

**A Compendium on  
Socio-Economic Rights  
in Zimbabwe**

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*I see one-third of a nation ill-housed, ill-clad, and ill-nourished. . . The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.*

*Franklin D Roosevelt*

*In a real sense, all life is interrelated. The agony of the poor impoverishes the rich; the betterment of the poor enriches the rich. We are inevitably our brother's keepers because we are our brother's brother. Whatever affects one directly affects all indirectly.*

*Martin Luther King*

## List of Acronyms

ACRWC	African Charter on Rights and Welfare of the Child
AU	African Union
CDE	UN Convention against Discrimination in Education
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
LEDRIZ	Labour and Economic Development Research Institute of Zimbabwe
OSISA	Open Society Initiative for Southern Africa
RLF	Rosa Luxemburg Foundation
SADC	Southern African Development Community
SDG	Sustainable Development Goal
UNHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
WHO	World Health Organization
ZHRC	Zimbabwe Human Rights Commission

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## **The Purpose of this Compendium:**

**To inform and educate Zimbabweans on the following:**

- What are the economic, social and cultural (ESC) rights in the Constitution?
- What do these rights involve?
- What are the obligations of the State and non-State entities in terms of these rights?
- What constitutes a violation of these rights?
- What remedies are available for such violations?
- How can these remedies be accessed?

# 1. What are Human Rights?

Human rights are claims that every human being is entitled to in order to live a dignified life. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights:<sup>1</sup> ‘All human beings are born free and equal in dignity and rights.’ Human rights have traditionally been characterised into civil and political (CP) rights, and economic, social and cultural (ESC) rights. A clear distinction between CP rights and ESC rights is reflected in the adoption in 1966 of two separate instruments: the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup> (guaranteeing among others the rights to life, a free trial, freedom of expression and freedom from discrimination) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>3</sup> (guaranteeing among others the rights to education, health, work, food and water).

At international level a number of treaties that combine both CP and ESC have been adopted, such as the Convention on the Rights of the Child (CRC).<sup>4</sup> The Vienna Declaration (1993) recognised CP rights and ESC rights as ‘indivisible, interdependent and interrelated’. The understanding is that

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1 Universal Declaration of Human Rights, adopted 10 December 1948, G.A. Res. 217A (III), U.N. Doc. A/180 at 71 (1948).

2 International Covenant on Civil and Political Rights, adopted 16 December 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, acceded to by Zimbabwe 13 May 1991.

3 International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976, acceded to by Zimbabwe 13 May 1991.

4 Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with Article 49.

both sets of rights are necessary to establish the integrity and dignity of the person. There is, therefore, no necessary hierarchy or precedence among these rights within international treaties. While it is a relatively simple act to ratify a human rights Covenant most countries have challenges when it comes to implementation. The ICESCR and the CRC have come up with complaints procedures to address violations of ESC rights. There is also increasing national, regional and international legal evidence that courts can adjudicate violations of ESC rights.

## **2. Background to Economic, Social and Cultural (ESC) Rights**

There is growing recognition of the relevance of ESC rights to ensuring pro-poor, inclusive and sustainable development. In Zimbabwe, where a large percentage of the population lives in poverty and social deprivation, provision of ESC rights becomes even more important. ESC rights aim to ensure that everyone has access to the resources, opportunities and services essential for an adequate standard of living. ESC rights provide protection for the dignity, freedom and well-being of individuals by guaranteeing state-supported entitlements to education, public healthcare, housing, a living wage, decent working conditions and other social amenities. Gross violations of ESC rights have been among the root causes of conflicts.

International recognition of ESC rights dates back to the early twentieth century, when the International Labour Organization (ILO), then an agency of the League of Nations, adopted a series of conventions intended to improve labour standards around the world. The ILO recognised a range of workers' rights in its Declaration of Philadelphia (1944), affirming that 'all human beings ... have the right to pursue

both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.’ The World Health Organization (WHO) has also been at the forefront of spearheading the international recognition of ESC rights. The Constitution of the WHO (1946) declared that ‘The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being ...’

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in December 1948, proclaimed the inviolability of ESC rights. Article 2 of the Declaration states that, ‘everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.’ ESC rights contained in the UDHR include:

- The right to own property (Article 17);
- The right to social security (Article 22);
- The right to employment (Article 23);
- The right to education (Article 26); and
- The right to an adequate standard of living (Article 25).

ESC rights were recognised formally in international law in 1966, when they were enshrined in the ICESCR. The ICESCR is the first part of an International Bill of Human Rights, the second being the Covenant on Civil and Political Rights. Both are international treaties and are binding on States Parties under international law. Under the ICESCR, governments

are required to ‘take steps ... to the maximum of available resources ... with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means’ (Article 2.1). They are also required to ‘guarantee that the rights ... will be exercised without discrimination of any kind’ (Article 2.2) and to ‘ensure the equal right of men and women to the enjoyment of all socio-economic rights’ (Article 3).

The ICESCR covers a number of ESC rights, including:

- The right to work (Article 6);
- The right to just and favourable conditions of work (Article 7);
- The right to form trade unions and the right to strike (Article 8);
- The right to social security (Article 9);
- The right to an adequate standard of living (Article 11(1));
- The right to adequate housing and food (Article 11(1));
- The right to freedom from hunger (Article 11(2));
- The right to the highest attainable standard of health (Article 12);
- The right to education (Article 13);
- The right to take part in cultural life (Article 15(1)(a));
- The right to enjoy the benefits of scientific progress (Article 15(1)(b)); *and*
- The right to the protection of scientific, literary and artistic creations (Article 15(1)(c)).

The CRC upholds the applicability of many of the rights contained in the ICESCR. These include:

- The right to health (Article 24);
- The right to social security (Article 25);

- The right to an adequate standard of living (Article 27);
- The right to education (Article 28); and
- Protection from economic exploitation (Article 32).

The International Convention on the Elimination of All Forms of Racial Discrimination,<sup>5</sup> for example, prohibits discrimination on the basis of racial or ethnic origin with respect to a range of ESC rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>6</sup> affirms the applicability of the full range of ESC rights to women.

A broad range of worker-related rights has been developed under the auspices of the ILO and enshrined in ILO Conventions and other legal instruments. Some of the relevant ILO conventions include:

- ILO Convention No. 29 concerning Forced or Compulsory Labour;
- ILO Convention No. 105 concerning the Abolition of Forced Labour;
- ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation;
- ILO Convention No. 117 concerning Basic Aims and Standards of Social Policy;
- ILO Convention No. 122 concerning Employment Policy;
- ILO Convention No. 154 concerning the Promotion of Collective Bargaining;
- ILO Convention No. 168 concerning Employment Promotion, and Protection Against Unemployment;

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5 Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19.

6 Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1).

*and*

- ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

At the continental level, the African Charter on Human and Peoples' Rights safeguards the following rights:

- The right to work (Article 15);
- The right to health (Article 16); and
- The right to education (Article 17).

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the 'AU Protocol on the Rights of Women', is a supplement to the African Charter on Human and Peoples' Rights to further address human rights concerns specific to women in Africa. It was adopted by the African Union in July 2003 and came into force in November 2005 after ratification by 15 countries. As of July 2010, 46 countries have signed on to the Protocol, and 28 countries have ratified it.

The African Charter on Rights and Welfare of The Child (ACRWC) was adopted in July 1990 during the 26<sup>th</sup> Assembly of Heads of State and Governments of the Organisation of African Unity (now African Union) in Addis Ababa, Ethiopia. It entered into force on 29 November 1999. The African Children's Charter provides recognition of the rights and welfare of African children and establishes a legal framework for their protection. Article 11(3)(a) of the Charter obligates States Parties to provide free and compulsory basic education. States are also required to take special measures to ensure access to education for 'female, gifted and disadvantaged children.' The State is also under an obligation to ensure that pregnant girls are allowed to continue with their education.

At regional level, the Charter of Fundamental Social Rights in SADC<sup>7</sup> embodies the recognition by governments, employ-

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<sup>7</sup> The Charter was adopted in 2003. It seeks to provide a framework for labour

ers and workers in the region of the universality and indivisibility of basic human rights proclaimed in instruments such as the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and other relevant international human rights instruments.

A number of countries have now included ESC rights in their constitutions either as directly enforceable provisions or as aspirational statements. Countries such as Costa Rica recognised the right to education from the 1840s. From the late nineteenth century, welfare reforms in many European countries introduced safeguards for some ESC rights such as the right to work. Early twentieth century constitutions of some Latin American countries, such as the 1917 Constitution of Mexico, were among the first to guarantee ESC rights as human rights. In the 1930s the US introduced stronger protection of workers' rights and recognised the State's responsibility to ensure access to basic social services.<sup>8</sup> Other nations, such as Sweden and Denmark, sought to promote both clusters of rights (political and civil rights; and ESC rights) through the establishment of social welfare states.<sup>9</sup> Many countries have crafted macroeconomic development strategies reflecting a commitment to ESC rights.

The Constitution of Zimbabwe Amendment (No. 20) Act of 2013 incorporates ESC rights. Chapter 4 of the Constitution provides a justiciable Declaration of Rights (commonly known as the Bill of Rights). The Declaration of Rights incorporates first, second and third generational rights. First generation rights deal with the civil and political rights. Second generation rights include: freedom of profession, trade or occupation, standards in the region and obliges member States to create an enabling environment in line with ILO core conventions.

8 See Frequently Asked Questions on Economic, Social and Cultural Rights Fact Sheet No. 33, Office of the United Nations High Commissioner for Human Rights.

9 *Economic and Social Justice A Human Rights Perspective, Human Rights Education* Topic Book 1 by David A. Shiman.

labour rights, property rights, right to agricultural land, right to education, right to health care, rights to food and clean water, and marriage rights. Third generation rights include language, culture and environmental rights. Furthermore, employment creation, the opportunity to work, labour relations, food security, cultural values, education, shelter, health services, and social welfare are included in Chapter 2 under National Objectives.

The Constitution provides a number ways for claiming and defending ESC rights. It establishes a number of independent institutions to hold the Government accountable to its constitutional duty to respect, promote, protect and fulfil socio-economic rights recognised in the Bill of Rights. These institutions include the legislature, the courts to enforce these rights, and bodies like the Zimbabwe Human Rights Commission (ZHRC) to promote and monitor their implementation.

Section 2(11) obliges the State to protect the rights in chapter 4 for their full realisation and fulfilment. Section 34 stipulates that all ratified and agreed international documents should be domesticated and complied with. Section 46(c) stipulates that all institutions and courts should interpret human rights in line with international conventions, declarations and agreements. These international treaties and declarations are defined in Section 327 as any agreement between one or more foreign states or governments which include, among others, ILO treaties, and AU and SADC agreements.

