

*TOWARDS THE RECOGNITION OF
FINANCIAL INCLUSION AS A
FUNDAMENTAL SOCIO-ECONOMIC RIGHT
IN SELECTED SADC COUNTRIES*

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Abstract

Most countries recognise socio-economic rights as fundamental rights. These rights enable people to access basic necessities for them to live a dignified life. Such necessities include adequate housing, food, healthcare, education, social security, and water. Socio-economic rights are recognised as human rights in several international human rights instruments such as the 1948 Universal Declaration of Human Rights ('UDHR') and the 1966 International Covenant on Economic, Social and Cultural Rights ('ICESCR'). Socio-economic rights are also protected in national constitutions such as the South African, Zimbabwean, Namibian, and Indian Constitutions. Governments, private individuals, and regulatory bodies can be held accountable if they do not respect, protect, and promote socio-economic rights. It is important to note that financial inclusion is not expressly recognised as a socio-economic right despite its crucial role in enabling people to lead dignified lives. Both the UDHR and the ICESCR do not expressly acknowledge it as a human right. The same is true for the

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South African, Namibian and Zimbabwean Constitutions. In this contribution, it is submitted that peoples' socio-economic rights are not respected if they continue to be financially excluded. Furthermore, it is difficult to exercise the rights to access to food, shelter, education, and health unless one has adequate access to financial services. Access to basic financial services through financial inclusion empowers the poor to enjoy other socio-economic rights.

Keywords: financial inclusion; human rights; socio-economic rights; dignified life.

I INTRODUCTION

Currently, the recognition of socio-economic rights often overlooks the significance of the right to financial inclusion. This right is important both in itself and as an instrument for any person to live a dignified life. The financial inclusion of the poor and unbanked persons is a major area of interest for policymakers, practitioners, and academics.¹ This can be attributed to the fact that financial inclusion is a tool for combatting poverty and inequality.² The financial exclusion of unbanked persons and the poor is one of the major causes of the rising levels of poverty in many poor communities.³ A study by Chikalipha reviews that access to basic financial services such as savings, payments and credit make substantial and positive differences in improving the lives of poor people.⁴ However, the Global Financial Index Report of 2021 provides that about 1.4 billion adults are still unbanked since they do not have an account at a financial institution or through a mobile money provider.⁵ Over the last few years, the debate about financial inclusion and the delivery of quality financial services to the poor at affordable costs has gained momentum globally due to the increased awareness of the importance of access to formal financial services for economic growth

¹ Barajas et al, 'Financial inclusion: What have we learned so far? What do we have to learn?' (2020) *IMF Working Paper WP/20/157* 1 at 5; Arun & Kamath, 'Financial inclusion: Policies and practices' (2015) 27(4) *IIMB Management Review* 267 at 267.

² Amadou, 'Financial inclusion and poverty reduction: Selected approaches and implication for Mali's choice' (2018) 4(4) *Academic Journal of Economic Studies* 50 at 51.

³ Ageme et al, 'Empirical assessment of the effects of financial inclusion on poverty reduction in Nigeria' (2018) 99 *European Journal of Economics, Finance and Administrative Sciences* 21 at 22.

⁴ Chikalipah, 'What determines financial inclusion in Sub-Saharan Africa?' (2017) 8(1) *African Journal of Economic and Management Studies* 1 at 8.

⁵ Demirguc-Kunt et al, *The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19* (World Bank Publications 2022) 28.

and poverty alleviation and the full enjoyment of human rights.⁶ It is submitted that financial inclusion should be expressly recognised as a fundamental human right in the Southern African Development Community ('SADC') region. The express recognition of financial inclusion as a fundamental human right could complement the current goal-oriented approach to the problem of financial exclusion by creating a non-discretionary duty for countries and international institutions to secure universal access to financial services.⁷ Accordingly, this article unpacks the importance of financial inclusion in a bid to explore how it should be treated as a socio-economic right in the SADC region, particularly in Zimbabwe, South Africa, and Namibia. The article discusses the meaning of financial inclusion as a socio-economic right. Thereafter, the inter-relationship between financial inclusion and socio-economic rights is provided. Lastly, possible recommendations to enhance financial inclusion in Zimbabwe, South Africa, and Namibia are proffered.

II WHAT IS FINANCIAL INCLUSION?

Financial inclusion refers to the accessibility to beneficial and fairly priced financial goods and services for all persons to meet their needs for payments, transactions, savings, credit, and insurance, offered in a sustainable and responsible manner.⁸ However, financial inclusion is perceived differently under different contexts. It can be viewed as the ease with which financial services could be accessed, their availability and affordability⁹ or as a process of developing socio-economic infrastructure for the public. In other words, financial inclusion is not only about money and savings but about directly eradicating the social exclusion of certain persons such as the poor and low-income earners

⁶ Queralt, 'A Human Right to Financial Inclusion' in Gaisbauer, Schweiger & Sedmak (eds), *Ethical Issues in Poverty Alleviation* (Springer 2016) 80; Stein et al, *Toward Universal Access: Addressing the Global Challenge of Financial Inclusion* (World Bank Publications 2011) 8.

⁷ Queralt, (Springer 2016) 79.

⁸ Chitimira & Warikandwa, 'Introduction to financial inclusion as an enabler to 21st century sustainable development goals' in Chitimira & Warikandwa (eds) *Financial Inclusion Regulatory Practices in SADC: Addressing Prospects and Challenges in the 21st Century* 1 ed (Routledge/Taylor & Francis 2023) 2.

