



DOES ZIMBABWE VIEW SOCIAL SECURITY AS A RIGHT?

**Submitted in partial fulfilment of the requirements of the LLM
Degree
(Master of Laws in Socio-Economic Rights)**

By

Nyashadzashe Faith Nyambayo

Student Number: 17257604

Supervised by Professor Michelo Hansungule

November 2019



University of Pretoria

Declaration of originality

This document must be signed and submitted with every essay, report, project, assignment, mini-dissertation, dissertation and/or thesis

Full names of student:

.....

Student number:

Declaration

1. I understand what plagiarism is and am aware of the University's policy in this regard.

2. I declare that this (eg essay, report, project, assignment, mini-dissertation, dissertation, thesis, etc) is my own original work. Where other people's work has been used (either from a printed source, Internet or any other source), this has been properly acknowledged and referenced in accordance with departmental requirements.

3. I have not used work previously produced by another student or any other person to hand in as my own.

4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.

Signature of student:.....

Signature of supervisor:.....



DEDICATION

To my siblings Covenant, Tintendaishe and Rudorwashe who inspire me.



ACKNOWLEDGEMENT

My Heavenly Father, I can never thank you enough for all you have done and continue to do for me.

I am forever grateful for my earthly parents, Eng. Julius Hwiridzai Nyambayo and Mrs Portia Nyambayo. You are lovers of education and you have taught me to value and have passion for knowledge. Thank you for the prayers, input, sacrifices and encouragement.

Takunda Nkomo, God's love for me personified, thank you for your encouragement, patience and assistance. Covenant, Tinotendaishe and Rudorwashe, I am grateful for you, your support and prayers. You keep me going.

Special thanks to my Supervisor and mentor Professor Michelo Hansungule. Your tutelage left an indelible mark on my academic and personal journey. Indeed in grey hair there is wisdom. Thank you for believing in me. I am also grateful to Dr Chikova, Professor Brand and Professor van Marle.

Dr Tinotenda Shoko, Mrs Crystal Mokoena and Primrose Kurasha, I am really grateful to God for you. You are true friends indeed.

My family, friends and well-wishers that I did not mention by name, I appreciate you. God bless you all.



CONTENTS

Chapter 1: Framework of the study	1
1.1 Background.....	1
1.2 Problem statement	4
1.3 Research question	5
1.4 Aim of study	5
1.5 Research methodology	5
1.6 Limitations/ scope of study.....	6
1.7 Literature review	6
1.8 Proposed chapters.....	9
Chapter 2: Examination of the social security policies and structures in Zimbabwe .	10
2.1 Introduction	10
2.2 The Constitution on promoting and protecting social security	10
2.3 Other legal provisions promoting and protecting social security	16
2.4 Social assistance policies in Zimbabwe	17
2.5 The Zimbabwe Human Rights Commission	21
2.6 The courts and the protection of the right to social security in Zimbabwe	23
2.7 Conclusion	26
Chapter 3: Zimbabwe’s international obligations to protect and enforce the right to social security.....	28
3.1 Introduction	28
3.2 Importance of international treaties for rights’ protection and enforcement in Zimbabwe	28
3.3 Procedure for treaty domestication in Zimbabwe	30
3.4 Progress made so far- domestication of international treaties ratified by Zimbabwe	32
3.5 Challenges- Some international treaties are ratified but not domesticated and others are partially domesticated or not compliant with international treaties	34
3.6 Conclusion	37
Chapter 4: The social security spending and budgeting behaviour in Zimbabwe	38
4.1 Introduction	38
4.2 Importance of budget analysis in social security rights’ protection in Zimbabwe	38
4.3 Framework for public finance management in Zimbabwe	39
4.4 Budget allocation analysis.....	41



