) *Constitution in Transition: Academic Inputs for a New Constitution in Zimbabwe* (2009, Friedrich Ebert Stiftung); PT Mhodi "An analysis of the doctrine of constitutionalism in the Zimbabwean Constitution of 2013" (2013) *Southern African Public Law* 383; GA Dzinesa "Zimbabwe's constitutional reform process: Challenges and prospects" (2012) *Institute for Justice and Reconciliation* 1; T Madebwe "Constitutionalism and the new Zimbabwean Constitution" (2014) *Midlands State University Law Review* 6; International Crisis Group *Zimbabwe: Waiting for the Future Africa* (briefing no 103, 29 September 2014); C Dziva, B Dube and P Manatsa "A critique of the 2008 Government of National Unity and human rights protection in Zimbabwe" (2013) *International Journal of Humanities and Social Science Invention* 83; Amnesty International "Zimbabwe: Human rights agenda for the government 2013–2018" (2013) *Amnesty International Publications* 5; and A de Bourbon "Human rights litigation in Zimbabwe: Past, present and future" (2003) *African Human Rights Law Journal* 195.
 - 21 E Dumbutshena "The rule of law in a constitutional democracy with particular reference to the Zimbabwe experience" (1989) *South African Journal of Human Rights* 311; and L Madhuku "Constitutional protection of the independence of the judiciary: A survey of the position in Southern Africa" (2002) *Journal of African Law* 232.

protection of socio-economic and cultural rights and the provision of social justice and other private and / or constitutional remedies to affected persons in Zimbabwe. The article examines the constitutional protection of socio-economic rights in other selected countries, in particular South Africa.²² This is undertaken to recommend possible measures that could be employed to promote and protect such rights in Zimbabwe.

SOCIO-ECONOMIC AND CULTURAL RIGHTS PROTECTION IN ZIMBABWE

The protection of socio-economic and cultural rights under the Lancaster House Constitution

Socio-economic rights were not consistently recognized as fundamental human rights under the Lancaster House Constitution. After 1980, the Lancaster House Constitution did not provide for, protect or treat socio-economic rights as fundamental rights. For instance, apart from providing for the right to protection from slavery and forced labour²³ and the right to protection from deprivation of property,²⁴ which are socio-economic related rights, the Declaration of Rights under the Lancaster House Constitution did not expressly provide for many socio-economic rights.²⁵ Thus, notwithstanding the fact that the Lancaster House Constitution was amended 19 times, none of the amendments targeted the incorporation of socio-economic rights into its Declaration of Rights (the LH Declaration of Rights).²⁶

22 South Africa has sufficient valuable socio-economic rights jurisprudence to promote and protect such rights in Zimbabwe. See TW Maseko "Prison inmates' socio-economic rights in South Africa: Compatibility of domestic law with international norms and standards" (LLD thesis, University of South Africa, 2014); S Liebenberg "The value of human dignity in interpreting socio-economic rights" (2005) 21 *South African Journal of Human Rights* 1; K Pillay "Implementation of *Grootboom*: Implications for the enforcement of socio-economic rights" (2002) 6/2 *Law, Democracy & Development* 255; K Creamer "The implication of socio-economic rights jurisprudence for government planning and budgeting: The case of children's socio-economic rights" (2004) 8/2 *Law, Democracy & Development* 221; R Kapindu "Towards a more effective guarantee of socio-economic rights for refugees in Southern Africa" (PhD thesis, University of the Witwatersrand, 2014); *Soobramoney v Minister of Health (Kwa Zulu Natal)* 1998 (1) SA 765 (CC); *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA 1 (CC); *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (5) SA 703 (TAC case); *Minister of Home Affairs and Others v Watchenuka and Another* [2004] 1 All SA 21 (SCA); *Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* 2004 (6) SA 505 (CC); *Larbi-Odam v MEC for Education (North West Province)* 1998 (1) SA 745 (CC) 281; and *Lawyers for Human Rights and Another v Minister of Home Affairs and Another* 2004 (4) SA 125 (CC), 2004 (7) BCLR 775 (CC).

23 Lancaster House Constitution, sec 14.

24 Id, sec 16.

25 Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11; ZLHR, NCA and HIHRC "Economic, social and cultural rights", above at note 12.

26 Lancaster House Constitution, chap III.

The Lancaster House Constitution was inadequate in several respects.²⁷ The failure to provide for socio-economic rights in the LH Declaration of Rights is probably one of the main flaws that were embedded in the Lancaster House Constitution.²⁸ Therefore, unlike under the South Africa Constitution of 1996 (South Africa Constitution),²⁹ socio-economic rights were not protected as justiciable fundamental human rights in Zimbabwe before 2013. The Lancaster House Constitution only protected civil and political rights, while socio-economic and cultural rights were provided neither as constitutional-related national objectives³⁰ nor as fundamental human rights in the LH Declaration of Rights. Consequently, the majority of persons whose socio-economic and cultural rights were violated by the state or other persons before 1980, as well as between 1980 and 2012, were not constitutionally empowered to approach the relevant courts for redress.³¹ Thus, unlike in South Africa where affected persons could invoke section 38 of the constitution³² to enforce their socio-economic and cultural rights, affected persons could not rely on section 24 of the Lancaster House Constitution to enforce similar rights in the relevant courts in Zimbabwe.³³

27 Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11; ZLHR, NCA and HIIHRC "Economic, social and cultural rights", above at note 12.

28 AS Tsanga "A critical analysis of women's constitutional and legal rights in Zimbabwe in relation to the Convention on the Elimination of All Forms of Discrimination Against Women" (2002) 54/2 *Maine Law Review* 218; Mavedzenge and Coltart, *ibid*; ZLHR, NCA and HIIHRC, *ibid*.

29 South Africa Constitution, Bill of Rights, secs 13, 15 and 22–31.

30 The Lancaster House Constitution provided no constitutional-related national objectives.

31 Kersting (ed) *Constitution in Transition*, above at note 20; Dzinesa "Zimbabwe's constitutional reform", above at note 20; International Crisis Group *Zimbabwe*, above at note 20; Amnesty International "Zimbabwe", above at note 20; de Bourbon "Human rights litigation", above at note 20; Manzungu et al "Emerging forms of social action", above at note 18; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

32 South Africa Constitution, sec 38 read with sec 172; *Soobramoney*, above at note 22, where the court rejected the appellant's application to request the government to provide him with health care services for dialysis under sec 27 of the South Africa Constitution, on the basis of, inter alia, inadequate government resources; *Mazibuko*, above at note 22, where the court rejected the appellants' application to rely on sec 27(1)(b) to compel the respondents to supply them with free water and not install pre-paid water meters in their residences; the TAC case, above at note 22, where the appellant's application on the basis of secs 27 and 28 of the South Africa Constitution to require the government to provide pregnant women and their new born children with nevirapine and access to health services to combat mother-to-child transmission of HIV/AIDS was successful; *Government of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC), where the appellants were, inter alia, ordered to provide the evicted and homeless respondent children and their parents with shelter, in accordance with sec 26, read with sec 38 of the South Africa Constitution.

33 Lancaster House Constitution, sec 24(1), read with subsecs (2)–(9), which empowered affected persons to enforce their civil and political rights and other related rights (not necessarily socio-economic rights) in the relevant courts for redress, whenever they allege that such rights in the LH Declaration of Rights have been, are being or are likely

Under the Lancaster House Constitution, several socio-economic rights were neglected by the government to the detriment of many Zimbabwean citizens. For instance, it did not protect the right to sufficient food and water. Access to water and sanitation has deteriorated across all of Zimbabwe's cities and provinces, particularly in Matebeleland and rural areas.³⁴ Cases such as *Tracy Maponde v City of Harare*³⁵ were brought to court. In this case, the appellant's application to the High Court to compel the City of Harare to re-connect water at her house was upheld. Conspicuously, the court's decision was not based on the appellant's right to water per se, but rather on the respondent's breach of contract.³⁶ Likewise, in *Manyame Park Residents v Chitungwiza Municipality*,³⁷ the High Court rejected the application by the appellants (Manyame Park residents) to stop the Chitungwiza Municipality from discharging raw sewage into Manyame River (which was a source of their domestic water), citing that the Chitungwiza Municipality had limited resources to remedy the sewage problems at the time of application.³⁸ It appears that the court's decision was based on the availability of resources to the respondent, rather than on the importance of the appellant's socio-economic right to water. In *Dora Farm v City of Mutare*,³⁹ the court upheld the appellants' application to stop the respondent from discharging waste into the Sakubva River, which was their only source of domestic water, and ordered the respondent to resolve the problem urgently.⁴⁰ Nonetheless, the court's decision was not contingent upon the appellants' right to sufficient clean and safe water, but rather on aspects of the respondent's contravention of the relevant environmental law.⁴¹ Similarly, in *Combined Harare Residents Association v City of Harare*,⁴² the court dismissed the appellant's application to restrain the respondent from implementing its proposed 2004 water tariffs, on the basis that the appellant had failed to bring its application timeously to the relevant court.⁴³ The court's decision in this case was unfortunately not based on the appellant's right to water.