⁹ Sarma & Pais, 'Financial inclusion and development' (2011) 23(5) *Journal of International Development* 613 at 614; Mkhwanazi, 'Accelerating financial inclusion in South Africa: Are online stokvels the answer?' (13 August 2020), available at <https://www.stellenboschbusiness.ac.za/management-review/news/2020-08-13-accelerating-financial-inclusion-south-africa-are-online-stokvels-answer>, accessed on 15 October 2023.

from the economy.¹⁰ Financial inclusion requires that a wide range of appropriate financial services should be provided to all persons in a manner that makes them understand and/or access them better. In most low-income countries, financial systems have remained poor and they tend to serve a small segment of the population. Low-income earners, women, and other socio-economically marginalised persons are usually underserved by financial institutions.¹¹ These people usually end up engaging in many financial relationships that take place in the informal sector because formal financial institutions are unable or unwilling to offer them adequate services.¹² The informal or semi-formal financial services available to the poor and low-income earners such as informal moneylending, savings, loan clubs and insurance clubs are insufficient, insecure and usually very expensive.¹³ International agencies such as the World Bank Group ('WBG'), the Group of 20 ('G20'), the International Monetary Fund ('IMF') and other consultative groups formulated many policies and initiatives to curb financial exclusion globally. Despite being a fundamental keystone of socio-economic development, financial inclusion has been treated as a mere policy goal for countries like Zimbabwe, South Africa and Namibia. Furthermore, financial inclusion is not expressly recognised as a fundamental human right in Zimbabwe, South Africa and Namibia.

The failure to recognise financial inclusion as a fundamental human right is reflected in international human rights treaties such as the Universal Declaration of Human Rights ('UDHR') which was adopted by the United Nations ('UN') General Assembly on 10 December 1948, the International Covenant on Civil and Political Rights ('ICCPR') which was adopted by the UN General Assembly on 16 December 1966 and entered into force on 23 March 1976, and the International Covenant on Economic, Social and Cultural Rights ('ICESCR') which was adopted by the UN General Assembly on 16 December 1966 and came into force on 3 January 1976. These international instruments do not make any express reference to the promotion of financial inclusion as a fundamental human right. However, there are a few countries that

¹⁰ Varghese & Viswanathan, 'Financial inclusion: Opportunities, issues and challenges' (2018) 8(11) *Economics Letters* 1935 at 1935; Omar & Inaba, 'Does financial inclusion reduce poverty and income inequality in developing countries? A panel data analysis' (2020) 9(37) *Journal of Economic Structures* 1 at 1.

¹¹ CGAP, 'Financial inclusion', available at <https://www.cgap.org/financial-inclusion>, accessed on 20 October 2023; Cicchiello et al, 'Financial inclusion and development in the least developed countries in Asia and Africa' (2021) 10(49) *Journal of Innovation and Entrepreneurship* 1 at 11.

¹² Queralt, (Springer 2016) 83.

¹³ Queralt, (Springer 2016) 83.

indirectly promote the fundamental need for financial inclusion. For instance, the United States of America ('USA') enacted the Equal Credit Opportunity Act (ECOA) 15 U.S.C. 1691 and the Community Reinvestment Act ('CRA') in 1977¹⁴ to increase access to financial services and address access to credit inequities for all persons. The CRA was aimed at encouraging banks and savings associations to meet the credit needs of all segments of the communities, especially low-income earners and the poor.¹⁵ The CRA is further aimed at encouraging banks to help rebuild and revitalise communities through sound lending and good business judgment that benefits the banks and the communities they serve.¹⁶ The CRA provides a framework for depository institutions and community organisations to work together to promote the availability of credit and other banking services for low-income earners and poor communities. According to Leyshon and Thrift, the CRA has ensured that many local communities have clung to a level of financial service provision that they would otherwise have lost.¹⁷ By 1996, an estimated US\$400 billion was distributed as loans to low-income earners who previously did not qualify for loans under the CRA.¹⁸

In addition, being able to have access to a transaction account is regarded as a first step towards broader financial inclusion since a transaction account allows people to store money, and send and receive payments.¹⁹ A transaction account serves as a gateway to other financial services. Therefore, Zimbabwe, Namibia and South Africa should ensure that people have access to transaction accounts to promote financial inclusion. To this extent, having a bank account is expressly regarded as a right in France. Thus, all individuals have a right to have

¹⁴ Community Reinvestment Act of 1977 P.L. 95–128, 91 Stat. 1147; Federal Reserve Bank of St Louis, 'About the Community Reinvestment Act,' available at <https://www.stlouisfed.org/community-development/about-us/community-reinvestment-act>, accessed on 14 October 2023; Federal Reserve, 'Community Reinvestment Act of 1977', available at <https://www.federalreservehistory.org/essays/community-reinvestment-act>, accessed on 20 October 2023. For more information see Wilsker, 'The Community Reinvestment Act of 1977: The saga continues' (1991) 46(3) *The Business Lawyer* 1083 at 1092.

¹⁵ Leyshon & Thrift, 'Geographies of financial exclusion: Financial abandonment in Britain and the United States' (1995) 20(3) *Transactions of the Institute of British Geographers* 312 at 322; Taylor & Silver, 'The Community Reinvestment Act: 30 years of wealth building and what we must do to finish the job' in the Federal Reserve Banks of Boston & San Francisco, *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act* (A joint publication of the Federal Reserve Banks of Boston and San Francisco 2009) 148.

¹⁶ Public Law, 95–128.

¹⁷ Leyshon & Thrift, (1995) 20(3) *Transactions of the Institute of British Geographers* 312 at 323.

¹⁸ Taylor & Silver, (A joint publication of the Federal Reserve Banks of Boston and San Francisco 2009) 148.