**Table 1: Zimbabwe's Ratification of International Human Rights Treaties and Conventions<sup>10</sup>**

<b>International Human Rights Treaties</b>	<b>Signed</b>	<b>Ratification</b>	<b>Accession</b>
International Covenant on Economic, Social and Cultural Rights			13/5/91
International Covenant on Civil and Political Rights			13/5/91
International Convention on the Elimination of All Forms of Racial Discrimination			13/5/91
Convention on the Elimination of All Forms of Discrimination against Women			13/5/91
Convention on the Rights of the Child	8/3/90	11/9/90	
African Charter on Human and Peoples' Rights	28/2/86	30/5/86	
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	18/11/03	15/4/08	
African Charter on the Rights and Welfare of the Child			19/1/95
ILO Convention No. 29 Forced Labour, 1930		27/8/98	
ILO Convention No. 87 Freedom of Association and Protection of the Right to Organise, 1948		09/4/03	
ILO Convention No. 98 Right to Organise and Collective Bargaining, 1949		27/8/98	
ILO Convention No. 100 Equal Remuneration, 1951		14/12/89	
ILO Convention No. 105 Abolition of Forced Labour, 1957		27/8/98	

10 Signature constitutes a preliminary endorsement of the Convention or Protocol. Signing the instrument does not create a binding legal obligation but demonstrates the State's intent to examine the treaty and consider ratifying it. While signing does not commit a State to ratification, it does oblige the State to refrain from acts that would undermine the treaty's objective and purpose. Ratification or accession signifies an agreement to be legally bound by the terms of the Convention. Though accession has the same legal effect as ratification, the procedures differ. In the case of ratification, the State first signs and then ratifies the treaty. The procedure for accession has only one step—it is not preceded by an act of signature.

<b>International Human Rights Treaties</b>	<b>Signed</b>	<b>Ratification</b>	<b>Accession</b>
ILO Convention No. 111 Discrimination in Respect of Employment and Occupation, 1958		23/6/99	
ILO Convention No. 135 Workers' Representatives, 1971		27/8/98	
ILO Convention No. 138 Minimum Age, 1973		06/6/00	
ILO Convention No. 144 Tripartite Consultation (International Labour Standards), 1976		14/12/89	
ILO Convention No. 182 Worst Forms of Child Labour, 1999		11/12/00	

Zimbabwe is a signatory to a number of declarations, including Education for All (World Education Forum Dakar, 2000), and the ten commitments of the World Summit on Social Development in Copenhagen (Copenhagen Declaration, 1995), which include the eradication of poverty and the promotion of full employment, social integration, human rights, gender equality and equity, adequate education for all, and access to universal primary health care. Zimbabwe is also a signatory to the Abuja Declaration of 2001 which set a target of allocating at least 15% of the annual budget to improve the health sector.

### **3. Obligations of States**

The obligations of States in relation to ESC rights are expressed differently from treaty to treaty. For example, the IC-ESCR requires States 'to take steps' to the maximum of their available resources to achieve progressively the full realisation of socio-economic rights.

Article 1 of the African Charter requires State Parties to 'recognise' the rights, duties and freedoms enshrined in the Charter, and 'to adopt legislative or other measures to give effect to them.' Such measures include:

- Providing for the protection and realisation of ESC rights through constitutional rights and institutions;
- Legislative, policy and budgetary measures;
- Educational and public awareness measures; and
- Administrative action as well as ensuring appropriate administrative and judicial remedies for the violation of these rights.

The Zimbabwean Government has three obligations relating to ESC rights. First, it must respect people's rights by not undertaking actions that violate these rights. Second, it must protect people's rights by ensuring that other people or bodies do not violate such rights. Third, it must fulfil people's rights by taking actions to make them a reality in practice.

### ***3.1 Progressive Realisation***

Progressive realisation involves constantly moving towards the full attainment of ESC rights, within the resources available to a State. However, the African Charter does not expressly refer to the principle of progressive realisation. This concept is widely accepted in the interpretation of ESC rights and has been implied into the African Charter in accordance with Articles 61 and 62. States Parties are therefore under a continuing duty to move as expeditiously and effectively as possible towards the full realisation of ESC rights.

States must implement a reasonable and measurable plan, including achievable benchmarks and timeframes, for the enjoyment over time of ESC rights within the resources available. Despite the obligation to progressively realise socio-economic rights, some of the obligations imposed on States Parties to the African Charter are immediate upon ratification of the Charter. These obligations include but are not limited to the obligation to take steps, the prohibition of retrogressive steps, minimum core obligations and the obligation to prevent

discrimination in the enjoyment of ESC rights. States Parties have an obligation to ensure the satisfaction of, at the very least, the minimum essential levels of each of the ESC rights contained in the African Charter. The concept of progressive realisation of rights does not justify government inaction on the grounds that a State has not reached a certain level of economic development.

Monitoring and analysing budgets is important when evaluating the progressive realisation of ESC rights. National budgets are key economic and political instruments reflecting States' priorities. Budget analysis also helps to establish the extent to which the most efficient use is made of available resources. Underfunding of certain sectors and regions may be indicative of the State's failure to progressively realise ESC rights. The State must put in place an effective and fair taxation system and an inclusive budgeting process to ensure that ESC rights are prioritised in the distribution of resources.

### ***3.2 Minimum Core Obligations***

The minimum core obligation<sup>11</sup> of the State is to ensure that no significant number of individuals is deprived of the essential elements of a particular right. This obligation exists regardless of the availability of resources and is non-derogable, i.e. it cannot be limited or suspended under any circumstance. When a State claims that it has failed to realise minimum essential levels of ESC rights it must be able to show that it has allocated all available resources towards the realisation of these rights, and particularly towards the realisation of the minimum core content. Where the State suffers from demonstrable resource constraints, caused by whatever reason, including economic adjustment, it should still implement mea-

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11 'Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights'. African Commission on Human and Peoples' Rights.

asures to ensure the minimum essential levels of each right to members of vulnerable and disadvantaged groups, particularly by prioritising them in all interventions.

Article 2 of the African Charter on Human and Peoples' Rights prohibits any discrimination in the enjoyment of the protected rights on the following non-exhaustive grounds including race, ethnic group, colour, sex/gender, language, religion, political or any other opinion, national and social origin, economic status and birth. Thus, any discrimination against individuals in their access to or enjoyment of socio-economic rights on any of the prohibited grounds is a violation of the African Charter. Discrimination includes any conduct or omission which has the purpose or effect of nullifying or impairing the equal access to and enjoyment of socio-economic rights. The obligation to protect the individual from discrimination is immediate.

The obligation to respect human rights requires States to refrain from interfering directly or indirectly with people's enjoyment of human rights. This is an immediate obligation. It includes respecting efforts people themselves make to realise their rights. Governments must not torture, unduly inhibit the right to strike, arbitrarily close private schools teaching in minority languages, or carry out evictions, without due process of law or providing alternative accommodation. Under the obligation to protect human rights, States must prevent, investigate, punish and ensure redress for the harm caused by abuses of human rights by third parties – private individuals, commercial enterprises or other non-state actors. This is an immediate obligation. Governments must regulate and monitor, for instance, corporate use of private security firms, potentially hazardous industrial emissions, the treatment of workers by their employers, and the adequacy and appropriateness of services that the State del-

egates or privatises, including private medical practices and private schools.

Another immediate obligation is the State's duty to prioritise 'minimum core obligations', to ensure minimum essential levels of each of the rights for all. Under the right to education, for example, core obligations include the right to free and compulsory primary education, and ensuring that children are not taught in a racist, homophobic or otherwise discriminatory way.

### ***3.3 The Role of Other Stakeholders***

#### **3.3.1 Parliament**

The legislature has, in many countries, a role to play in approving the ratification of international treaties, including those that recognise ESC rights. It also approves legislation and regulations to ensure that national laws conform to international or constitutional norms on ESC rights. Section 119 of the Constitution states that Parliament must promote democratic governance and ensure that the provisions of the Constitution are upheld and all institutions and agencies of government at every level act constitutionally and in the national interest. Furthermore, the legislature is in charge of approving the national budget and can thus ensure that the maximum available resources are devoted to fulfilling ESC rights. Many parliaments have cross-party human rights committees, which provide a forum for parliamentarians to work together on human rights, including ESC rights. The Parliament of Zimbabwe has a thematic committee on human rights.

#### **3.3.2 Local Governments**

Local governments are responsible for guaranteeing all human rights, particularly when the provision of basic services, such as education, water or health, has been decentralised.

### **3.3.3 The Judiciary**

The judiciary has a role in ensuring that the State and others respect ESC rights, and provides remedies if such rights are violated. The judiciary also has a role in clarifying and elaborating the content and scope of ESC rights.

### **3.3.4 Independent Commissions**

Human Rights Commissions safeguard and promote ESC rights in a number of ways, such as by handling complaints in cases of violations, undertaking investigations, monitoring implementation of relevant international human rights treaties, advising the government on the domestic application of international treaties, recommending policy changes, and providing training and public education.

Institutions such as the Zimbabwe Human Rights Commission (ZHRC) are increasingly working to promote and monitor socio-economic rights. The ZHRC was established under section 242 of the Constitution with a mandate to protect, promote and enforce human rights; it was operationalised by the Zimbabwe Human Rights Commission Act (Chapter 10:30).

General Comment No. 10 of the Committee on Economic, Social and Cultural Rights (CESCR) deals with the role of national human rights institutions, and the activities that can be undertaken by them, including:

The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;

The scrutinising of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the ICESR;

Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the

request of the public authorities or other appropriate agencies;

The identification of national-level benchmarks against which the realisation of Covenant obligations can be measured;

Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realised, either within the State as a whole or in areas or in relation to communities of particular vulnerability;

Monitoring compliance with specific rights recognised under the Covenant and providing reports thereon to the public authorities and civil society; and

Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State.

### **3.3.5 Civil Society and Trade Unions**

Various actors in civil society, such as NGOs, trade unions, social movements, community-based organisations, human rights defenders, professional associations, academics and religious institutions, have crucial roles in working with individuals and groups to promote their ESC rights, and in holding the government accountable for realising these rights.

Success stories in a number of countries have shown that civil society can play an important role in litigating cases. SECTION27, a public interest law centre based in South Africa, successfully used rights-based strategies focusing on litigation, community activism and direct lobbying to secure textbook delivery and thereby protect the right to education in Limpopo in 2012.