4.5 Sources of funding	42
4.6 Challenges for Zimbabwe in the budget allocation process	43
4.7 Spending patterns analysis	44
4.8 Challenges in the spending patterns	46
4.9 Conclusion	47
Chapter 5: Conclusion and recommendations	48
5.1 Introduction	48
5.2 Summary and conclusions	49
5.3 Recommendations	52
5.3.1 Reinforcing the legal provisions, structures and institutions promoting and protecting the right to social security.....	52
5.3.2 The need for judicial intervention	53
5.3.3 Engaging international law and treaties	54
5.3.4 Funding for social safety nets	54
Bibliography	56
Cases.....	56
Legislation.....	56
Journals	56
Reports	58
Academic papers	60
Books	60
Newspaper Articles	61
Websites	61
International Treaties	62
Theses	62



LIST OF FIGURES

Figure 1: Diagram showing expenditure on social protection programmes from 2010-2015 (Source: Zimbabwe PER 2016, Volume 5: Social Protection)	41
Figure 2: Diagram showing sources of funding for social protection programmes (Source: Zimbabwe PER 2016, Volume 5: Social Protection)	42
Figure 3: Diagram showing the composition of government expenditure (Source: 2018 National Budget Statement)	46



ABSTRACT

This research examines the attitude that Zimbabwe portrays towards the protection, promotion and enforcement of the right to social security. Zimbabwe did not have a Constitution that provided for the realisation of the right to social security before 2013. With the enactment of the 2013 Constitution, many people now have a chance to enjoy economic, social and cultural rights (including social security) which ordinarily was not possible in the past.

Provision of the right to social security plays a pivotal role by assuring human dignity for people when they are faced with circumstances such as the deteriorating and unpredictable economic situation in Zimbabwe in recent years.

This study uses academic textbooks, journals, legislation, international treaties, newspaper reports and other sources of literature to analyse Zimbabwe's outlook on social security and examines the structures, policies and institutions put in place to enforce the right to social security. The Constitutional provisions for social security are also analysed in the light of international instruments' provisions of social security to find out if they are adequate and effective in the protection and promotion of social security in Zimbabwe. The study also examines the national polices; the national commission for human rights and the courts to determine their efficacy in their administration of the right to social security.

The Constitution of Zimbabwe states that when provisions of the declaration of rights and any legislation such as the provisions for the right to social security are being interpreted, international law and all treaties and conventions that Zimbabwe is a party to must be taken into consideration. Thus, in this study the application and influence on the enforcement of the right to social security by international law and all the treaties and conventions that Zimbabwe is a party to, are scrutinised.

Budgets mirror the government's values and can be reflective of the attitude that a State has towards a priority. That is why the study also examines the budget allocation and spending patterns of Zimbabwe towards the protection and promotion of the right to social security.



Chapter 1: Framework of the study

1.1 Background

About 80% of the world population does not have access to social security and of this 80%, 20% lives in extreme poverty and is in dire need of social security.¹ Even if the figures have changed since the time of recording of the statistics, the number could not have drastically metamorphosed for the better overnight.

The General comment 19 of the International Convention on Economic, Social and Cultural Rights, hereinafter referred to as the ICESCR, remarking on the right to social security (article 9)² highlights that the denial of or lack of access to adequate social security undermines the realisation of equal rights of men and women to the enjoyment of all economic, social and cultural rights and other human rights.

The traditional Zimbabwean society (Zimbabwe before colonisation) had its own system of social security. In this system the holistic needs of an individual were met in the family. The traditional African family was an exclusive welfare system that supported the bereaved, elderly, sick and needy members of the family.³

Being a member of the family was an important requirement for an individual to be assisted and emphasis was placed on the individual's sense of belonging and creation of harmony amongst relations. The individual was viewed as belonging to the larger extended family rather than the nuclear unit.⁴ Underprivileged parents would send their children to live with wealthier extended families. This was done for the purposes of redistributing child labour, schooling and taking advantage of the informal insurance mechanism.