¹⁹ World Bank, 'Financial inclusion an overview,' available at <https://www.worldbank.org/en/topic/financialinclusion/overview>, accessed on 20 October 2023.

a bank account.²⁰ In Bangladesh, Muhammad Yunus called for the recognition of the fundamental human right to credit and the right to microcredit for the poorest people, on the grounds that having access to a loan is a necessary condition for breaking recurring cycles of poverty.²¹ In Zimbabwe, Namibia and South Africa, there are no statutes specifically dealing with financial inclusion. However, in South Africa, the Financial Sector Regulation Act 9 of 2017 ('FSRA') merely stipulates the need to promote financial inclusion.²² Zimbabwe, Namibia and South Africa have adopted some financial inclusion policies which have not been effectively utilised in eliminating financial exclusion to increase access to financial services for all persons. In Zimbabwe, the 2022 Finscope Survey Report provided that 12 per cent of the population is completely excluded from accessing financial services while 36 per cent rely on informal financial services.²³ In South Africa, the National Treasury provided that about 3.6 million people are still financially excluded²⁴ and financial inclusion is not expressly recognised as a socio-economic right that ought to be protected and fulfilled by the state.

III WHAT ARE SOCIO-ECONOMIC RIGHTS

(a) *General overview of socio-economic rights*

Before unpacking the nexus that exists between financial inclusion and socio-economic rights, it is important to first define and describe what constitutes socio-economic rights. Socio-economic rights are rights that are based on the promotion of equality as well as the provision of guaranteed access to basic and/or essential socio-economic goods, services and opportunities to all persons in a country.²⁵ Socio-economic

²⁰ Sarma & Pais, (2011) 23(5) *Journal of International Development* 613 at 614.

²¹ Brownlee & Stemplowska, 'Financial Inclusion, Education and Human Rights' in Sorell & Cabrera (eds) *Microfinance, Rights and Global Justice* (Cambridge University Press 2015) 47; Ruben, *The Promise of Microfinance for Poverty Relief in the Developing World* (Proquest CSA LLC 2007) 12.

²² Sections 7(1)(f); 34(1)(e) and 58(1)(e).

²³ FinScope, 'Zimbabwe 2022 consumer survey', *FinScope Consumer Survey Report*, available at https://finmark.org.za/Publications/FinScope_Zimbabwe_2022_Consumer_Presentation.pdf, accessed on 4 January 2024.

²⁴ National Treasury, 'An inclusive financial sector for all,' (November 2023), available at https://www.treasury.gov.za/comm_media/press/2023/2023112701%20An%20Inclusive%20Financial%20Sector%20for%20all%202023.pdf, accessed on 4 January 2024.

²⁵ Council of Europe, 'The evolution of human rights,' available at <https://www.coe.int/en/web/compass/the-evolution-of-human-rights>, accessed on 10 October 2023.

rights are positive rights that impose an obligation on the government to act within its means to promote and adequately fulfil such rights.²⁶ Governments in the SADC, particularly in Zimbabwe, Namibia and South Africa, should have more interest in the promotion and protection of socio-economic and cultural rights. There should be more awareness among governments and the judiciary on how to promote, respect and protect these rights so that everyone enjoys them equally. The UDHR recognises many socio-economic rights such as the right to social security, work, rest and leisure, a reasonable standard of living, education, cultural life and the right to scientific advancement benefits.²⁷ Article 2 of the UDHR states that everyone is entitled to these rights without discrimination of any kind based on grounds such as race, colour, sex and religion.²⁸ A similar position was followed in the ICESCR, which guarantees a comprehensive range of socio-economic rights such as the right to an adequate standard of living which includes adequate food, clothing, housing, education and social security.²⁹ The ICESCR requires a member state to 'take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation' of all rights enshrined in its provisions.³⁰ In the past few decades, socio-economic rights have become increasingly well defined in national and regional legal systems, constitutions and international agreements. Regionally, socio-economic rights have been documented in instruments such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) of 1988,³¹ the African Charter on Human and Peoples' Rights of 1981,³² and the European

²⁶ Currie & De Waal, *The Bill of Rights Handbook* 6 ed (Juta 2013) 564; Heyns & Brand, 'Introduction to socio-economic rights in the South African Constitution' (1998) 2(2) *Law Democracy & Development* 153 at 158; Liebenberg, 'The interpretation of socio-economic rights' in Woolman, Bishop & Brickhill (eds), *Constitutional Law of South Africa* 2 ed (Juta 2012) 33–1.

²⁷ Articles 22–27 of the *Universal Declaration of Human Rights* of 1948 (UDHR).

²⁸ See article 2 of the UDHR; Cheng, 'The Universal Declaration of Human Rights at sixty: Is it still right for the United States?' (2008) 41(2) *Cornell International Law Journal* 251 at 258.

²⁹ Articles 1–15 of the *International Convent on Economic, Social and Cultural Rights* 1966 (ICESCR); Camur, 'Civil and political rights vs social and economic rights: A brief overview' (2017) 6(1) *Journal of Bitlis Eren University Institute of Social Sciences* 205 at 211.

³⁰ See article 2 of the ICESCR.

³¹ The Protocol of San Salvador came into effect on 16 November 1999 and provides for the rights to work, health, food and education.

³² Also known as the Banjul Charter, and it promotes socio-economic rights such as the right to work in article 15, the right to health in article 16, and the right to education in article 17. It further provides for the rights to equality and development in articles 19 and 22 respectively.