### **3.3.6 International Organisations**

The Charter of the United Nations declares that one of the purposes of the UN is promoting respect for human rights, and international human rights treaties envisage a particular

role for UN bodies and specialised agencies in their implementation. For instance, the World Bank, the International Monetary Fund (IMF), and agencies such as UNICEF are requested to cooperate effectively with States Parties on the national implementation of all rights.

### **3.3.7 The Media**

The media provides a forum for public discussion on ESC rights. The media plays an important role in disseminating information regarding ESC rights and also identifying and publicising violations of them.

### **3.3.8 The Private Sector**

Businesses are considered to have some responsibilities with respect to human rights. The United Nations Global Compact defines ten principles related to human rights, labour standards, the environment and anti-corruption that companies signing up to it pledge to respect. Some companies have developed their own policies, programmes and tools to incorporate human rights into their business operations.

The ten principles are derived from the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. These Principles are:

- 1: Businesses should support and respect the protection of internationally proclaimed human rights; *and*
- 2: make sure that they are not complicit in human rights abuses.
- 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- 4: the elimination of all forms of forced *and* compulsory labour;

- 5: the effective abolition of child labour; *and*
- 6: the elimination of discrimination in respect of employment and occupation.
- 7: Businesses should support a precautionary approach to environmental challenges;
- 8: undertake initiatives to promote greater environmental responsibility *and*
- 9: encourage the development and diffusion of environmentally friendly technologies.
- 10: Businesses should work against corruption in all its forms, including extortion and bribery.

#### **4. Violations of ESC rights**

The Vienna Convention on the Law of Treaties (1969) states that '[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.' Since ESC rights involve many positive obligations, scholars have sought to clarify the nature of violations of these rights. These may not only involve actions (acts of commission), but failures to act (acts of omission). Different types of violations have been set out in the Maastricht Guidelines:

Most violations of ESC rights are directly linked to systemic inequalities and may, in many cases, be challenged as such. Thus, in jurisdictions lacking explicit protections of ESC rights, the right to equality may serve as a critical vehicle for disadvantaged groups seeking to enforce their ESC rights.<sup>12</sup>

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12 Economic, Social and Cultural Rights Handbook for National Human Rights Institutions, Professional Training Series No. 12, United Nations, 2005.

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### **Box 1: Violations through acts of commission**

#### **14. Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include:**

- (a) The formal removal or suspension of legislation necessary for the continued enjoyment of an ESC right that is currently enjoyed;
- (b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;
- (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
- (d) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realization of ESC rights for the most vulnerable groups;
- (e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;
- (f) The calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
- (g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

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13 Economic, Social and Cultural Rights Handbook for National Human Rights Institutions, Professional Training Series No. 12, United Nations, 2005.

## **Box 2: Violations through acts of omission**

**15. Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:**

- (a) The failure to take appropriate steps as required under the Covenant;
- (b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- (c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;
- (e) The failure to utilize the maximum of available resources towards the full realization of the Covenant;
- (f) The failure to monitor the realization of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;
- (g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;
- (h) The failure to implement without delay a right which it is required by the Covenant to provide immediately;
- (i) The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- (j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations, or multinational corporations.

## **5. Legal Remedies for the Violation of ESC rights**

With respect to legal remedies for violations of ESC rights, the Universal Declaration of Human Rights, in 1948, provided that ‘everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.’ Despite this promise made by the international community, victims

of violations of ESC rights have historically been accorded few avenues to seek redress at either the national level or the international level. Furthermore, remedial mechanisms have been piecemeal and have traditionally favoured civil and political rights. Litigation has also been hindered by the lack of awareness about ESC rights among judges, lawyers, advocacy organisations and victims. However, a growing body of case law concerning ESC rights is now evident at the national, regional and international levels and has supplied inspiration for those advocates wishing to take the legal option in addressing issues of poverty and exclusion.

International and regional adjudicative mechanisms concerned with human rights are ordinarily restricted to applying the rights set out in their constituent instruments, in most cases the relevant human rights treaty. The United Nations Human Rights Committee is empowered to oversee the International Covenant on Civil and Political Rights (ICCPR). There are some exceptions though. The African Commission on Human and Peoples' Rights is expressly entitled to apply, as appropriate, relevant international and regional human rights instruments and principles.

States Parties have obligations under international human rights treaties to ensure that domestic remedies are provided in cases of violations. Article 2(3) of the ICCPR obliges contracting parties to provide an effective remedy to those individuals and groups whose Covenant rights are violated, which includes examination of a claim by a competent or other authority and enforcement of remedies when granted. States that have ratified the Convention on the Elimination of All Forms of Discrimination against Women are required 'to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection

of women against any act of discrimination.’ The ICESCR does not expressly provide that victims must have recourse to legal remedies; it only notes that appropriate means to implement the Covenant include legal methods (Article 2(1)). A similar provision is found in the Convention on the Rights of the Child (Article 3(2)). However, the CESCR has stated that the rights are capable of judicial application and that States should justify why such methods are not used to further the implementation of the Covenant. It has also called on countries to make the rights domestically applicable and justiciable at the national level.

Judiciaries in many countries have displayed a growing willingness to imply ESC rights from other human rights. For example, the Constitutional Court of the Swiss Confederation has held that rights to democracy and liberty are meaningless without the recognition of a right to a basic minimum level of subsistence, a right to basic necessities. In the decision of the Supreme Court of the Republic of Ireland in *G v An Bord Uchtála*, Justice Walsh observed that ‘[t]he child also has natural rights. ... the child has the right to be fed and to live, to be reared and educated, to have the opportunity of working and of realising his/her full personality and dignity as a human being. These rights of the child (and others which I have not enumerated) must equally be protected and vindicated by the State.’ The Indian courts have famously implied the full catalogue of ESC rights by reading the rights to life and equality together with the Directive Principles (which contain policy objectives in the social and economic domains).

The Constitutional Court of South Africa commented in *Government of the Republic of South Africa v Grootboom* that ‘socio-economic rights are expressly included in the Bill of Rights; they cannot be said to exist on paper only ..., and the courts are constitutionally bound to ensure that they are

protected and fulfilled. The question is therefore not whether socio-economic rights are justiciable under our Constitution, but how to enforce them in a given case’ [Paragraph 20].<sup>14</sup>

## 6. The Right to Education

The right to education includes the right to free and compulsory primary education, and increasing access to secondary, technical, vocational and higher education. The right to education is cross-cutting involving civil, cultural, economic, political and social elements. Realising people’s right to education reduces their vulnerability to child labour, early marriage, discrimination and many other human rights abuses. It also increases their opportunities to realise other human rights, including the right to health and the right to participate in public affairs.<sup>15</sup>

The right to education is provided for under Sections 27 (Education) and 75 (Right to Education) of the Zimbabwean Constitution. Section 27 obliges the State to take all practical measures to promote free and compulsory education for children. The State must also take measures to ensure that girls are afforded the same opportunities as boys to obtain education at all levels. Section 75 entitles every citizen and permanent resident of Zimbabwe to a basic state-funded education, including adult basic education and further education, which the State, through reasonable legislative and other measures, must make progressively available and accessible. This is in line with Article 13 of the ICESCR.

Furthermore, according to the Education Act of 1987, as amended in 2006, ‘No child in Zimbabwe shall be refused admission to any school or be discriminated against by the im-

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14 ‘Litigating Economic, Social and Cultural Rights: Legal Practitioners Dossier’, Centre on Housing Rights and Evictions, December 2006.

15 *Human rights for human dignity: A primer on economic, social and cultural rights*, Amnesty International 2005.

position of ... terms and conditions in regard to his admission to any school on the grounds of his race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender.’

Sustainable Development Goal (SDG) 4 of the United Nations (UN) seeks to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. A key target under this SDG is to ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes by 2030.

### ***6.1 The Right to Education in International Law***

The right to education has been covered extensively in international law. The Universal Declaration of Human Rights was the first international instrument to give expression to the right to education. Article 26 provides that ‘everyone has the right to education’ and that ‘education shall be free, at least in the elementary and fundamental stages.’ It further states that ‘elementary education shall be compulsory.’

Article 4(a) of the UNESCO Convention against Discrimination in Education (CDE) requires States Parties ‘to promote equality of opportunity and of treatment in the matter of education and in particular [t]o make primary education free and compulsory’. States Parties are required to make secondary education only generally available and accessible. The CDE was the first international treaty to include an obligation on States Parties to provide free and compulsory primary education.

Article 13(2) (a) and (b) of the ICESCR obliges States Parties to make primary education compulsory and free, whereas secondary education ‘shall be made generally available and accessible.’

Article 28(1) (a) of the CRC obliges States Parties

to make primary education compulsory and free, whereas article 28(1)(b) requires them to make secondary education available and accessible to the child.

Article 17(1) of the African Charter on Human and Peoples' Rights states that, 'Every individual shall have the right to education.' Article 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa requires that:

*'1. States Parties shall take all appropriate measures to:*

- a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;*
- b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;*
- c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;*
- d) provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;*
- e) integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.'*

Article 13(1) of the African Youth Charter, 2006 states, 'every young person shall have the right to education of good quality.' Article 11(1) of the African Charter on the Rights and Welfare of the Child,

1990 states that, 'Every child shall have the right to an education.' Article 11(3) obliges States Parties to take all appropriate measures with a view to achieving the full realisation of free and compulsory basic education.

Article 15 of the Charter of Fundamental and Social Rights in SADC (2003) declares, 'member States shall create an enabling environment consistent with ILO Convention on paid education and training (No. 140) so that: (a) government, employers and trade unions contribute towards workers education, training and skills development; and (b) All workers have the right to paid study leave subject to the provisions of the ILO Convention and to a collective agreement.'

Zimbabwe is also a signatory to a number of global declarations, including the Education for All Declaration (World Education Forum Dakar, 2000), and the ten commitments of the World Summit on Social Development in Copenhagen (Copenhagen Declaration, 1995), which includes, the eradication of poverty and the promotion of full employment, social integration, human rights, gender equality and equity, adequate education for all, and access to universal primary health care.

## ***6.2 Core Content of the Right to Education***

The CESCR has articulated the core contents of each economic, social and cultural right. For example, reflecting the work of the Special Rapporteur on the right to education, its General Comment No. 13 (1999) sets out the essential features of the right to education as availability, accessibility, acceptability and adaptability.