Due to families living and working together, both the extended families and nuclear families became self-sufficient and could manage to ward off external threats and shocks.⁵ It is the colonisation of the country and the subsequent processes of urban

¹M Cichon and K Hagemeyer 'Social security for all investing in Global and Economic Development. A consultation' (2006) Issues in Social Protection Series. Discussion Paper 16, ILO Social Security Department, Geneva.

²General comment 19 of Article 9 of the ICESCR par 8.

³E Kaseke 'Social Security in Zimbabwe' (1988) *Journal of Social Development in Africa*, 3(1):5-19.

⁴M Mushunje 'Child protection in Zimbabwe: past, present and future' (2006) *Journal of Social Development in Africa*, 21.1:12-34.

⁵M Mushunje 'Interrogating the relevance of the extended family as a social safety net for vulnerable children in Zimbabwe' (2014) *African Journal of Social Work* 4(2).



and industrial development and growth that brought a schism to the relationship between the individual and his relatives.⁶

During the period of urbanisation and industrialisation, the indigenous people were familiarized with the working environment and they became susceptible to new contingencies such as unemployment and industrial injuries. Even with these novel risks, the colonial government saw no need to provide the native people with protection.⁷

Due to the racial discrimination in colonial Rhodesia (now called Zimbabwe), there were fragmented social security schemes attainable only by the non-indigenous population. The colonial government expected that the native people would return to their rural homes when they retired or were retrenched as rural areas were believed to be a form of indigenous retirement pension mechanism.

Since Zimbabwe's independence in 1980, there has been a mushrooming of social security schemes. The first decade after liberation saw a growth in social and economic rights in areas such as education, health and rural development. As part of rural development, the government started programmes to ensure that the people had access to water, electricity supplies and agricultural land. Social movements, including trade union movements, arose to implement large scale social and economic reform programmes.

There were five major social assistance programmes that were existent in the 1980-1990 period such as the minimum wage legislation which was administered and enforced in terms of the Minimum Wages Act of 1980. The scheme was meant to improve the interests of unskilled and semi-skilled labour. The minimum wages were increased and a price control system was put in place for the regulation of prices of basic food commodities as they were relatively lowered as the State subsidized producers.

Another initiative was the free health care programme which was established in 1980. Free health services were provided to people earning a certain low amount of money per month. It is at this time that hospitals and rural health centres were built

⁶E Brooks and E Nyirenda 'Social welfare in Zambia in Dixon, J (ed) *Social welfare in Africa*' (1987) Beckenham: Croom Helm Ltd.
⁷Kaseke (n 3) 9.



and initiatives such as traditional midwifery programmes and village worker programmes were established.⁸

The third programme to be established was the reformation of the education system. There was a thrust towards the removal of the bottle-necks inherited from the colonial system of low adult literacy and high student-teacher ratios which inhibited the efficiency of learning and teaching.

Agricultural boards such as the Grain Marketing Board, popularly known as GMB and the Cotton Marketing Board, also known as the CMB, were other establishments used in agricultural programmes meant to transfer income to the rural population.

In the period 1982-1984 a drought-relief programme was also established to supply food rations to families heavily affected by the drought during that period.⁹ The food-for-work programme and free-food distribution programmes were set up for the period 1987-1988. The free-food distribution programme was for households without able-bodied adults and the food-for-work programme catered for households with able-bodied adults.

Households, in the 1990s, faced a variety of mishaps including unemployment, retrenchment; death in families; long illnesses; devaluation; taxes and drought.¹⁰ Social safety nets were used at this time in Zimbabwe for purposes of ameliorating the negative effects of droughts and floods in the form of drought-relief and humanitarian assistance.

After the year 2000, social assistance has been more privatised and there is heavy reliance on the money sent to families in Zimbabwe from their relatives in the diaspora. It must be noted that State-aided programmes still exist.¹¹

In May 2013 there was an amendment to the 1980 Constitution. The 2013 Constitution brought an expansion of the already existing privileges and now

⁸ Journal of Social Development in Africa (1990) 5-1 – 5-22.