Social Charter of 1961 which provides for the rights such as housing, health, education and labour rights. Moreover, the Revised European Social Charter of 1996³³ entrenches similar rights. The SADC Charter of the Fundamental Social Rights of 2003 also recognises the rights to social protection, health, employment and education. Socio-economic rights are entrenched in the constitutions of a number of SADC countries such as South Africa, Zimbabwe and Namibia.³⁴ The recognition that human rights and basic social conditions in which people live are fundamentally interconnected has encouraged the inclusion of socio-economic rights in modern constitutions.³⁵ Accordingly, it is submitted that financial inclusion should be recognised as a fundamental human right in SADC so that the relevant governments of all member countries are obliged to curb inequalities and financial exclusion among all persons.

(b) The justiciability of socio-economic rights

The adoption of socio-economic rights has been fiercely contested both at national and international level. The contention arose from the argument that socio-economic rights were regarded as intrinsically non-justiciable and incapable of being enforced by the courts.³⁶ According to Currie and De Waal,³⁷ the problems of the separation of powers and polycentricity have been used to justify the non-justiciability of the rights under discussion. The doctrine of the separation of powers conveys the idea of power-sharing between the executive, the legislature, and the judiciary to ensure essential checks and balances with the aim of curbing the abuse of power by one of these organs.³⁸ According to this arrangement, the legislature is granted the

³³ This Charter came into force in 1999.

³⁴ Sections 65 and 71–77 of the Zimbabwe Constitution 2013; sections 23; 26(1); 27(1); 29(1) and (2) of the Constitution of the Republic of South Africa, 1996; Articles 20 and 95 of the Namibian Constitution 1990.

³⁵ Currie & De Waal, (Juta 2013) 564; McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655 at 660.

³⁶ Mubangizi, 'The constitutional protection of socio-economic rights in selected African countries: A comparative evaluation' (2006) 2(1) *African Journal of Legal Studies* 1 at 3; Trilsch, 'What's the use of socio-economic rights in a constitution?: Taking a look at the South African experience' (2009) 42(4) *Law and Politics in Africa, Asia and Latin America* 552 at 554; Christiansen, 'Adjudicating non-justiciable rights: Socio-economic rights and the South African Constitutional Court' (2007) 38(2) *Columbia Human Rights Law Review* 321 at 321.

³⁷ Currie & De Waal, (Juta 2013) 564; De Vos & Freedman, *South African constitutional law in context* (OUP Southern Africa 2014) 60; Trilsch (2009) 42(4) *Law and Politics in Africa, Asia and Latin America* 552 at 554.

³⁸ Ngang, 'Judicial enforcement of socio-economic rights in south Africa and the separation of powers objection: The obligation to take the other measures' (2014) 14(2)

powers to make laws, the judiciary to interpret and apply laws, and the executive to implement laws.³⁹ This doctrine is enshrined in the constitutions of many countries. For instance, the Constitution of the Republic of South Africa, 1996 provides for such powers in section 43 which vests the legislative authority in the parliament, while section 85 vests the executive authority in the president, and section 165 vests the judicial authority in the courts.⁴⁰ South African courts have also recognised the significance of this doctrine. In *South African Association of Personal Injury Lawyers v Heath*,⁴¹ the Constitutional Court held that there can be no doubt that the Constitution of the Republic of South Africa, 1996 provides for separation of powers. This was also reiterated by CJ Langa in *Glenister v President of South Africa*,⁴² where it was stated that the doctrine of the separation of powers is part of South Africa's constitutional design.

Justiciable socio-economic rights could be seen as potentially undermining the concept of the separation of powers in a democratic society.⁴³ It is also submitted that making socio-economic rights justiciable would require the courts to control how the government allocates resources.⁴⁴ Moreover, it is argued that the protection of socio-economic rights should be the responsibility of the legislature and the executive rather than the judiciary which does not directly make decisions regarding the allocation of social and economic resources.⁴⁵ In relation to polycentricity, it is often argued that socio-economic rights should not be justiciable because they involve polycentric tasks of which judges do not have powers to determine.⁴⁶ In other words, socio-economic rights are believed to be

African Human Rights Law Journal 655 at 659; Seedorf & Sibanda, 'Separation of powers' in Woolman, Bishop & Brickhill (eds), *Constitutional Law of South Africa* (Juta 2012) 12; Fombad, 'The separation of powers and constitutionalism in Africa: The case of Botswana' (2005) 25(2) *Boston College Third World Law Journal* 301 at 306.

³⁹ Ngang, (2014) 14(2) *African Human Rights Law Journal* 655 at 659.

⁴⁰ Sections 43, 85 and 165 of the Constitution of the Republic of South Africa 1996.

⁴¹ 2001 (1) SA 883 (CC) para 22.

⁴² 2011 (3) SA 347 (CC).

⁴³ Allsop et al, *Constitutional Law for Students: Part 2* (UCT Libraries 2020) 484; Desierto, 'Justiciability of socio-economic rights: Comparative powers, roles and practices in the Philippines and South Africa' (2009) 11(1) *Asian-Pacific Law & Policy Journal* 114 at 117.

⁴⁴ Currie & De Waal, (Juta 2013) 566; Allsop et al, (UCT Libraries 2020) 484; Brennan, 'To adjudicate and enforce socio-economic rights: South Africa proves that domestic courts are a viable option' (2009) 9(1) *Queensland University of Technology Law and Justice Journal* 64 at 72.

⁴⁵ Mubangizi, (2006) 2(1) *African Journal of Legal Studies* 1 at 3; Currie & De Waal, (Juta 2013) 596; *Certification of the Constitution of the Republic of South Africa* 1996 (4) SA 744 (CC) paras 77–78.