The Committee identifies the following specific obligations that relate to Article 13 as a whole:

To adopt a national educational strategy (para. 52);

- To adopt an educational fellowship system (para. 53);
- To establish minimum educational standards and an effective monitoring system (para.54);
- To ensure that communities are not dependent on child labour (para. 55);
- To ensure that international agreements do not adversely impact upon the right to education. (para. 56);
- To ensure access to public educational institutions without discrimination (para. 57);
- To ensure education conforms to the objectives in Art.13(1) (para. 57);
- To provide primary education for all (para. 57); and
- To ensure free choice in education (para. 57).

### ***6.3 Common Violations of the Right to Education***

Below are some examples of violations of the different obligations imposed by the right to education.

#### **Violations of the Obligation to Respect:**

- Closure of private schools by the State;
- Passing a law providing that all persons who are unable to pay school fees will be denied the right to basic education;
- Failure to provide the funding necessary to maintain State schools that have already been established.

#### **Violations of the Obligation to Protect:**

- Failure of the State to prevent parents, employers and other third parties from stopping girls attending school;
- Failure of the State to protect individuals from discrimination in private educational institutions;
- Failure of the State to regulate recognition of private educational institutions and diplomas.

## **Violations of the Obligation to Fulfil:**

- Failure to take appropriate steps to ensure that education is culturally appropriate for minorities;
- Failure to develop a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying teachers domestically competitive salaries;
- Failure to secure free compulsory primary education for all children.

### ***6.4 Enforcement of the Right to Education***

For the right to education to be fully realised it must be effectively implemented at the national level through the adoption of constitutional provisions, enabling legislation and policies. It is not sufficient to have a legal right; enforcement mechanisms must be put in place. This includes the possibility of legal recourse, which requires that the right to education be justiciable. If rights are justiciable, there exists a right to an effective remedy when violations have occurred. Moreover, courts can ensure that the State is held accountable for its actions, in accordance with international, regional, and domestic human rights obligations. It also means that civil society can be more effective in campaigning, advocating, and mobilising for accountability and change. A justiciable right to education means that when this right is violated, the right-holder can take her claim before an independent and impartial body, and if the claim is upheld, be granted a remedy, which can then be enforced.<sup>16</sup>

One of the ways courts hold States and other violators to account is by granting remedies to address the harms done to the complainant, for example, through injunctions, preventative measures, recommending policy measures, striking down

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16 <http://www.refworld.org/docid/4a7840562.html>

laws, administrative penalties, and criminal punishment. In some instances these remedies benefit not just the claimant but also all those affected or likely to be affected by the actions (or inactions) that led to the case being heard. Courts can also award compensation. In 2000, the first UN Special Rapporteur on the right to education affirmed: ‘the general question of whether economic, social and cultural rights are justiciable does not apply to the right to education, which is litigated both domestically and internationally’.<sup>17</sup>

The right to education has been subject to judicial and quasi-judicial scrutiny in a number of jurisdictions and there is a growing body of case law. In the past, most courts were only willing to adjudicate on violations of the right to education if the case involved discrimination or unequal treatment. The scope of the right to education was very narrow. However, as the right to education is further applied, its scope has widened and it has become more entrenched – and increasingly justiciable. Justiciable elements of the right to education now include educational freedom, quality education, compulsory and free education, and education financing.

The aspect of the right to education most amenable to judicial scrutiny is non-discrimination. Cases of discrimination have long been adjudicated on in most courts. For example, in *Brown v Board of Education*,<sup>18</sup> the US Supreme Court found that racial segregation in schools was a violation of the equal protection clause of the US Constitution. The Supreme Court stated: ‘We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.’

National courts have also heard cases on education financ-

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17 <http://www.right-to-education.org/issue-page/justiciability>

18 <http://www.uscourts.gov/educational-resources/get-involved/federal-court-activities/brown-board-education-re-enactment/history.aspx>

ing,<sup>19</sup> an important issue that significantly affects the accessibility and quality of education. From 2005 to 2007 a public law charity in Indonesia brought a series of cases<sup>20</sup> to the Constitutional Court claiming that a new law that sought to bring education spending up to 20% of the budget gradually and successive budgets that only allocated 7% and 8.1% to education, were in breach of the Constitution which provides that 20% of the national budget must be dedicated to the provision of education. The Court ruled that the law and both budget allocations were unconstitutional, striking down the law. It did not void the budget, however, it ordered that if any extra revenue became available, it must be allocated to education. By 2008, spending on education in Indonesia had risen to 11.8% no doubt due to the Court's influence.

Related to education financing is the issue of privatisation<sup>21</sup> and private schools. In Nepal,<sup>22</sup> the Supreme Court of Nepal issued a verdict demanding educational authorities devise reform programmes to regulate private schools – regulating fees, prohibiting the sale of unregistered and over-priced textbooks, and limiting the number of private schools gaining accreditation. In addition, the private sector cannot raise fees for three years as exorbitant fees charged by private providers of education are causing greater social and economic disparity between working and middle classes.

In India, the right to free and compulsory education was recognised in the Constitution in 2002 following an historic decision by the Supreme Court (*Unni Krishnan, J.P. v State of Andhra Pradesh* (1993)) which ruled that the right to education was an integral part of the right to life, rendering

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19 <http://www.right-to-education.org/issue-page/education-financing>

20 <http://www.indonesiamatters.com/422/education-budget-the-constitution/>

21 <http://www.right-to-education.org/issue-page/privatisation-education>

22 <http://www.openequalfree.org/ed-news/nepali-private-schools-banned-from-raising-fees>

the right to education indirectly justiciable. At the international level, the right to education has been made justiciable through the recent entry into force of complaints procedures<sup>23</sup> for the ICESCR and the CRC. As these mechanisms become more established, a growing body of international case law will emerge.

The African Commission on Human and People's Rights, in *Free Legal Assistance Group and Others v Zaire*<sup>24</sup> (1995) found that a two-year-long closure of universities and secondary schools in Zaire (as it was at the time) due to the gross mismanagement of public finances, was a violation of the right to education as enumerated in Article 17 of the African Charter on Human and People's Rights.

In *Farai Dzvova v Minister of Education, Sports and Culture and Others*, the applicant and father of six-year-old Farai Dzvova successfully challenged the decision of the Ruveneko Government Primary School to expel Farai from the school on account of his Rastafarian dreadlocks. The Supreme Court ruled that the 'expulsion of a Rastafarian from school on the basis of his expression of his religious belief through his hairstyle is a contravention of Sections 19 and 23 of the Constitution of Zimbabwe'.

## 7. The Right to Health

The CESCR has adopted a broad conception of the right to health, recognising it as, 'an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive

23 <http://www.ohchr.org/en/hrbodies/tbpetitions/pages/hrtbpetitions.aspx>

24 <http://www.escr-net.org/docs/i/673100>

health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.<sup>25</sup>

The right to health is provided for under Section 76 of the Zimbabwean Constitution which clearly spells out the right of every citizen and permanent resident of Zimbabwe to have access to basic healthcare services, including reproductive health. Every person living with a chronic illness has the right to have access to basic healthcare services for the illness. No person may be refused emergency medical treatment in any healthcare institution. Section 29 obliges the State to ‘(1) take all practical measures to ensure the provision of basic, accessible and adequate health services throughout Zimbabwe; (2) take appropriate, fair and reasonable measures to ensure that no person is refused emergency medical treatment at any health institution; and (3) take all preventive measures within the limits of the resources available to it, including education and public awareness programmes, against the spread of disease.’

Sustainable Development Goal (SDG) 3 of the United Nations (UN) seeks to ensure healthy lives and promote well-being for all at all ages. An important target under this SDG is to reduce the global maternal mortality ratio to less than 70 per 100,000 live births.

### ***7.1 The Right to Health in International Law***

The right to health was first articulated in the 1946 Constitution of the WHO, whose preamble defines health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’. The preamble further states that ‘the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human be-

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25 CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health.

ing without distinction of race, religion, political belief, economic or social condition.’

The 1948 Universal Declaration of Human Rights also identified health as part of the right to an adequate standard of living (Article 25). The right to health was again recognised as a human right in the 1966 ICESCR, Article 12 of which recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. Subsequently, many international human rights treaties have recognised or referred to the right to health or to elements of it, such as the right to medical care.

The right to health is also recognised in the African Charter on Human and Peoples’ Rights (1981). Article 16 states that: ‘1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.’

Article 12 (a) of the *Charter of Fundamental Social Rights in SADC* (2003) recognises the right of every worker in the region ‘to health and safety at work and to a healthy and safe environment that sustains human development and access to adequate shelter.’

Article 24 of the *Covenant on the Rights of the Child* obliges the State to ‘recognise the right of the child to the enjoyment of the highest attainable standard of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.’

## ***7.2 Core Content of the Right to Health***

In May 2000 the CESCR adopted General Comment No. 14. Paragraph 12 describes the core contents of the right to health: *Availability*. Public health care facilities must exist in suf-

ficient quantity. Though this definition will vary according to the level of development, adequate facilities must include safe drinking water, adequate sanitation, hospitals, clinics, trained medical personnel receiving domestically competitive salaries, and essential drugs;

*Accessibility.* This includes the sub-elements of non-discrimination, physical accessibility, economic accessibility and information accessibility;

*Acceptability.* All health facilities must be respectful of medical ethics and culturally appropriate;

*Quality.* Health facilities, goods and services must be scientifically and medically appropriate and of good quality. Among other things, this requires skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe water and adequate nutrition.

Paragraph 43 sets out what obligations the minimum essential levels of the right to health entail:

To ensure the right of access to health facilities on a non-discriminatory basis, especially for vulnerable groups;

To ensure access to minimum essential food;

To ensure access to basic shelter, sanitation, and adequate supply of potable water;

To provide essential drugs, as defined by the WHO;

To ensure equitable distribution of all health facilities, goods and services; and

To adopt a national public health strategy and plan of action.

### **7.3 Common Violations of the Right to Health**

Below are some examples of violations of the different obligations imposed by the right to health.

### **Violations of the Obligation to Respect**

- Exposing communities to pollution, which will impact detrimentally on their health;
- Marketing of unsafe drugs by the State; and
- Limiting access to contraceptives and other means of maintaining sexual and reproductive health.

### **Violations of the Obligation to Protect**

- Failure of the State to ensure that employers adhere to legislation setting out regulations on healthy working conditions;
- Failure of the State to ensure that privatisation of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; *and*
- Failure of the State to prevent third parties from coercing women to undergo traditional practices (e.g. female genital mutilation).