⁹The Herald Newspaper pg 27, 30 April 1982.

¹⁰ G Mutangadura and E Makaudze 'Urban Vulnerability to Income Shocks and Effectiveness of Current Social Protection Mechanisms: The Case of Zimbabwe' (2000) Consultancy Report prepared for the Ministry of Public Service, Labour and Social Welfare, funded by the World Bank, Harare, (on file with the authors).

¹¹T Masuka 'The new Constitution of Zimbabwe and its implications for social workers' (2014) 2 *Journal of Social Welfare and Human Rights* 29-40.



includes socio-economic rights which were not part of the 1980 Constitution.¹² The 1980 Constitution had ignored socio-economic rights.¹³

1.2 Problem statement

In Zimbabwe social security is provided for in Chapters 2 and Chapter 4 of the 2013 Zimbabwe Constitution.¹⁴ The right to social security is promoted and protected by the Constitution for the elderly (those above 65), war veterans and the disabled. For the rest of the Zimbabwean population, social security is just a national objective.

Many Zimbabweans languish in poverty when contingencies depriving them of their livelihood such as old age, disability, retrenchment, death of a bread-winner and sickness become part and parcel of their lives. The social aid provided by the State is inadequate and in some cases more resources are used to get the aid than the resources the beneficiaries tend to gain. Social assistance from the State is also unpredictable. There are times when beneficiaries go for months without aid yet there is always money that is apportioned for such assistance in the national budget and there are no calls from any sector for the State to account.

What is even more surprising is that, despite all the woes explained above that are experienced by the actual and potential beneficiaries of social security and social care, there are no cases brought by them or interested parties before the courts demanding for the provision of social assistance from the State. This can suggest that either the affected people might not be aware that they are entitled to receive social security or that the masses have been given the impression that social assistance is a privilege.

It is with the above background in mind that this research is carried out to examine if social security is a justiciable and recognised right or just an aspiration documented in the Constitution of Zimbabwe.

¹²As above.

¹³Masuka (n 11).

¹⁴Annexure C to the Lancaster House Agreement, 21 December 1979, Southern Rhodesia Constitutional Conference held at Lancaster House, London.



1.3 Research question

The Lancaster House Constitution did not protect and recognise socio-economic rights including the right to social security. The task at hand is to find out how Zimbabwe portrays social security after the constitutional reform and inclusion of social security as a right and also a national objective in Zimbabwe's 2013 Constitution.

This analysis is done by asking other questions. The first question is to ask what policies, institutions and structures are in place to protect and promote the right to social security and if they give a rights approach to the right to social security. The second enquiry is to determine if there are international treaties that Zimbabwe has domesticated to ensure the maximum enforcement and protection of this right.

Lastly, an enquiry is done to determine the resource allocation and spending patterns of the State in its efforts to protect and promote the right to social security.

1.4 Aim of study

The researcher aims to convert parts of this dissertation into a research paper.

1.5 Research methodology

The researcher did a desk-based research. The researcher studied the Constitution of Zimbabwe, the Constitution of South Africa, academic textbooks, theses, reports, newspaper articles, policies, legislation, international treaties, General comments on different treaties and case law.

South Africa was chosen for a comparative study in some aspects as it has a well-documented and established jurisprudence on socio-economic rights and recognises social security as a justiciable right. From the comparison, some lessons are picked that Zimbabwe can take from South Africa which has come a long way in protecting and enforcing the right to social security.

1.6 Limitations/ scope of study

The study focuses only on the protection and enforcement of the right to social security in Zimbabwe. Social protection is broad and given that this is a mini-research, the study focuses on social assistance and does not dwell on social insurance because the scope of research would be too broad if both aspects were researched on.

The study also only concentrates on the work done to promote, protect and provide social security since the promulgation of the new Constitution in 2013.