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to be contravened. These rights could be enforced: for one's own account; for the account of a person who is detained, if any other person alleges such a contravention in relation to the detained person; and without prejudice to any other action with respect to the same matter that was lawfully available to the affected persons.

34 Manzungu et al "Emerging forms of social action", above at note 18; Amnesty International "Walk the talk", above at note 18; and Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

35 HH 5948/05.

36 Manzungu et al "Emerging forms of social action", above at note 18.

37 HH 11152/03.

38 Manzungu et al "Emerging forms of social action", above at note 18.

39 HC 1312/2005.

40 Manzungu et al "Emerging forms of social action", above at note 18.

41 Ibid.

42 HH-73-04 HC 2899/04.

43 Manzungu et al "Emerging forms of social action", above at note 18.

The Lancaster House Constitution evidently did not provide a right to food. As a result, those who could not have basic food commodities due to unemployment, droughts and other causes were not constitutionally empowered to approach the courts for appropriate remedies and / or to compel the government to provide them with such commodities.⁴⁴ In some instances, members of the Zimbabwe Republic Police (ZRP) precluded non-governmental organizations (NGOs) and other human rights defenders⁴⁵ from providing food aid to affected persons, particularly in rural areas.⁴⁶

Unlike the position in South Africa,⁴⁷ the LH Declaration of Rights did not protect the right to work and / or labour relations, apart from providing for the right to protection from slavery and forced labour.⁴⁸ Accordingly, the working and living conditions of many employees in Zimbabwe deteriorated significantly after the early 1990s.⁴⁹ Thousands of Zimbabwean workers, in both the public and private sectors, were impoverished, with wages ranging between \$150 and \$300 per month and / or by enduring several months without their salaries being paid in full.⁵⁰ On the other hand, a selected few employees of certain government departments and agencies were being paid exorbitant and unfairly high salaries and allowances.⁵¹ For instance, the Premier Services Medical Aid Society chief executive officer (Cuthbert Dube) was reportedly receiving a salary of about \$230,000 per month, plus several allowances.⁵² Likewise, the Zimbabwe Broadcasting Corporation (ZBC) chief executive officer (Happison Muchechedere) was reportedly earning about \$27,000 per month, plus a monthly allowance of \$3,000, another \$2,500 for his domestic employees, and numerous travelling and shopping vouchers, while ordinary ZBC workers were not paid for over six months.⁵³ Thus, although the right to work is protected in various international instruments that Zimbabwe acceded to or ratified, this right was not consistently protected in Zimbabwe before 2013.⁵⁴ In light of this, the author concurs

44 Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

45 Human rights defenders include NGOs, human rights activists and members of opposition parties.

46 Amnesty International "Zimbabwe", above at note 20; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

47 Bill of Rights, South Africa Constitution, sec 23, read with sec 22, which entrench labour relations rights, and the freedom of trade, occupation and profession respectively.

48 Lancaster House Constitution, sec 14.

49 Kersting (ed) *Constitution in Transition*, above at note 20; Dzinesa "Zimbabwe's constitutional reform", above at note 20; International Crisis Group *Zimbabwe*, above at note 20; Amnesty International "Zimbabwe", above at note 20; and Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

50 Amnesty International, *ibid*; the Zimbabwe Human Rights Forum, *ibid*.

51 The Zimbabwe Human Rights Forum, *ibid*.

52 P Chipunza "PSMAS fires Cuthbert Dube" (28 January 2014) *The Herald*, available at: <<http://www.herald.co.zw/psmas-fires-cuthbert-dube/>> (last accessed 15 February 2017).

53 Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

54 *Ibid*.

with Liebenberg and Goldblatt, who argue that the right to equality should be carefully considered when interpreting socio-economic rights, to ensure that such rights are fairly provided to all persons without any form of discrimination.⁵⁵

The LH Declaration of Rights also did not expressly protect cultural and marriage rights. Consequently, some minority cultures and certain marriages⁵⁶ were not constitutionally recognized in Zimbabwe before 2013. This means that some individuals could not freely enjoy their cultures, religious beliefs, practices and languages in Zimbabwe during this period.⁵⁷

The LH Declaration of Rights did not expressly protect the right to health care. Persons who could not afford basic and / or terminal illness related health care services due to unemployment, poverty or other causes were not constitutionally empowered to approach the relevant courts for appropriate remedies.⁵⁸ This was worsened by the fact that major government hospitals in Zimbabwe were poorly funded.⁵⁹ Consequently, most hospitals could not procure the relevant drugs and equipment for the purposes of providing the best health care services to all persons in Zimbabwe before 2013.

The LH Declaration of Rights did not enshrine rights to housing or education. This caused gross violations of these socio-economic rights to be more prevalent in Zimbabwe between the early 1990s and early 2014.⁶⁰ For instance, about 50,000 villagers were displaced by the Tokwe-Mukosi flood in 2014. However, these villagers were given inadequate, poor and deplorable temporary housing and sanitation facilities in Chingwizi and Nuanetsi Range.⁶¹ No proper schools were constructed to ensure that these villagers' children could also realise their right to basic education. Nevertheless, the Tokwe-Mukosi flood victims were not constitutionally authorized to approach the relevant courts for redress.⁶² Another related housing and education rights violation was caused by Operation Murambatsvina.⁶³ For instance, in

55 S Liebenberg and B Goldblatt "The interrelationship between equality and socio-economic rights under South Africa's transformative constitution" (2007) 23 *South African Journal of Human Rights* 335.

56 Such marriages include gay and lesbian marriages.

57 ZLHR, NCA and HHR "Economic, social and cultural rights", above at note 12; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

58 Ibid.

59 Ibid.

60 ZLHR, NCA and HHR "Economic, social and cultural rights", above at note 12; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

61 T Chitagu "Resettle Chingwizi victims, war vets demand" (11 February 2015) *Southern Eye*, available at: <<http://www.southerneye.co.zw/2015/02/11/resettle-chingwizi-victims-war-vets-demand/>> (last accessed 15 February 2017).

62 V Langa "Compensate Chingwizi victims" (22 October 2014) *Newsday*, available at: <<https://www.newsday.co.zw/2014/10/22/compensate-chingwizi-victims/>> (last accessed 15 February 2017).

63 This was a government-related project, apparently aimed at ensuring compliance with the required housing and / or health standards in certain towns and cities.

2005, the government of Zimbabwe forcibly evicted over 700,000 people by demolishing their houses.⁶⁴ United Nations (UN) officials estimate that the number of those affected by Operation Murambatsvina exceeds 2.4 million.⁶⁵ These evictions were chaotically executed against those affected, without adequate notice, relevant court permission, due process and appropriate redress measures in place.⁶⁶ Consequently, the victims' right to housing⁶⁷ was grossly violated, despite the introduction of the government's purported housing related redress project called Operation Garikai / Hlalani Kuhle, which was targeted at providing adequate housing to those whose houses were destroyed through Operation Murambatsvina.⁶⁸ Notably, over 92,460 houses were reportedly destroyed during Operation Murambatsvina, but only about 3,325 houses had been constructed by the end of 2006.⁶⁹ Some of these new houses were poorly constructed in areas where the victims' families could not have access to schools, healthcare, roads and supermarkets.⁷⁰ Consequently, socio-economic related problems, such as poor living conditions, child mortality and school drop outs, were reportedly rife in Operation Garikai / Hlalani Kuhle resettlement areas, especially in Hopley settlement.⁷¹ Some of the victims' new houses were repossessed by the government because they could not afford to renew the lease agreements.⁷²

The LH Declaration of Rights did not expressly protect rights of the elderly and the disabled, or the right to social security. Thus, unlike in South Africa,⁷³

64 "Zimbabwe as bad as it can get" (1 June 2006) *Reuters* (copy on file with the author); ZLHR, NCA and HIHRC "Economic, social and cultural rights", above at note 12; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18; Amnesty International "Zimbabwe", above at note 20; and Amnesty International "Walk the talk", above at note 18.