### **Violations of the Obligation to Fulfil**

- Failure of the State to provide essential primary health care to those in need;
- Failure of the State to ensure equal access for all to the underlying determinants of health, e.g. nutritiously safe food, potable water, basic sanitation and adequate housing and living conditions; and
- Failure by the State to ensure that healthcare staff are trained to recognise and respond to the specific needs of vulnerable or marginalised groups.

## 7.4 *Enforcement of the Right to Health*

### **Box 3: The Treatment Action Campaign in South Africa: ensuring equitable access to treatment for persons living with HIV/AIDS**

Making medicines available where they are most needed and using its resources adequately are two concrete examples of ways in which the Government can fulfil its obligations in relation to the right to health and be made accountable.

#### *Minister of Health v Treatment Action Campaign*

The South African Government had chosen not to roll out a national programme to reduce the risk of mother-to-child transmission of HIV. Instead, it identified two research sites per province that alone were authorised to distribute the drug nevirapine, thus restricting the availability of the drug, although its efficacy had already been well established. This meant that HIV-positive mothers who could not afford private healthcare and did not have access to the research sites could not receive the drug. In August 2001, the Treatment Action Campaign, a network of organisations and individuals campaigning for equitable and affordable access to HIV/AIDS treatment, filed a claim against the Government before the Pretoria High Court, demanding that it distribute the drug to pregnant women in all public hospitals, on the grounds that the governmental policy was unconstitutional and failed to respect its human rights obligations. The South African Constitution recognises the right of everyone to have access to public healthcare services and the right of children to special protection.

#### **Decisions**

In December 2001 the High Court decided in favour of the Treatment Action Campaign and held that the Government's restrictions were unreasonable. In its decision upon appeal, in July 2002, the Constitutional Court upheld the Pretoria ruling and decided that the Government's policy 'had not met its constitutional obligations to provide people with access to healthcare services in a manner that is reasonable and takes account of pressing social needs'. The Court confirmed that the policy discriminated against poor people who could not afford to pay for services. The Government was required to remove restrictions on the availability of nevirapine at public hospitals and clinics that are not research sites, and to devise and implement within its available resources a comprehensive and coordinated programme to progressively realise the rights of pregnant women and their newborn children to have access to health services to combat mother-to-child transmission of HIV. These decisions led to the establishment of one of the largest programmes in Africa to reduce mother-to-child transmission.

## **8. The Right to Food**

The United Nations Special Rapporteur on the right to food defined the right to food as: ‘The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.’

The CESCR declared that, ‘the right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.’

Section 77 of the Zimbabwean Constitution gives every person the right to ‘sufficient food’. This right is fully enforceable and justiciable. The Constitution also specifically protects potentially vulnerable groups, including women (Section 8), children (Section 81), the elderly (Section 82), the disabled (Section 83), and veterans of the liberation struggle (Section 84). This right is not limited to citizens and permanent residents, but applies to every person within the territory of Zimbabwe.

### ***8.1 The Right to Food in International Law***

The right to food is recognised by international human rights law. The Universal Declaration of Human Rights recognises, in the context of an adequate standard of living, that ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...’ (Article 25).

The ICESCR recognises the right to adequate food as an essential part of the right to an adequate standard of living (Article 11 (1)). It also explicitly recognises ‘the fundamental

right of everyone to be free from hunger' (Article 11 (2)).

### ***8.2 Core Content of the Right to Food***

Paragraph 8 of General Comment No. 12 of the CESCR notes that the 'core content' of the right to adequate food implies: 'The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.'

The right to food contains the following key elements:

*Availability* requires that food should be available from natural resources and that food should be available for sale in markets and shops (paragraph 12 of General Comment No. 12).

*Accessibility* requires economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, persons with disabilities or the elderly, for whom it may be difficult to go out to get food. Access to food must also be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, as well as to prisoners. For example, to guarantee physical access to food to people living in remote areas the infrastructure could be improved, so that they can reach markets by public transport (paragraph 13 of General Comment No. 12).

*Adequacy* means that the food must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, sex, etc. Food should be *safe* for human

consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be culturally acceptable. (paragraphs 9, 10 and 11 of General Comment No. 12).

### ***8.3 Enforcement of the Right to Food***

Increasing numbers of individuals and groups of individuals are bringing cases alleging violations of the right to food. Below are some examples of such litigation.

In India, the NGO People's Union for Civil Liberties filed a case before the Supreme Court claiming that starvation deaths had occurred in drought-affected rural areas while public granaries were overflowing. The Court acknowledged that preventing hunger and starvation was one of the Government's prime responsibilities and failure to do so would constitute a violation of the right to live with human dignity as well as the State's duty to raise the level of nutrition and the standard of living of its people under the Constitution. It issued a series of interim orders directing the central and State Governments to implement several existing schemes, such as the Famine Code of 1962, to improve the situation.<sup>26</sup>

In Nepal, in response to public interest litigation, the Supreme Court issued an interim order in 2008 directing the Government to supply food immediately to 32 districts which were seriously affected by food shortages. The Court observed that the Constitution guaranteed the right to food as a fundamental right and the Government should ensure adequate food supplies for all.

### ***8.4 Common Violations of the Right to Food***

Paragraph 17 of General Comment No. 12 states that, 'Violations of the Covenant occur when a State fails to ensure the

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<sup>26</sup> <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

satisfaction of, at the very least, the minimum essential level required to be free from hunger.’ General Comment No.12 requires that once a violation of a minimum subsistence right is found, ‘...the State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations’.

**Paragraph 19 gives the following general examples to identify violations:**

Formal repeal or suspension of legislation necessary for the enjoyment of the right to food;

Denial of access to food to particular individuals or groups, whether such discrimination is based on legislation or is pro-active;

Prevention of access to humanitarian food aid in internal conflicts or other emergency situations;

Adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations related to the right to food;

Failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others;

The prevention of access to humanitarian food aid in internal conflicts or other emergency situations;

Failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or international organizations.

## **9. The Right to Water and Sanitation**

In 2002, the UN Committee on Economic, Social, and Cultural Rights adopted General Comment No. 15 (GC 15) on the right to water. GC 15 states that ‘the right to water clearly falls within the category of guarantees essential for securing

an adequate standard of living, particularly since it is one of the most fundamental conditions for survival'. GC 15 explains that 'the human right to water is indispensable for leading a life in human dignity' and reminds us that 'safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.'

In 2007, the UN High Commissioner for Human Rights analysed the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international law. The High Commissioner expressed the view that 'it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses – drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene – to sustain life and health.'

On 28 July 2010, through Resolution 64/292, the UN General Assembly explicitly recognised the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution calls upon States and international organisations to provide financial resources, help capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.

Section 77 of the Zimbabwean Constitution gives every person the right to 'safe, clean and potable water'. The Constitution also specifically protects potentially vulnerable groups in this respect, as it does regarding the right to food noted above.

Sustainable Development Goal (SDG) 6 of the UN seeks to ensure the availability and sustainable management of wa-

ter and sanitation. An important target under this goal is to achieve universal and equitable access to safe and affordable drinking water for all by 2030. Another important target under this goal is to achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.

### ***9.1 The Right to Water and Sanitation in International Law***

The international legal basis of the right to water and sanitation derives from multiple treaties – primarily the ICESCR, the CRC, the CEDAW, the Committee on the Rights of Persons with Disabilities (CRPD), and the International Convention on the Elimination of All Forms of Racial Discrimination. The legally binding nature of the right to water was expressed in General Comment No. 15 (of 2002) by the UN Committee on Economic, Social and Cultural Rights; the right to water was inferred by the Committee on the basis of Article 11 of the ICESCR, the ‘right to an adequate standard of living, including food, clothing and housing’.

The CRC explicitly mentions water, environmental sanitation and hygiene. Article 24(2): ‘States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ... c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; ... (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.’

The CEDAW sets out an agenda to end discrimination against women, and explicitly references both water and sanitation in Article 14(2)(h): ‘States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.’

Principle 4 of the 1992 International Conference on Water and Sustainable Development (Dublin Conference) states that ‘... it is vital to recognise first the basic right of all human beings to have access to clean water and sanitation at an affordable price.’

UN Human Rights Council (HRC) Resolution 15/9 of September 2010 also acknowledges the right to water and sanitation, citing all of the above treaties, in the following key statement: ‘The Human Rights Council ... 3. Affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.’

In recognition of the independent existence of this right, the HRC has established a Special Procedure known as the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation. Other major international instruments affirming the rights to water and sanitation, and calling for their progressive implementation by States, include UN General Assembly Resolution 64/292 (July 2010); UN HRCI Resolution 18/1 (September 2011); and the Rio+20 Outcome Document (June 2012).

## 9.2 Core Content of the Right to Water and Sanitation

General Comment 15 of the UN Committee on Economic, Social, and Cultural Rights outlines the essential elements of the human right to water and sanitation. These elements include:

- *Sufficient*. The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. According to the WHO, between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met and few health concerns arise.
- *Safe*. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Measures of drinking-water safety are usually defined by national and/or local standards for drinking-water quality. The WHO Guidelines for drinking-water quality provide a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking-water.
- *Acceptable*: Water should be of an acceptable quality in terms of colour, odour and taste. All water facilities and services must be culturally appropriate and sensitive to gender, lifecycle and privacy requirements.
- *Physically accessible*. Everyone has the right to a water and sanitation service that is physically accessible within, or in the immediate vicinity of, the household, educational institution, workplace or

health institution. According to the WHO, the water source has to be within 1,000 metres of the home and collection time should not exceed 30 minutes.

- *Affordable.* Water, and water facilities and services, must be affordable for all. The United Nations Development Programme suggests that water costs should not exceed 3% of household income.

In its 2013 resolution, the Human Rights Council for the first time spelled out the content of the right to water and sanitation in some detail and recognised that everyone, without discrimination, is entitled ‘to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and acceptable, and that provides privacy and ensures dignity.’

*Availability.* Sanitation facilities must be available within each household, or its immediate vicinity. Facilities must be available on a reliable and continuous basis. In order to meet requirements throughout the day and night, including when not at home, sanitation facilities must also be available wherever people spend significant amounts of time. This includes health and educational institutions, public institutions and places, the workplace, and prisons and other detention facilities.

*Accessibility.* Sanitation facilities must be accessible to everyone. All users should be able to physically access them, including those with special needs in terms of accessibility, such as children, persons with disabilities, older persons, pregnant women, people with special health conditions, and others accompanying them. The entrance, the interior space, support mechanisms such as handrails, the position of defecation, and other aspects must be designed to accommodate these individuals

*Affordability.* Sanitation services must be available at a

price that is affordable to everyone, including the poorest. This must cover all costs associated with sanitation, ranging from tariffs in the case of sewerage networks, to connection fees that contribute to capital construction costs, to costs of on-site solutions such as pit latrines and septic tanks (including costs for construction as well as operation, maintenance and repair).