1.7 Literature review

*'The new Constitution of Zimbabwe and its implications for social workers'*¹⁵ examines Zimbabwe and observes that social policy in the nation has developed and now reflects the new priorities and attitude the country has towards the causes of social problems and their solutions.

Kaseke in *'Social Security in Zimbabwe'*¹⁶ agrees that the social security of Zimbabwe can be traced back to the country's colonial history. He writes that the discrimination on the ground of race in colonial Rhodesia led to fragmented social security schemes which benefitted only the white population. He comments in his article that the colonial government irrefutably assumed that the needs of the African population could be easily met in the peasant economy because they were simple.

Hall and Midgely in *'Social policy for development'*¹⁷ observe that South Africa, like Zimbabwe, also reflects that social policy can be used to right the racial discrimination of the past. White people were the only race eligible to receive social services in colonial times and the social policy now is changing this status quo so that even the black people can benefit from social welfare.

It is thus important that as the research is undertaken that due notice is given to the history of social security in Zimbabwe. However, unlike other authors that have looked at the country's past from pre-colonial times, the researcher in this study will

¹⁵Masuka (n 11) 29-40.

¹⁶Kaseke (n 3).

¹⁷A Hall & J Midgely *'Social policy for development, London: Sage' (2004) Journal of Social Policy* 312-313.



focus on the history post-2008 which in her view should more or less influence the social policy of Zimbabwe going forward.

After studying '*A review of social protection programmes in Zimbabwe: Lessons learnt*'¹⁸ one appreciates that to design, formulate and implement social protection programmes there is need for policy-makers and concerned parties to understand the environment they are dealing with. Provision of social services can be considered multi-dimensional. Political, technical, social, legal or even economic factors have to be considered. Delivery of social services can be political in the sense that oftentimes the decision of who benefits or the number of people that will benefit lies with the politicians as they create statutes and policies.

Social service provision can be technical in nature. There is need for State actors to calculate and quantify the cost of providing social services. The bearer of the costs needs to be identified and the period in which assistance will be given has to be determined even before services are provided.

Another important dimension of social service provision is the legal aspect. Munro¹⁹ observes that the presence of legislation acts as a lifeguard for schemes from possible abuse, manipulation and corruption. Some of the ways in which legislation safeguards schemes is if it has a clear definition of public assistance as this will limit political interference by politicians seeking to promote allegiance and patronage by placing their undeserving followers on social schemes.

Thus, it will be imperative in this study to look at the legislation on social security to examine if it does promote and protect the right to social security. It will be important to analyse if the legislation matches international standards and if it safeguards schemes from social ills that can prevent the enjoyment of the right.

The social environment is also important in the planning, creation and operation of social protection programmes. In many developing countries, social assistance recipients are often viewed as failures in society so they suffer from social stigma.

¹⁸ O Mtapuri '*A review of social protection programmes in Zimbabwe: Lessons learnt*' (2012) 24(3) *The Social work practitioner- Researcher* 2.

¹⁹ LT Munro '*Poverty and social safety nets in Zimbabwe 1990-99*' PhD thesis, University of Manchester, 2001 (on file with the author).



The attitude of Government often does not make matters any better as it tends to regard social assistance as a treat and not an entitlement.

Worse still due to the scarcity of resources in developing countries, only a few people, who sometimes are not very desperate, receive assistance. Schemes often benefit a fragment of the entire population and the majority, often in great need, are left without any assistance. The people who are in real need are secluded from assistance programmes.

Welfare offices are often not within easy reach and one notices that sometimes the poor must pay significant amounts in bus-fare to travel to and from the nearest district office which also serves as the social security office. The implication is that some end up not going to the offices and are thus excluded from benefitting from social assistance schemes. Exclusion because of inability to access services becomes tantamount to denial of the right. This study will look at other forms of exclusion, if any, that might be lacing the fabric of social policy in Zimbabwe of late.