65 "Zimbabwe: Mugabe's housing programme grinds to a halt" (3 December 2005) *ZimOnline* (copy on file with the author).

66 Amnesty International "Zimbabwe: No justice for the victims of forced evictions" (8 September 2006), available at: <<https://www.amnesty.ie/zimbabwe-no-justice-victims-forced-evictions/>> (last accessed 15 February 2017).

67 This right is widely recognized; for instance, see UN GA res 42/146 "Realization of the right to adequate housing", adopted 7 December 1987; Office of the UN High Commissioner for Human Rights "The human right to adequate housing" (fact sheet no 21), available at: <http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf> (last accessed 15 February 2017); Committee on Economic, Social and Cultural Rights "The right to adequate housing" (1991) (General Comment No 4, 6th session) at 7, available at: <<http://www.refworld.org/docid/47a7079a1.html>> (last accessed 15 February 2017).

68 ZLHR, NCA and HIHRC "Economic, social and cultural rights", above at note 12; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18; Amnesty International "Walk the talk", above at note 18.

69 *Ibid.*

70 *Ibid.*

71 *Ibid.*

72 *Ibid.*

73 South Africa Constitution, sec 27 read with sec 38; Creamer "The implication of socio-economic rights", above at note 22; S Liebenberg "The right to social assistance: The

the elderly, the disabled and other marginalized persons were not constitutionally entitled to enforce their right to social security in the courts against the Zimbabwean government before 2013.

The protection of socio-economic and cultural rights under the Zimbabwe Constitution

Unlike the position under the Lancaster House Constitution, socio-economic and cultural rights are now expressly protected in the Zimbabwe Constitution, under its Declaration of Rights (Constitutional Declaration of Rights)⁷⁴ and national objectives.⁷⁵ This is a commendable effort on the government's part to ensure that the socio-economic and cultural rights of all Zimbabwean people are respected, promoted, protected and fulfilled.⁷⁶ Accordingly, this article discusses the adequacy of the socio-economic and cultural rights that are enumerated in the Constitutional Declaration of Rights, such as the right to freedom from arbitrary eviction,⁷⁷ right to education,⁷⁸ right to health care,⁷⁹ right to food and water,⁸⁰ marriage rights,⁸¹ freedom of profession, trade and occupation,⁸² right to language and culture,⁸³ freedom from forced and / or compulsory labour,⁸⁴ labour rights,⁸⁵ environmental rights,⁸⁶ women's rights,⁸⁷ children's rights,⁸⁸ rights of the elderly,⁸⁹ rights of persons with disabilities⁹⁰ and property rights.⁹¹ It also discusses related socio-economic rights that are protected in the national objectives of the

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implications of 'Grootboom' for policy reform in South Africa" (2001) *South African Journal on Human Rights* 232 at 256; and Liebenberg and Goldblatt "The interrelationship", above at note 55.

74 Zimbabwe Constitution, chap 4.

75 Id, chap 2.

76 ZLHR, NCA and HIHRC "Economic, social and cultural rights", above at note 12; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18; and Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11 at 23–24. For the purposes of this article, cultural rights include marriage rights, rights to language and culture, women's rights, children's rights, rights of the elderly, rights of persons with disabilities and youth rights.

77 Zimbabwe Constitution, sec 74.

78 Id, sec 75.

79 Id, sec 76.

80 Id, sec 77.

81 Id, sec 78.

82 Id, sec 64.

83 Id, sec 63.

84 Id, sec 55.

85 Id, sec 65.

86 Id, sec 73.

87 Id, sec 80.

88 Id, sec 81.

89 Id, sec 82.

90 Id, sec 83.

91 Id, sec 71.

Zimbabwe Constitution, namely empowerment and employment creation rights,⁹² right to food security,⁹³ culture rights,⁹⁴ right to gender balance,⁹⁵ children's rights,⁹⁶ youth rights,⁹⁷ rights of the elderly,⁹⁸ rights of persons with disabilities,⁹⁹ work and labour relations rights,¹⁰⁰ rights to protection of the family,¹⁰¹ marriage rights,¹⁰² right to education,¹⁰³ right to shelter,¹⁰⁴ right to health services¹⁰⁵ and right to social welfare.¹⁰⁶

The duty to respect, protect, promote and fulfil all these socio-economic rights is imposed upon the state and all persons in Zimbabwe;¹⁰⁷ the Constitutional Declaration of Rights binds the state, as well as all state organs and agencies, and all persons, including juristic persons.¹⁰⁸ Accordingly, like the position in South Africa,¹⁰⁹ those whose socio-economic rights are violated can now approach the relevant courts in Zimbabwe to enforce their rights against the state (including its organs) and / or other persons (including juristic persons).¹¹⁰ This means that all affected persons are now expressly given the locus standi¹¹¹ to approach the courts if they allege that their socio-economic rights enshrined in the Constitutional Declaration of Rights have been, are being or are likely to be contravened.¹¹² The persons who have such locus standi include persons acting: on their own behalf; on behalf of other persons who cannot act on their own; as members or on behalf of a group or class of persons; in the public interest; and as an association of persons acting in the interests of its members.¹¹³ The South Africa Constitution

92 Id, sec 14.

93 Id, sec 15.

94 Id, sec 16.

95 Id, sec 17.

96 Id, sec 19.

97 Id, sec 20.

98 Id, sec 21.

99 Id, sec 22.

100 Id, sec 24.

101 Id, sec 25.

102 Id, sec 26.

103 Id, sec 27.

104 Id, sec 28.

105 Id, sec 29.

106 Id, sec 30.

107 Id, sec 44 read with sec 45. In South Africa, a similar duty to respect, protect, promote and fulfil all the rights (including socio-economic rights) in the Bill of Rights is expressly imposed upon the state alone: South Africa Constitution, sec 7.

108 Zimbabwe Constitution, sec 45; Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11.

109 South Africa Constitution, sec 8 read with secs 7 and 38.

110 Zimbabwe Constitution, sec 45 read with secs 44 and 85; Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11.

111 For further explanation of the definition of locus standi, see I Currie and J De Waal *The Bill of Rights Handbook* (2013, Juta & Co Ltd) at 73.

112 Zimbabwe Constitution, sec 85(1).

113 Ibid.

also gives similar classes of persons locus standi.¹¹⁴ However, unlike in South Africa, the fact that an affected person has previously contravened a particular law does not debar him or her from seeking appropriate relief under the Zimbabwe Constitution.¹¹⁵ Given this background, this article offers a brief analysis of the protection of socio-economic rights under the Zimbabwe Constitution.

Unlike the position under the South Africa Constitution,¹¹⁶ the Constitutional Declaration of Rights expressly protects the right to freedom from arbitrary eviction.¹¹⁷ For instance, no person may be evicted from their home and / or have their home demolished without a relevant court order. The courts should only grant such an order after considering all the relevant circumstances.¹¹⁸ However, the constitution does not specify the actual circumstances that the courts should consider before granting an eviction order.¹¹⁹ Moreover, despite the fact that the national objectives clearly recognize the right to shelter,¹²⁰ the Constitutional Declaration of Rights includes no similar provision. The Constitutional Declaration of Rights only recognizes the right to shelter in respect of children under the age of 18.¹²¹ However, although the Constitutional Declaration of Rights does not expressly provide a right to shelter, it is indirectly protected under the right to freedom from arbitrary eviction.¹²²

As in South Africa,¹²³ the right to education is now protected in both the national objectives and the Constitutional Declaration of Rights.¹²⁴ Nonetheless, unlike the position under the Zimbabwe Constitution, the South Africa Constitution extends the right to education to “everyone” who is in South Africa.¹²⁵ The Zimbabwe Constitution only expressly extends the right to education to all citizens and permanent residents of Zimbabwe.¹²⁶

114 South Africa Constitution, sec 38.

115 Zimbabwe Constitution, sec 85(2), read with sec 85(1), (3) and (4).

116 See the Bill of Rights, which shows that the right to freedom from arbitrary eviction is not expressly and constitutionally protected in South Africa.