*Quality and Hygiene.* The human right to sanitation requires that facilities are hygienically safe to use and easy to clean. They must effectively prevent human and animal, including insect, contact with human excreta.

*Acceptability.* Social and cultural acceptability are important considerations when designing sanitation facilities. Sanitation is a highly sensitive issue across cultures and regions. What is acceptable may vary across societies and cultures and change over time. Therefore, the design, positioning, and conditions for use must be tailored to the differing perspectives about which sanitation solutions are acceptable.

### **9.3 Enforcement of the Right to Water and Sanitation**

#### **Box 4: Mushoriwa v City of Harare (HC 4266/13) [2014] ZWHHC 195 (30 April 2014)\***

Sometime in May 2013 the respondent sent the Applicant a bill of US\$1,700.00 claiming payment for water services rendered. The Applicant flatly disputed owing the amount claimed or any other amount for that matter. He maintained that he had always paid his bills in full and on time. He has attached proof of payment to his application. He argued that the amount claimed pertains to a bulk meter not connected to his premises.

On 31 May 2013 the Respondent without any further ado unilaterally and arbitrarily disconnected water supplies to the Applicant's premises prompting him to file this urgent chamber application the following day for a spoliation order directing the Respondent to restore water services pending resolution of the dispute by the courts.

The Judge observed that the dispute that has arisen between the parties has to do with their respective rights and obligations in respect of the provision of water to a citizen by a municipal authority such as the City of Harare. The parties are generally agreed that the Respondent has an

obligation to provide water and the applicant in turn is obliged to pay for it. The point of departure is what happens in the event that there is a dispute regarding payment. In that case, is the respondent entitled to self-help and to unilaterally cut off water supplies to a citizen without recourse to law? Put differently is the respondent entitled to self-help without recourse to the courts of law and be a law unto itself.

The Respondent's argument is that by virtue of s 8 of the City of Harare's water by-laws S.I 164 of 1913 as read with s 198 (3) and s 69 of the third Schedule to the Urban Councils Act it is clothed with unfettered discretion to disconnect water supplies to a citizen at will without recourse to the courts of law. The by-law provides as follows:

The council may, by giving 24 hours' notice, in writing without paying compensation and without prejudicing its rights to obtain payment for water supply to the consumer, discontinue supplies to the consumer: (a) If he shall have failed to pay any sum which in the opinion of the Council is due under the conditions or the water by-law.

The Applicant has countered that the by-law relied upon by the Respondent is ultra vires section 198 as read with s 69 (2) (e) of the third schedule to the parent Act and s 77 of the Constitution.

The right to water is a fundamental right enshrined in s 77 of the constitution of Zimbabwe which provides as follows: 'Every person has the right to-(a) Safe clean and portable water; and (b) Sufficient food.'

Section 44 of the Constitution imposes a duty on the State and all its institutions and agencies to respect fundamental human rights and freedoms.

The Respondent being a public body and institution of local government, it follows that it cannot deny a citizen water without just cause. It is trite that it is the function of the judiciary to interpret and enforce the law when a citizen complains that his human rights have been violated. Section 162 of the Constitution clothes this Court with judicial authority and s 165 (1) (c) provides that, 'The role of the courts is paramount in safeguarding human rights and freedoms and the rule of law.'

Section 8 of by-law 164 of 1913 contradicts both the Constitution and the enabling statute in more respects than one. Firstly, it authorises the Respondent to arbitrarily deprive citizens of their fundamental right to water without compensation contrary to section 85 of the Constitution which entitles an aggrieved person to appropriate compensation whenever his fundamental human rights have been violated.

Secondly, in the event of a disputed bill it unlawfully confers the respondent with the sole jurisdiction to arbitrarily determine the dispute without recourse to the courts of law contrary to the provisions of s 69 of the third

schedule to the Act as read with Section 165 (1) (c) of the Constitution. By so doing the by-law allows the Respondent to be the sole arbiter in its own case contrary to the well-established common law maxim that no one should be a judge in his own case.

In the final analysis the application can only succeed. It is accordingly ordered that a provisional order be and is hereby granted in the following terms:

#### TERMS OF THE FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms:–

1. That the termination by the Respondent of the Applicant's water supplies on the basis of a disputed water bill and in the absence of any order of Court is unlawful self-help.
2. That respondent and all its employees be and are hereby interdicted from interfering whatsoever with, disrupting or terminating Applicant's water supply without the authority of a Court Order.
3. That the Respondent shall pay costs of suit on the higher scale of legal practitioner and client only if it opposes this Application.

#### INTERIM RELIEF GRANTED

Pending determination of this matter, the Applicant is granted the following relief –

1. That Respondent be and is hereby ordered to immediately restore water supply to the Applicant's rented premises being 12 Northcliff Flats, Harare.
2. That pending finalisation of this matter, Respondent and its employees and assigns be and are hereby interdicted from interfering with applicant's possession of the premises by interfering with or terminating water supply.
3. That the Respondent shall pay costs of suit on a legal practitioner client scale.

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\* <http://www.zimlil.org/zw/judgment/harare-high-court/2014/195/HH%20195-14.pdf>

## 10. The Right to Work

The right to work has at least two significant social functions: it is a source of livelihood and income, and a source of dignity and self-realisation. For it to be a source of livelihood, everyone must have access to work, and it must provide a just and favourable remuneration ensuring for them and their family an existence worthy of human dignity (Universal Declaration of Human Rights, Article 25); to be a source dignity and self-realisation, it must be work which a person freely chooses or accepts, and he or she must enjoy safe and healthy working conditions and equal opportunity to be promoted to appropriate higher levels, subject to no considerations other than those of seniority and competence (ICESCR, Article 7).

The right to work is spelt out under the National Objectives of the Constitution of Zimbabwe. Section 14 deals with Empowerment and Employment Creation. Section 14 (2) states that, 'At all times the State and all institutions and agencies of government at every level must ensure that appropriate and adequate measures are undertaken to create employment for all Zimbabweans, especially women and youths.'

Section 24 deals with Work and Labour Relations:

*(1) The State and all institutions and agencies of government at every level must adopt reasonable policies and measures, within the limits of the resources available to them, to provide everyone with an opportunity to work in a freely chosen activity, in order to secure a decent living for themselves and their families.*

*(2) The State and all institutions and agencies of government at every level must endeavour to secure-*

*(a) full employment;*

- (b) the removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities;*
- (c) vocational guidance and the development of vocational and training programmes, including those for persons with disabilities; and*
- (d) the implementation of measures such as family care that enable women to enjoy a real opportunity to work.'*

Section 65(1) provides that every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage.

Section 65(4) entitles every employee to just, equitable and satisfactory conditions of work.

Sustainable Development Goal (SDG) 8 seeks to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. One of the key targets under this goal is to achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.

### ***10.1 The Right to Work in International Law***

Article 22 of the Universal Declaration of Human Rights declares:

*'Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.'*

Article 23 of the UDHR affirms that:

1. *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
2. *Everyone, without any discrimination, has the right to equal pay for equal work.*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
4. *Everyone has the right to form and to join trade unions for the protection of his interests.'*

Article 6 of the ICESCR states:

1. *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.'*

Article 7 of the ICESCR says:

*'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*

- (a) *remuneration which provides all workers, as a*

*minimum, with:*

- (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
- (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant.'*

Article 9 states:

*'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.'*

Article III of the ILO Philadelphia Declaration, 1944 declares:

*'The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:*

- (a) full employment and the raising of standards of living;*
- (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;*
- (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;*
- (d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a*

*minimum living wage to all employed and in need of such protection;*

*(e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;'*

Article 15 of the African Charter on Human and Peoples' Rights states:

*'Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.'*

The Charter of Fundamental and Social Rights in SADC contains the following provisions:

Article 4 – Freedom of Association and Collective Bargaining

*'Member States shall create an enabling environment consistent with ILO Conventions on freedom of association, the right to organise and collective bargaining so that:*

- (a) employers and workers of the Region shall have the right to form employers associations or trade unions of their choice for the promotion and defence of their economic and social interests;*
- (c) employers associations and trade unions shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice;*
- (f)(v) the right of trade union representatives to education and training leave; and*
- (i) freedom of association and collective bargaining*

*rights shall apply to all areas, including export processing zones.'*

#### Article 10 – Social Protection

- '1. Member States shall create an enabling environment so that every worker in the Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits.*
- 2. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.'*

#### Article 11 – Improvement of Working and Living Conditions

*'Member States shall create an enabling environment so that:*

- (a) harmonisation of minimum requirements laid down in labour legislation and in particular the introduction of equitable basic working and living conditions, the specifications of minimum rest periods, annual paid leave, compassionate leave, paid maternity leave, occupational health and safety protection, and stipulation of acceptable rules and compensation for overtime and shift work, are achieved;*
- (b) every worker in the Region shall have a right to a weekly rest period and annual paid leave, the duration of which must be progressively harmonised in accordance with the national practice; and*
- (c) the conditions of employment for every worker in the Region shall be stipulated in national law, a collective agreement or a contract of employment.'*

#### Article 14 – Employment and Remuneration

*Member States shall create an enabling environment so that:*

- (a) every individual shall be free to choose and engage in an occupation of that person's choice;*
- (b) workers are provided with fair opportunities to receive wages, which provide for a decent standard of living;*
- (c) Remuneration systems in Member States encourage the progressive establishment of equitable wage rates across the Region in accordance with arrangements applying in each Member State; and*
- (d) workers, subject to terms of employment other than full-time contracts, shall benefit from an equitable current rate.'*

## **10.2 Core Content of the Right to Work**

The CESCR has emphasised the interdependence of the provisions of the Covenant that safeguard the right to work, rights at work and the right to form and join a trade union, as well as to strike. The right to work entails:

- Access to employment without discrimination of any kind;
- The right to choose freely and not be forced into work;
- Access to a system of protection against unfair dismissals, and a supportive structure that aids access to employment, including appropriate vocational education. The right to work covers both paid work and people working independently (referred to as livelihoods in certain contexts) and requires governments to extend protections to people working in the informal sectors of the economy;

- Protecting the right of everyone to just and favourable conditions of work, including to fair wages, equal pay for work of equal value, safe and healthy working conditions, reasonable limitations on working hours, protections for workers during and after pregnancy, and equality of treatment in employment;
- The right to social security;
- The right to collective bargaining;
- The right to strike and the freedom of migration of workers; and
- Equality of treatment and non-discrimination.