⁴⁶ Allsop et al, (UCT Libraries 2020) 484; Larsson, *The justiciability of socio-economic rights – courts as protectors of economic and social rights: The case of South Africa* (unpublished LLM dissertation, Lund University 2009) 27.

beyond the capacity of the judiciary because of their polycentric nature.⁴⁷ A polycentric challenge occurs when a judicial decision has complex repercussions that extend beyond the affected parties and the factual situation before the court.⁴⁸ Socio-economic rights' cases are polycentric because they have budgetary consequences. For instance, each decision to allocate a particular sum of money for a specified purpose could result in less money for other purposes. Socio-economic rights are logically linked to collective rather than individual claims. On the other hand, the courts are ill-suited to adjudicate collective claims because they give rise to multiple interests. Thus, the recognition of socio-economic rights may result in the courts making orders that encroach into other organs of the state. However, the division between state organs is sometimes blurred. When a court enforces civil and political rights, such as equality, the right to a fair trial, and dignity, the orders it makes will often have the same implications as those of socio-economic rights.⁴⁹ Socio-economic rights should be effectively protected.⁵⁰ Section 7(2) of the Constitution of the Republic of South Africa, 1996 imposes duties on the state to respect, protect, promote and fulfil socio-economic rights. Thus, socio-economic rights are justiciable and the state is prohibited from interfering with the people's enjoyment of such rights.⁵¹

IV THE RELATIONSHIP BETWEEN FINANCIAL INCLUSION AND SOCIO-ECONOMIC RIGHTS

The right to financial inclusion should provide for the effective access to basic financial services, including credit, savings, insurance, and payment services at an affordable cost, without being discriminated against on grounds of financial situation, race, religion, ethnicity, or gender.⁵² It should further ensure access to basic and essential financial services that enable individuals' full participation in the mainstream

⁴⁷ Mbazira, *Litigating socio-economic rights in South Africa: A choice between corrective and distributive justice* (Pretoria University Law Press 2009) 6; Van der Berg, 'A capabilities approach to remedies for systemic resource-related socio-economic rights violations in South Africa' (2019) 19(1) *African Human Rights Law Journal* 290 at 316.

⁴⁸ Currie & De Waal, (Juta 2013) 596; Nolan et al, 'The justiciability of social and economic rights: An updated appraisal' in Kamminga (eds), *Challenges in International Human Rights Law*, vol III, (Routledge 2016) 89.

⁴⁹ De Wet, 'The positive aspects of certain negative rights in the interim bill of rights: Identifying certain parallels with Teilhaberechte in German constitutional law' (1995) 10(1) *SAPR/PL* 73 at 87.

⁵⁰ Currie & De Waal, (Juta 2013) 568; Allsop et al, (UCT Libraries 2020) 508.

⁵¹ *Certification of the Constitution of the Republic of South Africa* para 78.

⁵² Queralt, (Springer 2016) 82; Brownlee & Stemplowska, (Cambridge University Press 2015) 47.

economy. Recognising financial inclusion as a human right gives rise to three distinct correlative duties, namely, the duty to respect, protect and fulfil access to financial services.⁵³ The obligation to fulfil incorporates a duty to facilitate access and provide financial services. It also entails that the state must proactively engage in activities that strengthen people's access to, and utilisation of financial resources. The obligation to promote access to financial services requires SADC member states to take relevant measures that empower all persons to access such services. The obligation to protect requires SADC member states to take measures to ensure that individuals are not deprived access to financial services and products. The right to financial inclusion is fulfilled when all individuals⁵⁴ are able to conveniently access basic financial services and products at affordable prices.⁵⁵ Adequate opportunities should be provided to all persons to access financial services and products in the SADC.⁵⁶

The call for the recognition of financial inclusion as a socio-economic right is premised on the similarities and the nexus that exists between financial inclusion and socio-economic rights. Socio-economic rights form part of fundamental rights that are symbiotic and mutually reinforcing. This means that socio-economic rights cannot be fully enjoyed without realising other human rights.⁵⁷ Therefore, the realisation of financial inclusion and socio-economic rights depends on the existence of other fundamental rights. It should be noted that there is some interdependency between various human rights. This interdependency could be defined in terms of logical and/or practical consistency.⁵⁸ For example, the right to social security is important in

⁵³ Wellman, 'Basic rights by Henry Shue' (1981) 3(3) *Human Rights Quarterly* 144 at 144; United Nations, 'Frequently asked questions on a human rights-based approach to development cooperation', available at <https://www.ohchr.org/sites/default/files/Documents/Publications/FAQen.pdf>, accessed on 14 October 2023.

⁵⁴ An individual is generally regarded as poor if he or she does not have the means to afford basic goods and services that are necessary to maintain a good standard of living in any country.

⁵⁵ Queralt, (Springer 2016) 82; Global Partnership for Financial Inclusion (GPII) & Consultative Group to Assist the Poor (CGAP), 'Global standard-setting bodies and financial inclusion for the poor: Toward proportionate standards and guidance' (2011) *White paper* 1 at 9.

⁵⁶ Brownlee, (2013) 63(251) *The Philosophical Quarterly* 199 at 200.

⁵⁷ Nickel, 'Rethinking indivisibility: Towards a theory of supporting relations between human rights' (2008) 30(4) *Human Rights Quarterly* 984 at 984; Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993 para. 5; United Nations, 'What are human rights?', available at <https://www.ohchr.org/en/what-are-human-rights>, accessed on 15 October 2023.