117 Zimbabwe Constitution, sec 74.

118 Ibid.

119 Ibid.

120 Id, sec 28.

121 Notably, only children can enforce a right to shelter as well as a right to freedom from arbitrary eviction: id, secs 81(1)(f) and 74.

122 Id, sec 74; Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11.

123 South Africa Constitution, sec 29.

124 Zimbabwe Constitution, secs 27 and 75 respectively. See Committee on Economic, Social and Cultural Rights “The right to education” (General Comment 13, 21st session, 1999) UN doc E/C.12/1999/10 (1999), para 2; and ICESCR, art 13.

125 South Africa Constitution, sec 29; *Khosa*, above at note 22, from para 505.

126 This could suggest that any persons who do not fall into these categories might not realise and / or enforce their right to education in Zimbabwe. Zimbabwe Constitution, sec 75(1), read with secs 81(1)(f) (relating to children’s rights), 83(e) (relating to the rights of persons with disabilities) and 27 (dealing with the national objectives on education); Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11.

Such persons have a right to basic state-funded education, including adult basic education and / or higher and tertiary education.¹²⁷ Every person has the right to establish and maintain, at their own expense, independent educational institutions of a reasonable standard, accessible to all persons without any form of discrimination.¹²⁸ However, the right to state-funded education is contingent upon the state taking reasonable legislative and other practical measures, within the limits of its available resources, to ensure its progressive realization by all citizens and permanent residents of Zimbabwe.¹²⁹

Moreover, unlike the situation in South Africa where the right to health care is provided to “everyone”,¹³⁰ the Zimbabwe Constitution only extends the right to health care to citizens and permanent residents of Zimbabwe.¹³¹ Nevertheless, it appears that everyone (irrespective of their citizenship and / or permanent resident status) living with a chronic illness has the right to access basic healthcare services in Zimbabwe.¹³² Furthermore, no person may be refused emergency medical treatment in any healthcare institution in Zimbabwe.¹³³ This right to health care is dependent upon the state taking reasonable legislative and other appropriate, fair and practical measures, within its available resources, to ensure its progressive realization by all relevant persons in Zimbabwe.¹³⁴

The right to food and water is provided to “everyone” in South Africa.¹³⁵ Likewise, in Zimbabwe, the right to food and water is now expressly recognized in the national objectives¹³⁶ and provided to everyone as stipulated in the Constitutional Declaration of Rights.¹³⁷ Consequently, every person in Zimbabwe now has the right to safe, clean, potable water and sufficient food. Related water rights were discussed in *Farai Mushoriwa v City of Harare* (*Farai Mushoriwa*),¹³⁸ where the High Court discussed the violation of the appellant’s right to safe, clean, potable water.¹³⁹ In addition, the state has a

127 Id, sec 75(1) read with sec 27.

128 Id, sec 75(2) read with secs 75(3) and 27.

129 Id, sec 75(4) read with sec 27.

130 South Africa Constitution, sec 27.

131 Zimbabwe Constitution, sec 76(1) read with sec 29.

132 Id, sec 76(2) read with sec 29. However, it is possible that the right to health care services for chronic patients can be limited in certain instances. For example, see *Soobramoney*, above at note 22, where the appellant’s application for dialysis services under sec 27 of the South Africa Constitution was rejected on the basis of, inter alia, inadequate government resources.

133 Id, sec 76(3) read with sec 29.

134 Id, sec 76(4), read with secs 81(1)(f) (relating to children’s rights), 83(d) (relating to the rights of persons with disabilities), 82(b) (relating to elderly persons’ rights), 84(1) (relating to the rights of veterans of the liberation struggle) and 29 (dealing with the national objectives on health care).

135 South Africa Constitution, sec 27.

136 Zimbabwe Constitution, sec 15.

137 Id, sec 77.

138 HH 4266/13.

139 Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11 at 47.

positive duty to encourage people to grow and store adequate food, secure the establishment of adequate food reserves, and encourage and promote adequate and proper nutrition through mass education and other appropriate means.¹⁴⁰ This suggests that Zimbabwe now complies with international best practice on the protection of the right to food and water.¹⁴¹ However, the right to food and water is dependent upon the state taking reasonable legislative and other appropriate measures, within its available resources, to ensure its progressive realization by all persons in Zimbabwe.¹⁴²

The Constitutional Declaration of Rights and national objectives now protect marriage rights.¹⁴³ Interestingly, the South Africa Constitution has no similar provision. Therefore, every person in Zimbabwe who has attained the age of 18 has the right to found a family,¹⁴⁴ unlike the position in South Africa. Additionally, no person may be compelled to enter into marriage against their will.¹⁴⁵ This provision complies with the relevant ICESCR provisions that, inter alia, outlaw forced marriages.¹⁴⁶ However, the Zimbabwe Constitution does not indicate the types of marriages that relevant persons may establish in Zimbabwe.¹⁴⁷ Nonetheless, the Zimbabwe Constitution prohibits same sex marriages.¹⁴⁸ All marriage rights are subject to legal requirements stipulated in legislation including the Marriage Act¹⁴⁹ and the Customary Marriages Act.¹⁵⁰ A positive duty is also imposed upon the state to take appropriate measures to prevent forced marriages and ensure equality of rights and obligations for spouses during marriage and at its dissolution.¹⁵¹ A similar duty is imposed on the state to protect the institution of the family and to adopt appropriate measures, within its available resources, to provide all families with care and assistance and to combat domestic violence.¹⁵²

As in South Africa,¹⁵³ the Constitutional Declaration of Rights protects the right to freedom of profession, trade and occupation.¹⁵⁴ However, the

140 Zimbabwe Constitution, sec 15 read with sec 77.

141 UN Committee on Economic, Social and Cultural Rights "The right to adequate food" (General Comment No 12, 12 May 1999) and ICESCR, art 11. Mavedzenge and Coltart A *Constitutional Law Guide*, above at note 11 at 50–54; T Chiviru "Socio-economic rights in Zimbabwe's new constitution" (2014) 36/1 *Strategic Review for Southern Africa* 111.

142 Zimbabwe Constitution, sec 77 read with sec 15.

143 Id, secs 78 and 26 respectively.

144 Zimbabwe Constitution, sec 78(1), read with sec 26(a) and (b).

145 Id, sec 78(2), read with sec 26(a) and (b).

146 ICESCR, art 10; Mavedzenge and Coltart A *Constitutional Law Guide*, above at note 11 at 54–55.

147 Zimbabwe Constitution, sec 78, read with sec 26; Mavedzenge and Coltart, *ibid*.

148 Id, sec 78(3), read with sec 26.

149 Act 81 of 1964 as amended, chap 5:11.

150 Ordinance 5 of 1917 as amended, chap 5:07.

151 Zimbabwe Constitution, sec 26, read with sec 78.

152 Id, sec 25, read with sec 78.

153 South Africa Constitution, sec 22, extending only to South African citizens the right to freedom of trade, occupation and profession.