### ***10.3 Enforcement of the Right to Work***

#### **Box 5: Supreme Court of Justice, Aníbal Raúl Pérez v. Disco S.A., 1 September 2009, P. 1911. XLII, Argentina<sup>27</sup>**

Concept and legal nature of the remuneration/ Food vouchers as part of remuneration / Social benefits to workers / Direct resolution of a dispute on the basis of international law

A worker brought an action to have the food vouchers given to him by his employer included in the calculations of the compensation package he was due for unfair dismissal because he considered that they formed part of his remuneration. The decision of first instance upheld his application but it was reversed by the National Labour Appeal Court. This Court maintained that the calculation had been based on a law handed down by Congress, which authorised employers to grant certain social benefits to workers with the aim of improving their quality of life without this counting towards their remuneration. The Court also stated that the law did not infringe the Constitution.

The Supreme Court nevertheless distanced itself from the above premise, clarifying that the matter did not hinge on whether the law-maker could not provide for the possibility of providing ‘social benefits’ but rather that this could not be used for changing ‘the intrinsic legal nature of the payment’.

<sup>27</sup> <http://compendium.itcilo.org/en/compendium-decisions/decision.2012-03-07.9208788875>

The Court examined the constitutional validity of Article 131 of Act 24,700, used as grounds for the social benefits' and for excluding their inclusion as part of the remuneration package. To conduct its examination, the Court drew on Article 14 of the Constitution and the principle of protection enshrined in it and related it to various international instruments, pointing out that these contained the rights that should be respected by the law-maker. The Court stated that "the legal nature of an institution shall be fundamentally defined by its constituent elements, irrespective of the name given to it by the law-maker or individuals" and referred to sources including the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (specifically to Articles 6 and 7) and to the ILO Declaration of Philadelphia of 1944. The Court concluded from this analysis that the food vouchers did effectively amount to remuneration for the worker:

'Attention must be focused on Articles 6 and 7 of the ICESCR because, since they are 'interdependent' they lay down, with all-embracing simplicity and eloquence, decisive guidelines for clarifying this problem of categorisation and hence resolving the case under dispute. In effect, given that the first provision states that the right to work 'includes the right of everyone to the opportunity to gain his living by work [...]' (point 1, Italics added), and the second classifies as 'wage' or 'remuneration' the payment due by the employer to the employee when the above-mentioned opportunity is within the context of an employment relationship; it must be concluded that it is inconceivable for any payment, such as the food vouchers in question, that unambiguously amounts to an 'earning' for the plaintiff and that equally clearly is only motivated or arises as a consequence of the said contract or employment relationship, to fall outside the scope of the above terms.'

The Court stated that the content of the constitutional guarantees could not be changed by the will of the law-maker or of the employer. It pointed out that the framework of reciprocity of the employment contract must be ruled by the principle of social justice and that everything concerned with wages transcends the limits of labour market rules and makes the wage subject to the higher needs of protecting personal dignity and the common good. The Court made a comment about social justice, in which it referred to the ILO Declaration on Social Justice:

'The value that has continually guided the ILO from the very moment it was established (Treaty of Versailles, Section I, first paragraph) to the present day and that was re-affirmed in the recent ILO Declaration on Social Justice for Fair Globalisation (adopted in Geneva, 10-06-2008) as a way of

facing up to the challenges of the 21st century is none other than social justice.’

The Court added that a definition of remuneration under the Argentine legal system ‘could not in any way be understood to be less far-reaching than the definition contained in Article 1 of ILO Convention No. 95 on protection of wages’ and for this reason deemed it appropriate to refer to the repeated comments that have been directed at the government by the ILO Committee of Experts on the Application of Conventions and Recommendations since 1995, which have specifically referred to the article in question:

‘(...) The international body, moreover, persisted with or followed through the criticisms that it had levelled in 1995, at the non-remunerative benefits in Decrees Nos. 1477 and 1478 of 1989, and 333 of 1993, to improve the nutrition of the worker and his family, concluding that “there was a connection between the benefits designed to improve the nutrition of workers and their families and the work performed or service provided by virtue of a contract of employment. These ‘benefits’ — it continued — however they are termed (bonuses, supplementary benefits, etc.), constitute components of remuneration in the sense of Article 1 of the Convention.

In its previously mentioned comments of 1998 and 1999, the international body went on to state that it note[d] with regret that this new legislation [Article 103bis of the LCT (Act on Labour Contract) according to the text of Act No 24,700] brings the situation back to that of discrepancy with the requirements of the Convention, which it had repeatedly mentioned with regard to Decrees Nos 1477 and 1478 of 1989, and 333 of 1993’

## **11. The Right to Adequate Housing**

The CESCR has stated that: ‘the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head, or which views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity’.

Section 28 (Shelter) of the Constitution provides that: ‘The State and all institutions and agencies of government at every level must take reasonable legislative and other measures,

within the limits of the resources available to them, to enable every person to have access to adequate shelter.’

Section 71 states that: ‘(2) Subject to Section 72, every person has the right, in any part of Zimbabwe, to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others.’

Section 74 (Freedom from arbitrary eviction) says that: ‘No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.’

Sustainable Development Goal (SDG) 11 seeks to make cities and human settlements inclusive, safe, resilient and sustainable. A key milestone under this SDG is to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030.

### ***11.1 The Right to Adequate Housing in International Law***

Article 17 of the Universal Declaration of Human Rights affirms:

- ‘1. Everyone has the right to own property alone as well as in association with others.*
- 2. No one shall be arbitrarily deprived of his property.’*

Article 25 (1) declares that ‘everyone has the right to a standard of living adequate for health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services.’

Article 11 of the ICESCR states:

- ‘1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognising to*

*this effect the essential importance of international co-operation based on free consent.'*

Articles 17 and 26 of the International Covenant on Civil and Political Rights affirm that:

*(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

*(2) Everyone has the right to the protection of the law against such interference or attacks.*

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'*

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination states that: 'In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) ... (iii) The right to housing.'

Article 14(2) of the Convention on the Elimination of All Forms of Discrimination against Women says:

*'States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure ... such women the right:*

*... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.'*

Article 27(3) of the Convention on the Rights of the Child states:

*'States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.'*

Article 14 of the African Charter on Human and Peoples' Rights says:

*'The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.'*

African Commission Resolution 231 on the right to adequate housing and protection from forced evictions, 2012:

**Urges** all States Parties to the African Charter to take appropriate steps to ensure respect, protection and realisation of the right to adequate housing, in particular by:

- I. Putting an end to all forms of forced evictions, in particular evictions carried out for development purposes;*
- II. Ensuring that evictions are only carried out as a last resort after all alternatives to eviction have been provided and that all evictions comply with international and regional standards;*
- III. Adopting legislative and other measures to ensure that legal procedures are complied with prior to*

*any eviction and making available remedies that are likely to result in the right to reparation either in the form of restitutio in integrum or monetary compensation;*

*IV. Taking concrete measures to confer security of tenure to all people lacking such protection, with prior and informed consent of the affected people;*

*V. Ensuring that any alternative housing provided to people complies with international and regional standards on the right to adequate housing.'*

### **11.2. Core Content of the Right to Adequate Housing**

The CESCR lays the emphasis on the qualifying adjective 'adequate' in order to determine a number of universal attributes. It first defined adequate housing in general terms: a place to live in peace, security and dignity. The core elements of the right to adequate housing are detailed in paragraph 8 of General Comment No. 4 as follows:

*Legal security of tenure.* Security of tenure should be provided and enforced in consultation with the affected groups. This protects people from eviction, harassment and other threats.

*Availability* of services, materials, facilities and infrastructure. All people are entitled to facilities that are essential for health, security, comfort and nutrition, which include safe drinking water, energy for cooking, heating, lighting, sanitation facilities, refuse disposal, storage and emergency services.

*Affordability.* The cost of adequate housing should not compromise the satisfaction of other basic needs.

*Habitability.* Housing must protect its inhabitants from cold, damp, heat, rain, or other health threats and structural hazards, as well as provide them with adequate space.

*Accessibility.* All people are entitled to adequate housing,

and disadvantaged groups in particular must be accorded full and sustainable access to housing, which may mean granting them priority status in housing allocation or land-use planning.

*Location.* Housing should be located in areas in which there is access to employment options, healthcare services, schools, childcare centres and other social facilities. This applies equally in urban and rural areas. Housing also should not be built on or near polluted sites or sources of pollution.

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

### ***11.3. Violations of the Right to Adequate Housing***

Housing rights can be violated just as any other human rights. The CESCR noted in 1991 that ‘the right to housing can be subject to violation. Acts and omissions constituting violations will need to be explored by the Committee, especially in the context of forced evictions.’

General Comment No. 4 stipulates circumstances amounting to violations of the housing rights provisions of the Covenant, including the view that, ‘The Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.’ (Paragraph 18). The Committee has castigated several States Parties for violating Article 11(1) of the ICESCR because of the prevalence and massive scale of forced evictions sponsored and carried out by the government. Likewise, the Committee has criticised States Parties whose laws, including inheritance laws, discriminate with respect to housing rights.

### **Box 6: Examples of acts constituting housing rights violations \***

- (1) Carrying out, sponsoring, tolerating or supporting the practice of forced evictions;
- (2) Demolishing or destroying homes or dwellings as a punitive measure;
- (3) Actively denying basic services such as water, heating or electricity, to sectors of society, despite a proven ability to provide these;
- (4) Acts of racial or other forms of discrimination in the housing sphere;
- (5) Adoption of legislation or policies clearly inconsistent with housing rights obligations, particularly when these result in homelessness, greater levels of inadequate housing, the inability of persons to pay for housing and so forth;
- (6) Repealing legislation consistent with, and in support of, housing rights, unless obviously outdated or replaced with equally or more consistent laws;
- (7) Unreasonable reductions in public expenditures on housing and other related areas, in the absence of adequate compensatory measures;
- (8) Overtly prioritising the housing interests of high-income groups when significant portions of society live without their housing rights having been achieved;
- (9) Constructing or allowing the building of housing upon unsafe or polluted sites threatening the lives and health of future occupants; and
- (10) Harassing, intimidating or preventing non-governmental and community-based organisations and grassroots movements and groups concerned with housing rights from operating freely.

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\* UN Doc. E/CN.4/Sub.2/1993/15, paragraph 144.