⁵⁸ Nickel, (2008) 30(4) *Human Rights Quarterly* 984 at 988; Kunanayakam, 'The declaration on the right to development in the context of United Nations standard-setting',

guaranteeing the right to human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise such rights.⁵⁹ Access to water, health services and housing ensures that one's right to dignity is respected. Poor treatment, abuse and the neglect of patients results not only in a denial of their rights to access health, but also violates their right to be treated with dignity.⁶⁰ However, the argument for recognition, respect and protection of financial inclusion as a socio-economic rights is much more persuasive where the interdependency is stronger.

There appears to be a strong interdependency between the right to financial inclusion and social-economic rights. Financial inclusion and access to basic financial services and products enable the poor to realise other socio-economic rights.⁶¹ Therefore, it is imperative that one has access to financial services in order to fully enjoy socio-economic rights such as access to education, health care, clean water, and shelter. Financial inclusion and financial services provide access to credit, savings, and investment, which are essential for individuals to realise socio-economic rights such as the right to social security.⁶² Without access to financial services, it is difficult for recipients of social security grants to receive and safely store the funds they receive from government. Consequently, it is impossible for one to realise the right to social security without utilising the right to financial inclusion in the SADC.

Additionally, the express recognition of the right to financial inclusion will enable the realisation of socio-economic rights and the alleviation of the adverse effects of poverty in the SADC. 'Poverty' is defined as the lack of sufficient resources to secure basic life necessities, including amongst others safe drinking water, food, or sanitation and

the Office of the High Commissioner for Human Rights (OHCHR) (eds), *Realizing the Right to Development: Essays in Commemoration of 25 years of the United Nations Declaration on the Right to Development* (United Nations Publication 2013) 17.

⁵⁹ OHCHR, 'About the right to social security and human rights,' available at <https://www.ohchr.org/en/social-security/about-right-social-security-and-human-rights>, accessed on 16 October 2023.

⁶⁰ South African Human Rights Commission, 'Access to health care' available at <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf>, accessed on 1 October 2023.

⁶¹ Brownlee & Stemplowska, (Cambridge University Press 2015) 47; Department for International Development report 'Reducing poverty by tackling social exclusion' (2005) *Policy paper* 1 at 2.

⁶² Olivier & Van Rensburg, 'Protection and enforcement of the right to social security' (2000) 4(1) *Law Democracy & Development* 87 at 97.

other socio-economic rights.⁶³ Poverty is increasingly recognised as a human rights challenge in South Africa, Zimbabwe, Namibia and other SADC countries.⁶⁴ The proper enforcement and protection of socio-economic rights and financial inclusion will combat poverty.⁶⁵ The minimum core approach to human rights could be utilised and this entails identifying subsistence levels in respect of each socio-economic right and insisting that the provision of core goods and services enjoys immediate priority.⁶⁶ This approach is made up of two components, namely, the minimum core content and the minimum core obligation.⁶⁷ Minimum core content refers to the minimum basic resources that are necessary to allow individuals to be free from threats to their survival and to achieve a minimum level of well-being.⁶⁸ These basic resources could be regarded as minimum conditions for one to live a standard life.⁶⁹ On the other hand, minimum core obligations are the obligations on the state to ensure the realisation of minimum essential levels of socio-economic rights and financial inclusion.⁷⁰ The ICESCR provides that the minimum core approach was developed to establish a minimum legal substance for socio-economic rights and enhance the prioritisation of socio-economic needs of the most

⁶³ Durojaye & Mirugi-Mukundi, 'General introduction to poverty and human rights in Africa' in Durojaye & Mirugi-Mukundi (eds) *Exploring the Link Between Poverty and Human Rights in Africa* (Pretoria University Press 2020) 1; Council of Europe, 'The evolution of human rights,' available at <https://www.coe.int/en/web/compass/the-evolution-of-human-rights>, accessed on 15 April 2024.

⁶⁴ Fredman, 'The potential and limits of an equal rights paradigm in addressing poverty' (2011) 22(3) *Stellenbosch Law Review* 566 at 566.

⁶⁵ Mubangizi & Mubangizi, 'Poverty, human rights law and socio-economic realities in South Africa' (2005) 22(2) *Development Southern Africa* 277 at 282; Bilchitz, *Poverty and Fundamental rights: The Justification and Enforcement of Socio-economic Rights* (Oxford University Press 2007) 185.

⁶⁶ Pieterse, 'Resuscitating socio-economic rights: Constitutional entitlements to health care services' (2006) 22(3) *SAJHR* 473 at 473; Brand & Russell, *Exploring the Core Content of Socio-economic Rights: South African and International Perspectives* (Protea Book House 2002) 71.

⁶⁷ Orago, 'The place of the "Minimum core approach" in the realisation of the entrenched socio-economic rights in the 2010 Kenyan Constitution' (2015) 59(2) *Journal of African Law* 237 at 245.

⁶⁸ Orago, (2015) 59(2) *Journal of African Law* 237 at 245; Bilchitz, (Oxford University Press 2007) 220–221.

⁶⁹ Young, 'The minimum core of economic and social rights: A concept in search of content' (2008) 33 *The Yale Journal of International Law* 113 at 138.