154 Zimbabwe Constitution, sec 64.

protection of this right is relatively broad in Zimbabwe compared with in South Africa, since all persons in Zimbabwe (irrespective of their citizenship) have the right to choose their own profession, trade or occupation freely.¹⁵⁵ Despite this, relevant laws in Zimbabwe may regulate the practice of a profession, trade or occupation.¹⁵⁶ On the other hand, the Zimbabwe Constitution also protects related rights, such as the right to freedom from forced and / or compulsory labour.¹⁵⁷ Thus, no person may be subjected to forced or compulsory labour in Zimbabwe. This right is also protected in the South Africa Constitution.¹⁵⁸

The Constitutional Declaration of Rights and national objectives protect the right to language and culture.¹⁵⁹ Thus, every person in Zimbabwe has the right to use the language of their choice¹⁶⁰ and to participate in the cultural practices of their choice.¹⁶¹ The South Africa Constitution contains related provisions.¹⁶² The state has the duty to take appropriate measures in order to promote and preserve cultural values and practices that enhance the dignity, wellbeing and equality of all persons in Zimbabwe.¹⁶³ Accordingly, the state must ensure that no person may exercise his or her right to language and / or to conduct cultural activities in a manner that is inconsistent with other fundamental rights enshrined in the Constitutional Declaration of Rights.¹⁶⁴

The Constitutional Declaration of Rights and national objectives protect work and labour related rights.¹⁶⁵ Similar rights are protected under the South Africa Constitution.¹⁶⁶ For instance, as in South Africa, everyone in Zimbabwe has a right to fair labour practices.¹⁶⁷ Nevertheless, unlike under the South Africa Constitution where every worker has the right to strike and to form or join a trade union,¹⁶⁸ the Zimbabwe Constitution does not extend this right to members of the security services.¹⁶⁹ Similarly, the Zimbabwe Constitution does not extend the right to engage in collective bargaining

155 Ibid.

156 Ibid.

157 Id, sec 55.

158 South Africa Constitution, sec 13.

159 Zimbabwe Constitution, secs 63 and 16.

160 This suggests that every person has the right to use any of the official languages enumerated in Zimbabwe Constitution, sec 6.

161 Id, sec 63.

162 South Africa Constitution, secs 30 and 31.

163 Zimbabwe Constitution, sec 16, read with sec 63.

164 Id, sec 63, read with secs 80(3) and 16; Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11 at 30–31; Gotosa et al “Language in education”, above at note 18; Maseko and Ndlovu “Indigenous languages”, above at note 18.

165 Id, secs 65 and 24.

166 South Africa Constitution, sec 23.

167 Zimbabwe Constitution, sec 65(1) and (4), read with sec 24.

168 South Africa Constitution, sec 23(2).

169 Zimbabwe Constitution, sec 65(2) and (3), read with sec 24.

and to organize, form or join federations to members of the security services.¹⁷⁰ Unlike the position in South Africa,¹⁷¹ the Zimbabwe Constitution expressly protects women's rights to equal remuneration and fully paid maternity leave for a period of at least three months.¹⁷² The state is obliged to adopt appropriate, transparent, fair and just affirmative action and other measures, within its available resources, to create employment opportunities for everyone in Zimbabwe, especially previously marginalized communities.¹⁷³

The Zimbabwe Constitution specifically protects environmental rights.¹⁷⁴ Everyone now has the right to an environment that is free from pollution and ecological degradation and not harmful to their health or wellbeing.¹⁷⁵ Accordingly, the state is obliged to take reasonable measures, within its available resources, to ensure the progressive realization of these rights in Zimbabwe.¹⁷⁶

Encouragingly, the Zimbabwe Constitution now protects the rights of vulnerable persons. For instance, the Constitutional Declaration of Rights protects the rights of women and children.¹⁷⁷ All women in Zimbabwe have the right to be treated equally with men (gender balance) and not to be subjected to degrading or unconstitutional cultural practices.¹⁷⁸ The state must employ relevant measures that promote full gender balance and participation of women in all aspects of Zimbabwean society.¹⁷⁹ Likewise, all children under 18 have the right to: equal treatment before the law; shelter and education; health care services; freedom from being forced to take part in sexual, political or other unconstitutional activities; and to be given a name and family name.¹⁸⁰ The state must employ appropriate measures to ensure the progressive realization of these children's rights in Zimbabwe.¹⁸¹ Section 28 of the South Africa Constitution also protects related rights.

The state must provide social security and welfare to needy persons in Zimbabwe.¹⁸² The Zimbabwe Constitution expressly protects rights of the

170 Id, sec 65(5), read with sec 24.

171 South Africa Constitution, sec 23.

172 Zimbabwe Constitution, sec 65(6) and (7), read with sec 24.

173 Id, secs 14 and 24, read with sec 65; Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11 at 33.

174 Id, sec 73. Notably, related environmental rights are also protected in South Africa; see South Africa Constitution, sec 24.

175 Id, sec 73(1).

176 Id, sec 73(2).

177 Id, secs 80 and 81.

178 Id, secs 17 and 80.

179 Ibid.

180 Id, sec 81.

181 Id, sec 19, read with sec 81.

182 Although the constitution provides no clear classification or categories of the needy or those who can qualify for government social security and welfare, such persons should include orphans, persons with disabilities, children, women and elderly persons:

elderly¹⁸³ and persons with disabilities.¹⁸⁴ Notably, all persons over the age of 70 have the right to receive medical and health care assistance, and social security and welfare from the state.¹⁸⁵ Nonetheless, the state must take appropriate measures, within its available resources, to ensure that elderly persons as well as persons with disabilities are empowered to receive food, social security, education and health care support.¹⁸⁶ The state must employ affirmative action programmes and other reasonable non-partisan measures to ensure that youths (between the ages of 15 and 35) have access to appropriate education, training and opportunities to enable them to participate in political, social and economic empowerment activities in Zimbabwe.¹⁸⁷ The Bill of Rights of the South Africa Constitution contains no similar provisions. Nevertheless, as in South Africa,¹⁸⁸ the Zimbabwe Constitution now expressly recognizes property rights.¹⁸⁹ For instance, every person in Zimbabwe has the right to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others.¹⁹⁰ No person may be deprived of their property unless such deprivation is duly executed as stipulated in the Zimbabwe Constitution.¹⁹¹

Evaluation and analysis of the protection of socio-economic and cultural rights under the Zimbabwe Constitution

Although the mere express recognition of socio-economic and cultural rights in the Zimbabwe Constitution is commendable, much still needs to be done to combat various challenges that could impede their practical protection in the future. Thus, socio-economic and cultural rights, like any other fundamental human rights, are limited in certain instances, such as public emergency and under the law of general application.¹⁹² However, any limitations to socio-economic and cultural rights must be fair, reasonable, necessary and justifiable having regard to other factors such as: the nature of the right or freedom concerned; the purpose of the limitation and whether it is necessary;¹⁹³ the nature and extent of the limitation; the need to ensure

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Zimbabwe Constitution, sec 30; Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11 at 55–57. On the other hand, sec 27 of the South Africa Constitution expressly extends the right to social security to every person.

183 Zimbabwe Constitution, sec 82, read with sec 21.

184 Id, sec 83, read with sec 22; see the definition of a “disabled person” in the Disabled Persons Act, chap 17:01 of 1992.

185 Zimbabwe Constitution, sec 82, read with sec 21.

186 Id, secs 82 and 83, read with secs 21 and 22.

187 Id, sec 20.

188 South Africa Constitution, sec 25.

189 Zimbabwe Constitution, sec 71.

190 Id, sec 71(2), read with sec 72.

191 Id, sec 71(3), read with secs 71(4) and 72.

192 Id, secs 86 and 87.

193 Necessary factors could include limitations in the interests of defence, public safety and

that the enjoyment of fundamental human rights by any persons does not prejudice the rights of others; the relationship between the limitation and its purpose, especially, whether it imposes restrictions that are not required to achieve its purpose; and whether there are any other less restrictive means of achieving the purported limitation.¹⁹⁴ Additionally, the protection of socio-economic and cultural rights is mostly contingent upon the state employing reasonable measures, within its available resources, to ensure their progressive realization in Zimbabwe.¹⁹⁵

Despite the stated limitations, affected persons may approach the relevant courts for appropriate relief¹⁹⁶ and the courts may grant a declaration of invalidity in respect of the infringing legislation or conduct.¹⁹⁷ Only Zimbabwe's Constitutional Court and High Courts may make such a declaration.¹⁹⁸ The courts may grant a declaration of rights to those whose socio-economic rights are violated by the state or other persons.¹⁹⁹ This is likely to be done where there are disputes regarding the validity and applicability of socio-economic rights in Zimbabwe. The courts may also grant compensatory remedies against the perpetrators of socio-economic rights violations in Zimbabwe.²⁰⁰ Moreover, those whose socio-economic rights are being violated or likely to be violated may approach the relevant courts for an interim²⁰¹ or final prohibitive interdict²⁰² to prevent and / or stop the violation or continued violation of their socio-economic rights. Affected persons may approach the courts

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order, public health, public morality, regional or town planning or the general public interest: id, sec 86(2)(b).