### **Box 7: Examples of omissions constituting housing rights violations\***

- (1) Failing to take ‘appropriate steps’ as required under the International Covenant on Economic, Social and Cultural Rights;
- (2) Failing to reform or repeal legislation inconsistent with the Covenant;
- (3) Failing to enforce legislation inherent in the fulfilment and recognition of housing rights;
- (4) Failing to intervene in the housing market, especially concerning rent levels, rent control, rent subsidies, issues of security of tenure and prevention of undue speculation;
- (5) Failing to incorporate and implement accepted international minimum standards of achievement concerning housing rights;
- (6) Failing to provide infrastructure, basic services (water, electricity, drainage, sewage, etc);
- (7) Failing to prohibit or prevent individual or civil actions amounting to housing rights violations by any person capable of committing such acts;
- (8) Failing to utilise all available resources for the fulfilment of this right;
- (9) Failing to integrate and fully consider the implications for housing rights when developing macro-economic policies impacting upon the housing or related social spheres; and
- (10) Failing to submit reports as required under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, as well as under other treaties.

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\* UN Doc. E/CN.4/Sub.2/1993/15, paragraph 145.

## ***11.4 Enforcement of the Right to Adequate Housing***

Paragraph 12 of General Comment No. 4 requires States to ‘adopt a national housing strategy’. Paragraph 13 requires States to ‘monitor the situation with respect to housing’. These are immediate obligations. General Comment No. 7 contains immediate obligations with respect to forced evictions. Paragraph 9 obliges the State to ‘refrain from forced evictions and ensure the law is enforced against State agents or third parties who carry out forced evictions.’ Paragraph 10 obliges the

State to 'enact legislation that controls forced evictions'.

The progressive realisation components of the right to adequate housing are subject to judicial and quasi-judicial enforcement. Elements of the right to adequate housing which are inherently justiciable include:

- Protection against arbitrary, unreasonable, punitive or unlawful forced evictions and/or demolitions;
- Security of tenure;
- Non-discrimination and equality of access in housing;
- Housing affordability and accessibility;
- Tenants' rights;
- The right to equality and equal protection and benefit of the law;
- Equality of access to land, basic civic services, building materials and amenities;
- Equitable access to credit, subsidies and financing on reasonable terms for disadvantaged groups;
- The right to special measures to ensure adequate housing for households with special needs or lacking necessary resources;
- The right to the provision of appropriate emergency housing to the poorest sections of society;
- The right to participation in all aspects of the housing sphere; and
- The right to a clean environment and safe and secure habitable housing.

**Box 8: Jean Pierre Dusabe and John Peter Mutokambali v City of Harare and Minister of Local Government, Public Works and National Housing and Minister of Lands and Rural Resettlement (High Court of Zimbabwe)\* (February 2016).**

The applicants sought an order barring the defendants from threatening and harassing them and prohibiting the defendants from destroying the applicants' household property. The applicants also sought an interim order that the respondents provide them with emergency alternative accommodation, together with their families.

The Judge observed that: Every citizen of this country has the right to administrative justice which is enshrined in Section 68 of the Constitution. This means that administrative conduct must be lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair. It is a disgrace for two government departments to admit that houses which had been built without the requisite planning authority were demolished and razed to the ground without a court order, without notice in writing being given to all those likely to be affected. The process was not procedurally fair. What is shocking and of great concern is the apparent misapprehension by these government departments, of their duty to uphold the Constitution, by ensuring that their conduct is not only lawful, it must be procedurally fair. Under no circumstances are government departments at liberty to unilaterally and arbitrarily demolish any structures in the absence of a court order authorising them to do so, whether the structures were built without approval of building plans, or layout plans or without complying with any other legal requirement. Even if the structures are an eyesore, they cannot just be razed to the ground at the drop of a hat, or on a whim. This is a democratic society in which such conduct, especially on the part of government department whose operations are funded by taxpayers' money, is not justifiable.

As a mark of its displeasure at the unlawful conduct of the first and second respondents, a punitive order as to costs will be made against them to discourage such blatant disregard of the law, in future. For these reasons, it be and is hereby ordered that:-

1. The 1st and 2nd respondent be and are hereby barred from threatening or harassing the applicants.
2. The 1st and 2nd respondent be and are hereby prohibited from further destruction of the applicants' property without a court order.
3. The 1st and 2nd respondents shall pay the costs of suit on a legal practitioner-client scale.

\* <http://www.zimlii.org/zw/judgment/harare-high-court/2016/114/>

**Box 9: Social and Economic Rights Action Centre (SERAC) v Nigeria.\***

The African Commission on Human and Peoples' Rights was confronted with a range of complaints, including the forced eviction and destruction of housing in several Ogoni villages by State security forces working in concert with the State-owned Nigerian National Petroleum Company. The Commission implied the right to housing from other provisions in the African Charter and continued by finding that 'the particular violation by the Nigerian Government of the right to adequate housing as implicitly protected in the Charter also encompasses the right to protection against forced evictions' [para 63]. In doing so, the Commission drew inspiration from the definition of the term 'forced evictions' by the Committee on Economic, Social and Cultural Rights' in General Comment No. 7 on the prohibition of forced evictions [para 63].

\*[http://www.achpr.org/files/sessions/30th/comunications/155.96/achpr30\\_155\\_96\\_eng.pdf](http://www.achpr.org/files/sessions/30th/comunications/155.96/achpr30_155_96_eng.pdf)

## ***12. The Right to a Healthy Environment***

A safe, healthy and sustainable environment is integral to the full enjoyment of a number of human rights, including the rights to education, health, food, water and sanitation.

Section 73 (Environmental rights) of the Constitution states that:

*(1) Every person has the right –*

*(a) to an environment that is not harmful to their health or well-being; and*

*(b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that –*

*(i) prevent pollution and ecological degradation;*

*(ii) promote conservation; and*

*(iii) secure ecologically sustainable development and use of natural resources while promoting socio-economic development.*

*(2) The State must take reasonable legislative and*

*other measures, within the limits of the resources available to it, to achieve the progressive realisation of the rights set out in this section.'*

Sustainable Development Goal (SDG) 15 seeks to protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.

### ***12.1. The Right to a Healthy Environment in International Law***

The right to a healthy environment is recognised in both international and regional conventions. The right to a healthy environment was first explicitly recognised in the Stockholm and Rio Declarations as nonbinding principles. The Stockholm Conference (1972) is considered an important starting point in developing environmental law at the global as well as national level. Principle 1 of the Stockholm Declaration linked environmental protection to human rights norms, stating: 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.'

The Rio Declaration on Environment and Development is a set of principles that recognise the importance of preserving the environment and set forth international guidelines for doing so.

Article 12(2)(b) of the ICESCR requires States Parties to improve 'all aspects of environmental and industrial hygiene.'

Article 24 of the African Charter on Human and People's Rights states: 'All peoples shall have the right to a general satisfactory environment favourable to their development.'

Article 12 (Protection of Health, Safety and Environment) of the Charter of Fundamental Social Rights in SADC, 2003 states:

*Member States shall endeavour to create an enabling environment so that:*

- (a) Subject to paragraphs (b) to (g) of this Article, every worker in the Region has the right to health and safety at work and to a healthy and safe environment that sustains human development and access to adequate shelter;*
- (i) Employers control and are liable for work related environmental risks according to the ‘polluter pays’ principle;*
- (k) Economic and investment measures take into consideration health, safety and environmental standards.’*

## **12.2 Core Content of the Right to a Healthy Environment**

Environmental human rights encompass three main areas:

- The right to a clean and safe environment;
- The right to act to protect the environment; and
- The right to information, to access to justice, and to participate in environmental decision-making.

States must take progressive steps to develop and implement actions and strategies necessary to ensure a healthy, sustainable environment. These actions and strategies must include the regulation of corporate and other private actors in their operations.

The CESCR indicated in General Comment No. 14 that the right to a healthy environment includes, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; and the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or

indirectly impact upon human health.

### **12.3 Enforcement of the Right to a Healthy Environment**

#### **Box 10: *Valico S. R. L. v Italy*,\* decision of 21 March 2006 (European Court of Human rights)**

The case related to a decision by the national authorities to impose a fine on a company for not complying with rules on the construction of buildings designed to protect the landscape and the environment. The Court examined the complaint under Article 1 of Protocol No. 1 and found that the disputed measure was prescribed by law and pursued the legitimate aim of protecting the landscape and developing the land rationally and in a manner showing due regard for the environment, all of which was in accordance with the general interest. As to the balance between the demands of the general interest and the need to protect the applicant company's fundamental rights, the Court found that even if the impugned change of the construction location, which had not been authorised by the authorities, had not damaged the environment, the simple fact of failing to satisfy the conditions imposed by the authorities responsible for spatial planning and development had constituted a breach of the relevant domestic legal regulations. Furthermore, while the penalty imposed on the applicant company might at first seem excessive, the change in the location of the building had substantially altered the original plans. This was also a large-scale project and the severity of the deterrent penalty had to be in keeping with the importance of the issues at stake. Lastly, there had been no order to demolish the building in question. In view of all of the foregoing, the Court found that the Italian authorities had struck the right balance between the general interest on the one hand and respect for the applicant company's right to property on the other. Accordingly, it considered that the interference had not imposed an excessive burden such as to make it disproportionate to the legitimate aim pursued, and dismissed the applicant's complaint.

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\* *Manual on human rights and the environment* - 2nd edition, Council of Europe, 2012, ISBN 978-92-871-7540-3PDF.

**Box 11: *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria***

The state-owned Nigerian National Company and the Shell Petroleum Development Corporation (in which the former had a majority of shares) had been exploiting oil reserves with no regard for the environment or health of the local communities in Ogoniland, Nigeria. Toxic wastes were deposited into the local environment and waterways but no facilities were put in place to prevent the wastes from spilling into villages. As a result, water, soil and air contamination brought about serious short-term and long-term health problems such as skin infections, gastrointestinal and respiratory ailments, increased cancer rates, and neurological and reproductive complications. The issue before the African Commission was whether the military government of Nigeria was guilty of, inter alia, violations of the right to health and the right to a clean environment by contaminating water, soil and air, which harmed the health of the Ogoni people, and by failing to protect the community from the harm caused by the oil companies.

The African Commission on Human Rights found the Federal Republic of Nigeria in violation of Articles 16 and 24 of the African Charter on Human and Peoples' Rights.

\* [www.humanrights.is/en/human-rights-education-project/comptive-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-health/right-to-a-healthy-environment](http://www.humanrights.is/en/human-rights-education-project/comptive-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-health/right-to-a-healthy-environment)