⁷⁰ Fuo & Du Plessis, 'In the face of judicial deference: Taking the "minimum core" of socio-economic rights to the local government sphere' (2015) 19 *Law, Democracy & Development* 1 at 5; UN, 'General comment No. 13: The right to education (Art. 13 of the covenant)', available at <https://www.refworld.org/legal/general/cescr/1999/en/37937>, accessed on 15 April 2024; Bilchitz, (Oxford University Press 2007) 221; Orago, (2015) 59(2) *Journal of African Law* 237 at 245.

vulnerable and poor people.⁷¹ Notwithstanding the differences in the level of economic development, the SADC member states should be obliged to fulfil socio-economic rights and promote financial inclusion so as to curb poverty and other socio-economic challenges.⁷²

Financial inclusion and socio-economic rights are both realised through the principal of minimum core obligation.⁷³ Both financial inclusion and socio-economic rights play a pivotal role in the fight against poverty and socio-economic challenges and inequalities. It is submitted that there is a correlation between financial inclusion and poverty levels. For instance, it is submitted that financial inclusion helps to alleviate poverty and income redistribution in Nigeria.⁷⁴ Financial inclusion promoted access to credit unions and this resulted in poverty reduction among low-income communities in the United Kingdom.⁷⁵ It is worth noting that access to financial services and products is instrumental for securing and sustaining the provision of food, shelter, social security, health and education. Financial exclusion hinders the realisation of socio-economic rights in the SADC. Therefore, Zimbabwe, Namibia, South Africa and other SADC countries should consider expressly recognising financial inclusion as a fundamental right in their constitutions and regulatory frameworks.

V THE ZIMBABWEAN, NAMIBIAN AND SOUTH AFRICAN APPROACH TO FINANCIAL INCLUSION

Zimbabwe, Namibia, and South Africa have well-defined financial inclusion policies. The South African financial inclusion policy is entitled the 'Financial Inclusion Policy Framework for South Africa' ('SA financial inclusion policy').⁷⁶ This policy was developed by the National Treasury and it was first published for public comments

⁷¹ Young, *Constituting Economic and Social Rights* (Oxford University Press 2012) 67–68.

⁷² UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Report of the sub-commission on prevention of discrimination and protection of minorities on its 47th Session', U.N. Docs. E/CN.4/Sub.2/1995/51 (1995).

⁷³ Young, (Oxford University Press 2012) 128; Moller, 'Rural blacks' perceptions of basic need fulfilment' (1985) *South African National Scientific Programmes Report No. 116* 67 at 68.

⁷⁴ Fadun, 'Financial inclusion, tool for poverty alleviation and income redistribution in developing countries: Evidence from Nigeria' (2014) 5(3) *Academic Research International* 137 at 138; Mohammed, Mensah & Gyeke-Dako, 'Financial inclusion and poverty reduction in Sub-Saharan Africa' (2017) 19(1) *The African Finance Journal* 1 at 3.

⁷⁵ Jones, 'From tackling poverty to achieving financial inclusion: The changing role of British credit unions in low-income communities' (2008) 37(6) *The Journal of Socio-Economics* 2141 at 2145.

⁷⁶ South African government, 'National development plan 2030' available at <https://www.gov.za/issues/national-development-plan-2030>, accessed on 4 January 2024; National Treasury 'An inclusive financial sector for all: Draft for consultation', (2020), available at

in October 2020. The SA financial inclusion policy was approved by the South African cabinet on 8 August 2023.

The Zimbabwean financial inclusion policy is known as the National Financial Inclusion Strategy II 2022–2026 (‘NFIS’).⁷⁷ In Namibia, the Financial Sector Strategy 2011–2021 provides a financial inclusion agenda.⁷⁸ The Reserve Bank of Zimbabwe (‘RBZ’) 2022 report⁷⁹ provides that 83 per cent of the Zimbabwean population has access to formal financial services. In South Africa, the level of financial inclusion is estimated to be about 90 per cent⁸⁰ while in Namibia, it is estimated to be at 78 per cent.⁸¹ However, all these countries still have high levels of poverty and rampant socio-economic inequalities. The World Bank estimates that 45 per cent of people in South Africa live in poverty.⁸² In Zimbabwe, it is submitted that the country’s poverty levels are at 42 per cent⁸³ while in Namibia, it is submitted to be at 41 per cent.⁸⁴ This shows that there are relatively high levels of poverty in Zimbabwe, Namibia and South Africa despite their relatively positive financial inclusion developments. In other words, the poverty levels in the aforesaid countries do not correlate with their positive financial inclusion developments. This can be partly attributed to the fact that there are still various challenges and socio-economic inequalities in

https://www.treasury.gov.za/comm_media/press/2020/Financial%20Inclusion%20Policy%20-%20An%20Inclusive%20Financial%20Sector%20For%20All.pdf, accessed on 9 April 2024.

⁷⁷ Reserve Bank of Zimbabwe (RBZ), ‘Zimbabwe’s 2022–2026 National Financial Inclusion Strategy’, available at <https://www.afi-global.org/publications/zimbabwes-2022-2026-national-financial-inclusion-strategy/>, accessed on 4 January 2024.

⁷⁸ Bank of Namibia, ‘Namibia financial sector strategy 2011–2021’, <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/e7/e7e69c6d-b02b-4109-8d3d-5b41a79f9d89.pdf>, accessed on 4 January 2024 at 8–38.

⁷⁹ RBZ National Financial Inclusion Strategy report 1 at 5.

⁸⁰ Fintech Futures, ‘South Africa banking industry trends report 2022: Mobile and digital banking are key drivers of financial inclusion in South Africa’, available at <https://www.fintechfutures.com/techwire/south-africa-banking-industry-trends-report-2022-mobile-and-digital-banking-are-key-drivers-of-financial-inclusion-in-south-africa/>, accessed on 14 October 2023.

⁸¹ Mukong & Amadhila, ‘Financial inclusion and household wellbeing in Namibia’ (2021) 25 *UNISA Press Journal* 1 at 4.

⁸² World Bank, ‘South Africa’, available at <https://thedocs.worldbank.org/en/doc/bae48ff2fefc5a869546775b3f0107350500062021/related/mpo-zaf.pdf> accessed on 15 October 2023; World Bank, ‘Poverty headcount ratio at national poverty lines (% of population) – South Africa’, available at <https://data.worldbank.org/indicator/SI.POV.NAHC?locations=ZA>, accessed on 10 April 2024.