194 Id, sec 86(2)(a)–(f).

195 Id, chaps 2 and 4.

196 Appropriate relief includes constitutional remedies such as a declaration of rights and an award of compensation: id, sec 85(1). See the South African position in *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC), para 19, where it was held, inter alia, that “depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced ... the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights”. Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11.

197 Zimbabwe Constitution, sec 85(1).

198 Id, sec 85(1), read with sec 167(3). Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11.

199 Id, sec 85(1); Mavedzenge and Coltart, *ibid*.

200 This usually occurs when the affected person has incurred some financial losses as a result of such violations. See *ibid*.

201 An interim interdict is usually employed to enforce a prima facie, proven and / or specific socio-economic right for a certain period of time. Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11.

202 A final interdict is usually granted where the affected person has succeeded in proving that his or her socio-economic right has been violated or is reasonably likely to be violated and that there are no other appropriate legal remedies available to him or her to avoid suffering prejudice in the future. See Mavedzenge and Coltart, *ibid*.

for a structured interdict in order to compel the offenders to take certain steps to rectify the violation of particular socio-economic rights in accordance with the courts' rules.²⁰³ The courts may also grant a mandamus interdict to compel offenders to perform a certain action to fulfil or protect a particular socio-economic right of the affected person.²⁰⁴ A mandamus interdict may be employed where the court seeks to compel the offenders to correct any unconstitutional actions which gave rise to the violation of the affected persons' socio-economic rights.²⁰⁵

Thus, unlike the position under the South Africa Constitution,²⁰⁶ any persons in Zimbabwe who are evicted from their houses and / or have their houses demolished without a relevant court order may now approach the courts for redress.²⁰⁷ Nonetheless, although the Constitutional Declaration of Rights expressly protects the right to freedom from arbitrary eviction, the right to shelter²⁰⁸ is only recognized in the national objectives. Furthermore, the Zimbabwe Constitution does not specify the actual circumstances that the courts should consider before granting an eviction order. This flaw could lead to the courts abusing eviction orders and affected persons suffering other detrimental inconsistencies. Given this position, it is unclear whether those whose homes were destroyed by Operation Murambatsvina will be able retroactively to enforce their right to freedom from arbitrary eviction in the courts and receive appropriate relief.²⁰⁹ Moreover, Operation Garikai / Hlalani Kuhle, which was targeted at providing redress to the victims of Operation Murambatsvina, has so far failed to provide sufficient houses to all affected persons.²¹⁰ The government has continued to evict people from their homes, especially, in Chiadzwa and Mazowe villages, without providing adequate compensation to those affected.²¹¹

Likewise, although the national objectives and Constitutional Declaration of Rights now protect the right to education,²¹² this right is only extended to

203 A structured interdict is usually granted where an affected person has successfully proved to the courts that the offender has refused or is refusing to perform an enforceable undertaking on a particular date or time as initially agreed. See Mavedzenge and Coltart, *ibid.*

204 Mavedzenge and Coltart, *ibid.*

205 *Ibid.*

206 See the Bill of Rights, which shows that the right to freedom from arbitrary eviction is not expressly and constitutionally protected in South Africa.

207 Zimbabwe Constitution, sec 74.

208 *Id.*, sec 28.

209 Amnesty International "Zimbabwe", above at note 20; and Amnesty International "Walk the talk", above at note 18.

210 ZLHR, NCA and HIHRC "Economic, social and cultural rights", above at note 12; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

211 For related comments, see *ibid* and Maguchu "No justice for victims", above at note 19; Amnesty International "Zimbabwe", above at note 20; and Amnesty International "Walk the talk", above at note 18.

212 Zimbabwe Constitution, secs 27 and 75 respectively. ICESCR, art 13.

citizens and permanent residents of Zimbabwe,²¹³ contrary to South Africa where the right to education is extended to “everyone” in South Africa.²¹⁴ However, given the ongoing political and economic challenges, it is uncertain whether all citizens and permanent residents of Zimbabwe will be able to enforce their right to education in the courts so that they receive basic state-funded education, including adult basic education and tertiary education.²¹⁵ The right to state-funded education is contingent upon the state taking reasonable measures, within its available resources, to ensure its progressive realization by all citizens and permanent residents of Zimbabwe.²¹⁶ Moreover, the Ministry of Education is facing serious funding challenges in relation to the government’s purported programme for providing access to education for orphans and vulnerable children: the Basic Education Assistance Module.²¹⁷ It is not certain whether the right to education is also extended to prisoners and refugees who reside in Zimbabwe.²¹⁸

Unlike in South Africa where the right to health care is provided to “everyone”,²¹⁹ the Zimbabwe Constitution only extends the right to health care to citizens and permanent residents of Zimbabwe.²²⁰ Despite this, it is uncertain whether all citizens and permanent residents will be able to enforce their right to health care in the courts, as stipulated in the Constitutional Declaration of Rights and national objectives. In other words, the right to health care is dependent upon the state taking reasonable measures, within its available resources, to ensure its progressive realization by all persons in Zimbabwe.²²¹ Notably, the government has so far struggled to employ sufficient measures to enhance the realization of basic health care services for all persons in Zimbabwe, probably due to maladministration, corruption, political instability and / or economic challenges.²²² Additionally, in 2011, the Ministry of Health, and the Ministry of Labour and Social Services faced challenges such as high infant mortality rates, especially in the Tokwe-Mukosi flood and Operation Murambatsvina victims’ new resettlement areas.²²³ In 2012, the government of Zimbabwe faced a severe shortage of medical doctors and all categories of medical drugs, including important children’s vaccines.²²⁴ This and other challenges may directly impede the realization of

213 *Id.*, sec 75(1).

214 South Africa Constitution, sec 29.

215 Zimbabwe Constitution, sec 75(1), read with sec 27.

216 *Id.*, sec 75(4), read with sec 27.

217 Masuka “The new Constitution”, above at note 18.

218 Maseko “Prison inmates’ socio-economic rights”, above at note 22 at 186–232; Kapindu “Towards a more effective guarantee”, above at note 22 at 23–315.

219 South Africa Constitution, sec 27.

220 Zimbabwe Constitution, sec 76(1), read with sec 29.

221 *Id.*, sec 76(4) read with secs 81(1)(f), 83(d), 82(b), 84(1) and 29.

222 Masuka “The new Constitution”, above at note 18; Maguchu “No justice for victims”, above at note 19.

223 *Ibid.*

224 *Ibid.*

the right to health care by all persons in Zimbabwe, in particular prisoners and refugees.²²⁵

Notwithstanding the fact that the right to food and water is provided to “everyone” in South Africa²²⁶ and Zimbabwe, it is doubtful whether all affected persons in Zimbabwe will be able to enforce this right in the courts, as provided in the national objectives and Constitutional Declaration of Rights.²²⁷ In *Farai Mushoriwa*, the court held that the disconnection of the water supply at the appellant’s home by Harare City Council was unconstitutional. Nevertheless, the court gave the appellant no remedy.²²⁸ Furthermore, due to persistent droughts and economic challenges, the government of Zimbabwe constantly faces problems in relation to the provision of adequate food to all persons in Zimbabwe.²²⁹ This is worsened by the fact that the government sometimes interferes with the distribution of food aid by NGOs and other human rights defenders to vulnerable persons, particularly in rural areas,²³⁰ prisons and refugee centres.²³¹

Unlike in South Africa²³² and notwithstanding the fact that marriage rights are now protected in the Constitutional Declaration of Rights and national objectives,²³³ children under the age of 18²³⁴ are still directly and indirectly forced into early marriages in Zimbabwe, probably due to poverty and other traditional customs respectively.²³⁵ Moreover, gays and lesbians might not be able to enforce their marriage rights because the Zimbabwe Constitution expressly prohibits same sex marriages.²³⁶

Similarly, despite the fact that the protection of this right is broader in Zimbabwe²³⁷ than it is in South Africa,²³⁸ some professions such as commercial sex work and labour broking are still treated with much contempt in Zimbabwe. Additionally, although the Zimbabwe Constitution protects the

225 Maseko “Prison inmates’ socio-economic rights”, above at note 22 at 186–232; Kapindu “Towards a more effective guarantee”, above at note 22 at 23–315.

226 South Africa Constitution, sec 27.

227 Zimbabwe Constitution, secs 15 and 77 respectively.

228 Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11 at 47.

229 ZLHR, NCA and HIIHRC “Economic, social and cultural rights”, above at note 12; Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18; Dzinesa “Zimbabwe’s constitutional reform”, above at note 20; Manzungu et al “Emerging forms of social action”, above at note 18.

230 ZLHR, NCA and HIIHRC, *ibid*; Zimbabwe Human Rights Forum, *ibid*.

231 Maseko “Prison inmates’ socio-economic rights”, above at note 22; Kapindu “Towards a more effective guarantee”, above at note 22.

232 See the Bill of Rights.

233 Zimbabwe Constitution, secs 78 and 26 respectively.

234 *Id*, sec 78(1) and (2), read with sec 26(a) and (b).

235 Kersting (ed) *Constitution in Transition*, above at note 20 at at 291–99; ZLHR, NCA and HIIHRC “Economic, social and cultural rights”, above at note 12; and Zimbabwe Human Rights Forum *Zimbabwe Human Rights*, above at note 18.

236 Zimbabwe Constitution, sec 78(3), read with sec 26.

237 *Id*, sec 64.

238 South Africa Constitution, sec 22.

right to freedom from forced and / or compulsory labour,²³⁹ it is not expressly stated whether prisoners can utilize this right to prevent themselves from being subjected to unlawful or degrading compulsory labour by the authorities in Zimbabwe.²⁴⁰

Despite the fact that the right to language and culture is protected in the Constitutional Declaration of Rights and national objectives,²⁴¹ the practical realization of this right has remained somewhat restricted and problematic in Zimbabwe, particularly in Parliament and in primary, secondary and tertiary institutions.²⁴² Likewise, although the Constitutional Declaration of Rights and national objectives²⁴³ protect work and labour related rights, an employee's rights to participate in collective job actions and to strike are still not enforced consistently in practice. The ZRP's recent harassment and disruption of peaceful demonstrations and employee petitions is a case in point.²⁴⁴ Moreover, unlike the South Africa Constitution, which extends to everyone the right to strike and to form or join a trade union,²⁴⁵ the Zimbabwe Constitution does not extend this right to members of the security services.²⁴⁶ The right to work is also not consistently enforced in Zimbabwe, as many persons are either unemployed or retrenched from their jobs, probably due to persistent economic challenges in the country.²⁴⁷ This is worsened by the fact that the government's indigenization and affirmative action policies, which are plausibly targeted at creating jobs for everyone in Zimbabwe, are sometimes politicized and ineffectively implemented.²⁴⁸

239 Zimbabwe Constitution, sec 55.

240 For related remarks, see: Human Rights report on Zimbabwe "Prison and detention center conditions" (2013) (copy on file with the author); and Maseko "Prison inmates' socio-economic rights", above at note 22.

241 Zimbabwe Constitution, secs 63 and 16 respectively.

242 Maseko and Ndlovu "Indigenous languages", above at note 18; Gotosa et al "Language in education", above at note 18.

243 Zimbabwe Constitution, secs 65 and 24 respectively.

244 "Police clear ZCTU demonstration" (9 April 2015) *Newsday*, available at: <<https://www.newsday.co.zw/2015/04/09/police-clear-zctu-demonstration/>> (last accessed 15 February 2017); "Police clear ZCTU weekend demonstration" (9 April 2015) *Newzimbabwe*, available at: <<http://www.newzimbabwe.com/news-21754-Police+clear+ZCTU+weekend+demo/news.aspx>> (last accessed 15 February 2017).

245 South Africa Constitution, sec 23(2).

246 Zimbabwe Constitution, sec 65(2) and (3), read with secs 65(5) and 24.

247 "Zimbabwe police bar protests over job losses" (9 August 2015) *Fin24*, available at: <<http://www.fin24.com/Economy/Zimbabwe-police-bar-protests-over-job-losses-20150809>> (last accessed 15 February 2017); "30000 lost jobs last year in Zim" (16 April 2015) *NewsdzeZimbabwe* (copy on file with the author), which states that, according to the Zimbabwe National Statistics Agency, over 30,000 people lost their jobs in Zimbabwe in 2014 alone, especially in the mining and manufacturing industries.

248 M Mzumara "Indigenisation Act continues to create confusion" (5 June 2014) *Zimbabwe Situation*, available at: <http://www.zimbabwesituation.com/news/zimsit_indigenisation-act-continues-to-create-confusion/> (last accessed 15 February 2017); T Mangudhla "Clarity, consistency elude indigenisation policy" (16 January 2015) *Zimbabwe Independent*,

Although the Zimbabwe Constitution now specifically protects environmental rights,²⁴⁹ the practical enforcement of this right has so far remained problematic. The environmental and other gross human rights abuses associated with the Chiadzwa diamond mines is a case in point.²⁵⁰ Additionally, despite the fact that the Zimbabwe Constitution protects the rights of both children and women,²⁵¹ more still needs to be done to promote gender equality and children's rights, especially in influential job sectors and / or marginalized rural areas.²⁵² Likewise, although the Zimbabwe Constitution expressly protects the rights of the elderly²⁵³ and persons with disabilities,²⁵⁴ and the right to social security and welfare,²⁵⁵ the government still needs to do much more to ensure that the elderly and persons with disabilities are empowered to receive food, social security, education and health care support, particularly in rural areas.²⁵⁶ Notably, the biggest threats to the full realization of these rights in Zimbabwe are the current economic challenges, corruption and the adoption of partisan measures to enforce social security and welfare policies, especially in small towns and rural areas.²⁵⁷ Similarly, notwithstanding the fact that the Zimbabwe Constitution protects property rights,²⁵⁸ the government still has much to do to ensure that no person may be arbitrarily deprived of their property in Zimbabwe.²⁵⁹ This follows the fact that the government has recently arbitrarily evicted and left homeless many people in Mazowe villages without providing adequate compensatory damages.²⁶⁰

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available at: <<http://www.theindependent.co.zw/2015/01/16/clarityconsistency-elude-indigenisation-policy/>> (last accessed 15 February 2017).

249 Zimbabwe Constitution, sec 73.

250 Maguchu "No justice for victims", above at note 19; K Nyangani "Report exposes abuses at Chiadzwa" (21 January 2014) *Newsday*, available at: <<https://www.newsday.co.zw/2014/01/21/report-exposes-abuses-chiadzwa/>> (last accessed 15 February 2017); O Manayiti "Chiadzwa: The agony of displacement" (9 November 2014) *The Standard*, available at: <<http://www.thestandard.co.zw/2014/11/09/chiadzwa-agony-displacement/>> (last accessed 15 February 2017); M Hove, T Nyamunda and P Mukwambo "Violent state operations at Chiadzwa (Zimbabwe) diamond fields 2006–2009" (2014) 6/1 *Journal of Aggression, Conflict and Peace Research* 56.

251 Zimbabwe Constitution, secs 81 and 17 respectively.

252 UN Population Fund Zimbabwe "Promoting gender equality and protection of women's rights" (30 March 2011) (copy on file with the author); Chinomona "Analysing the rights of women", above at note 18; Gotosa et al "Language in education", above at note 18.

253 Zimbabwe Constitution, sec 82, read with sec 21.

254 Id, sec 83, read with sec 22.

255 See id, sec 30; Mavedzenge and Coltart A *Constitutional Law Guide*, above at note 11 at 55–57.

256 Id, secs 82 and 83, read with secs 21 and 22.

257 Maguchu "No justice for victims", above at note 19; ZLHR, NCA and HIHRC "Economic, social and cultural rights", above at note 12; Amnesty International "Walk the talk", above at note 18.