⁸³ The Star, ‘Extreme poverty in Zimbabwe down slightly to 42 pct’, (06 May 2023), available at <https://www.thestar.com.my/news/world/2023/05/06/extreme-poverty-in-zimbabwe-down-slightly-to-42-pct> accessed on 10 April 2024.

⁸⁴ Namibia statistics agency, ‘Namibia Multidimensional poverty index (MPI) report 2021’, available at <https://www.unicef.org/esa/media/9041/file/UNICEF-Namibia-Multidimensional-Poverty-Index-2021.pdf>, accessed on 10 April 2024.

these countries. It is submitted that in the SADC, only 25 per cent of account holders actively use their accounts while over 30 per cent of account holders have dormant accounts, and more than 40 per cent use them purely as mailboxes to receive income and withdraw it in one lump sum.⁸⁵

Socio-economic rights are constitutionally protected in South Africa, Namibia and Zimbabwe. For instance, section 27 of the Constitution of the Republic of South Africa, 1996 provides for the right to health care, food, water and social security.⁸⁶ Moreover, section 26 of the Constitution of the Republic of South Africa, 1996 provides for a right to adequate housing⁸⁷ while section 29 provides for the right to education.⁸⁸ This is also the case with the Zimbabwe Constitution 2013, where section 75 provides for the right to education, while section 76 provides for the right to health care, and section 77 provides for the right to food and water.⁸⁹ Likewise, the Namibian Constitution 1990 provides for socio-economic rights in article 95, which provides that the state has a duty to ensure that citizens have reasonable access to basic services such as public goods and services, health, pension, decent standard of living, and opportunities for social and cultural participation.⁹⁰ However, the right to financial inclusion is not expressly provided for in the constitutions of Zimbabwe, Namibia and South Africa. Instead, financial inclusion is only recognised as a policy goal but it is not constitutionally protected. This approach could have negatively affected the combating of financial exclusion, poverty and socio-economic inequalities in the aforesaid countries and the SADC. For instance, in South Africa, financial inclusion is merely stated as an aim of the FSRA.⁹¹ Accordingly, it is submitted that the adequate provision of financial services could enhance financial inclusion and help to reduce poverty in any country. The enactment of the CRA has been credited with reducing poverty among poor communities in the USA. For instance, there was a significant reduction in poverty when

⁸⁵ Finmark Trust, 'Why use accounts?: Understanding account usage through a consumer lens', (2016), available at <https://finmark.org.za/system/documents/files/000/000/285/original/why-use-accounts-understanding-account-usage-through-a-consumer-lens.pdf?1612347198> accessed on 10 April 2024 at 3–55.

⁸⁶ Section 27(1) of the Constitution of the Republic of South Africa, 1996.

⁸⁷ Section 26 of the Constitution of the Republic of South Africa, 1996.

⁸⁸ Section 29 of the Constitution of the Republic of South Africa, 1996.

⁸⁹ Sections 65 and 71–77 of the Zimbabwe Constitution 2013.

⁹⁰ Articles 20 and 95 of the Namibian Constitution 1990; Moyo, 'A sub-regional and constitutional protection of socio-economic rights: SADC, Botswana, Lesotho, Malawi, Namibia and Zimbabwe' (2011) 5(1) *Malawi Law Journal* 75 at 80.

⁹¹ Sections 7(1)(f); 34(1)(e) and 58(1)(e).

the CRA was consistently enforced in the 1990s.⁹² The recognition of the right to a bank account is also credited with reducing poverty and increasing financial inclusion in France. The same approach could also increase financial inclusion and combat poverty and related socio-economic challenges in the SADC. This follows the fact that although South Africa, Namibia and Zimbabwe have made some considerable efforts to increase levels of financial inclusion among their people, financial inclusion remains very low in the SADC.

VI CONCLUSION

There are various flaws that negatively affect the realisation of financial inclusion in the SADC, especially in Zimbabwe, Namibia and South Africa. In this regard, it was explained that financial inclusion and socio-economic rights are strongly interconnected. Moreover, it was noted that the poor and low-income earners can leverage access to basic financial services to achieve financial inclusion and other socio-economic rights in Zimbabwe, Namibia, South Africa and the entire SADC. It is submitted that financial inclusion should be expressly recognised as a fundamental human right to curb financial exclusion and enable the poor and low-income earners to access and utilise financial services in SADC. Financial inclusion should be effectively utilised to access socio-economic rights to curb poverty and financial exclusion. In other words, the provision of basic financial services is necessary for financial inclusion, while the provision of basic resources is necessary for socio-economic inclusion. As with socioeconomic rights, financial inclusion facilitates and empowers the peoples' access to basic essential services such as health, education, social welfare and other financial services. Accordingly, financial inclusion should be statutorily protected like any other socio-economic right in SADC to promote equal access to such rights and formal financial services such as loans. Thus, there is a need for a paradigm shift from accepting financial inclusion as a mere policy goal to statutorily recognising it as a fundamental human right in the SADC. Moreover, South Africa, Zimbabwe and Namibia should enact specific statutes on financial inclusion to effectively combat financial exclusion and promote equal access to all basic financial services and relevant socio-economic rights.

⁹² Immergluck, *Credit to the community: Community Reinvestment and Fair Lending Policy in the United States* (M.E Sharpe Inc. 2004) 19; Jargowsky, *Poverty and Place: Ghettos, Barrios, and the American City* (Russell Sage Foundation 1997) 1.