258 Zimbabwe Constitution, sec 71.

259 Id, sec 71(3), read with secs 71(2) and (4) and 72.

260 E Mushava "Villagers in Mazowe evicted to pave way for Grace Mugabe wildlife park" (8 January 2015) *Nehanda Radio*, available at: <<http://nehandaradio.com>>

CONCLUDING REMARKS

The introduction of socio-economic rights in the Zimbabwe Constitution is a commendable step in the right direction for Zimbabwe to comply with the international instruments and treaties it has ratified. Nonetheless, a host of flaws are still associated with the enforcement of these rights in Zimbabwe. If not adequately addressed, such flaws could continue to inhibit the full realization of socio-economic rights by all persons in Zimbabwe. For instance, the practical enforcement of socio-economic rights by affected persons in relevant courts has remained very difficult. Consequently, although the Zimbabwe Constitution provides a number of constitutional remedies that could be utilized by affected persons, such persons are usually unable to claim their remedies against the government.²⁶¹ This could be because all socio-economic rights are dependent upon the state taking reasonable measures, within its available resources, to ensure their progressive realization by all relevant persons in Zimbabwe. Other influencing factors may also include corruption, economic challenges and the adoption of partisan measures by the government, in an attempt to enforce socio-economic rights in Zimbabwe. Therefore, the independent bodies that are involved in the enforcement of socio-economic rights in Zimbabwe, including the National Prosecuting Authority,²⁶² the Zimbabwe Gender Commission,²⁶³ the National Peace and Reconciliation Commission²⁶⁴ and the Zimbabwe Human Rights Commission,²⁶⁵ should be adequately financed to enable them to execute their duties consistently and timeously.²⁶⁶ These bodies must execute their constitutional duties independently and on a non-partisan basis to enable all affected persons to enforce their socio-economic rights timeously.²⁶⁷

The government of Zimbabwe must take an active role to respect, protect, promote and fulfil all the socio-economic rights enshrined in the Constitutional Declaration of Rights.²⁶⁸ This will lead to social justice, adequate redress for affected parties, respect for human dignity through socio-

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[com/2015/01/08/villagers-mazowe-evicted-pave-way-grace-mugabe-wildlife-park/](http://www.thestandard.com/2015/01/08/villagers-mazowe-evicted-pave-way-grace-mugabe-wildlife-park/) (last accessed 15 February 2017); N Sandu "300 evicted near Mugabe's Mazowe farm" (16 March 2014) *The Standard*, available at: <http://www.thestandard.com/2014/03/16/300-evicted-near-mugabes-mazowe-farm/> (last accessed 15 February 2017); and Maguchu "No justice for victims", above at note 19.

261 Maguchu, *ibid*; ZLHR, NCA and HIHRC "Economic, social and cultural rights", above at note 12; Amnesty International "Zimbabwe", above at note 20.

262 Zimbabwe Constitution, secs 258–63.

263 *Id*, secs 245–47.

264 *Id*, secs 251 to 253.

265 *Id*, sec 242, read with secs 243 and 244.

266 Chiviru "Socio-economic rights", above at note 141.

267 Amnesty International "Zimbabwe", above at note 20; and Amnesty International "Walk the talk", above at note 18.

268 Zimbabwe Constitution, sec 44, read with secs 45 and 85.

economic rights, and equal sharing of government resources among all persons.²⁶⁹ Accordingly, the author concurs with Liebenberg who correctly argues that:

“... access to basic social services is crucial not only to people’s physical survival, but also to enable the development of their potential to shape their own lives and to be active agents in the shaping of our new society. Human dignity as a relational concept requires society to respect the equal worth of the poor by marshalling its resources to redress the conditions that perpetuate their marginalization. This, in turn, requires a focus on the actual impact of the state’s actions or omissions on the life chances of disadvantaged groups, and a response that is proportionate to the seriousness of that impact. In constitutional adjudication, it requires that a high burden of justification is placed on the state in cases involving a deprivation of basic human needs ...”²⁷⁰

Consequently, the government of Zimbabwe should take appropriate measures adequately to address past and ongoing socio-economic rights violations, such as the environmental ecological degradation and forced evictions caused by Operation Murambatsvina as well as the Chiadzwa diamond mining and Mazowe villages displacements. It must unconditionally stop arbitrary forced evictions and provide appropriate constitutional remedies for all affected persons.²⁷¹ The government should remove unconstitutional restrictions that are usually imposed upon NGOs and other human rights defenders to enable them to provide sufficient clean water, clothes, food, shelter, medicines and other necessary basic needs to persons in prison and in rural areas, and other vulnerable persons in Zimbabwe.²⁷² The international community should also be encouraged to provide relevant aid to the needy in Zimbabwe. In turn, Zimbabwe must comply with all international instruments and treaties it has ratified.

The state must consistently protect the right to work for all employees in Zimbabwe, regardless of their political affiliation. The ZRP and other law enforcement authorities must stop the harassment and disruption of workers’ peaceful demonstrations, petitions and other labour actions. The government must adopt relevant non-partisan measures to empower women, youths, children, and elderly and disabled persons across the country. It should also create sufficient jobs to avoid retrenchments of workers in all relevant sectors. Accordingly, the mere passing of the Labour Amendment Bill²⁷³ alone

269 Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11; Kersting (ed) *Constitution in Transition*, above at note 20; and Amnesty International “Walk the talk”, above at note 18.

270 Liebenberg “The value of human dignity”, above at note 22 at 1.

271 Mavedzenge and Coltart *A Constitutional Law Guide*, above at note 11; Amnesty International “Walk the talk”, above at note 18.

272 Ibid.

273 HB 7, 2015. The Labour Bill 2015 will amend the Labour Act Chap 28:01 (Labour Act).

might not end workers' retrenchments in Zimbabwe, because some provisions of the Labour Bill 2015 violate the Zimbabwe Constitution.²⁷⁴ Moreover, the proposed retrospective application of the Labour Bill 2015 creates legal uncertainty that poses significant challenges to both employees²⁷⁵ and employers.²⁷⁶

Vital measures on the enforcement of socio-economic rights can be learnt from South Africa and regional and international regulatory bodies, such as the UN Committee on Economic, Social and Cultural Rights, the UN and the Southern African Development Community.²⁷⁷ Finally, Zimbabwe should provide adequate training for High Court and Constitutional Court judges to enable them to enforce socio-economic rights more effectively.

274 The retrospective application of sec 12 of the Labour Bill 2015 violates sec 3(2)(e) of the Zimbabwe Constitution in relation to the separation of powers, since it overturns *Nyamande and Donga v Zuva Petroleum (Private Limited)* 17 July 2015 judgment, where the court ruled in favour of retrenched employees. "How Labour Amendment Bill violates Constitution" (20 August 2015) *Newsday*, available at: <<https://www.newsday.co.zw/2015/08/20/how-labour-amendment-bill-violates-constitution/>> (last accessed 15 February 2017).

275 The employees' retrenchment package of two weeks' salary for every year worked is too little, since they only receive three months' salary if they have worked for the company for six years. If the retrospective application of the Labour Bill 2015 precedent is set, the government might arbitrarily change laws to suite its own demands. "Zanu PF Labour Bill 'more cruel'" (18 August 2015) *Newsday*, available at: <<https://www.newsday.co.zw/2015/08/18/zanu-pf-labour-bill-more-cruel/>> (last accessed 15 February 2017).

276 The employer in *Nyamande and Donga*, above at note 274, complied with the Labour Act. Consequently, the retrospective application of sec 12 of the Labour Bill is inconsistent with sec 56 of the Zimbabwe Constitution, which provides for equality and non-discrimination before the law. *Walls v Walls* 1996 (2) ZLR 117.

277 Chiviru "Socio-economic rights", above at note 141; PM Lenaghan "Trade liberalisation as facilitated through trade agreements within the southern African region: An instrument in the realisation of socio-economic rights" (2004) 8/1 *Law, Democracy & Development* 25.