The above-mentioned multi-dimensional factors and many other factors form part of the environment in which the right to social security operates. These are the factors that determine whether the right is realised or not. It is from this understanding that the research will take a multi-dimensional approach to examine if Zimbabwe views social security as a right.

However, even though all these approaches are considered and implemented, if there is no coordination of the efforts, the plans may be in vain. The article '*Spending on safety nets for the poor. How much for How many?*'²⁰ explains how the lack of coordination may cause programmes to cover a few people while others are not reached at all. This notion is evidenced by Smith's submission from the findings of his study that showed that the social protection problems in Malawi are as a result of different State organs proposing different designs, incentives and methodologies and there is no coordination of the initiatives.

²⁰WJ Smith '*Spending on safety nets for the poor. How much for How many?*' 2001 *The case of Malawi Africa Region Working paper series No. 11*, Washington DC: The World Bank.



In this study, the researcher will look at the different parties providing social services or ensuring the promotion and protection of social security and examine the coordination of their efforts and impact thereof.

1.8 Proposed chapters

Chapter 1 outlines the background, problem statement, objectives, methodology and the limitations of the research. The development of the protection and enforcement of the social security from pre-colonial times to date is observed and discussed in this chapter.

In chapter 2 an examination of the structures, policies and institutions put in place by the Zimbabwean government to promote and protect social security is carried out. The researcher will in this chapter look at the roles of the Zimbabwe Human Rights Commission with regards to social security, the courts, relevant legislation, relevant case law and relevant social security policies in Zimbabwe. The researcher will analyse if the structures, policies and institutions project a rights approach to social security.

Chapter 3 scrutinises the international treaties that Zimbabwe has ratified and how far it has gone to domesticate them since Zimbabwe uses a dualist approach to applying international law. An enquiry is to be made into the importance of domesticating international treaties for the right to social security to be promoted and protected. The effects and reasons of not domesticating international treaties on the protection and promotion of social security are also studied.

In chapter 4 an analysis is done of Zimbabwe's social security resource allocation and spending patterns from 2013-2019. The aim is to scrutinize if the programmes established to deliver social protection are adequately funded and performing and if there is an allocation of resources every year.

Lastly, in Chapter 5, conclusions are made on the findings of the research and recommendations given for improvement of the mechanisms put in place to promote and protect the right to social security.



Chapter 2: Examination of the social security policies and structures in Zimbabwe

2.1 Introduction

The responsibility of every government committed to providing social security to its people is to ensure that there are policies and programmes that diminish poverty and susceptibility of the citizens to shortage by reducing people's exposure to risks and enhancing their capability to protect themselves from the hazards resulting from interruption or loss of income.²¹

The preceding chapter focused on introducing and displaying the significance of this study. This chapter will focus on evaluating the structures, policies and institutions placed by the Government of Zimbabwe to enforce the right to social security from 2013 to date. The aim is to determine whether or not they are effective and they adequately provide for the protection and promotion of the right to social security. An examination will also be done to assess whether the policies and structures strengthen the capacity of the right-holders the duty-bearers to meet their obligations.

2.2 The Constitution on promoting and protecting social security

It must be evident that the State is working towards promoting rights; encouraging participation of the people; establishing groups committed to fighting societal ills; allowing individuals and groups to challenge unfair practices by the State and protecting the minorities and those who are marginalised from exploitation and from intrusion.

Rights guide the formulation of legislation and help develop an atmosphere of accountability and transparency. Rights equip individuals with the ability to demand protection through court processes and call upon political leaders to justify their policy choices. Socio-economic rights amount to nothing more than logical ideals if there are no legal enforceability mechanisms in place.²²

²¹<http://www.adb.org/social-protection/default.asp> (Accessed 5 July 2019).

²² R Willes and others 'Researching researchers: Lessons for research ethics' (2006) *Qualitative Research* 6 (3) at 283-299



Sections 19, 21, 22, 23 and 30 of the Constitution of Zimbabwe contain the Chapter 2 social security provisions. Section 19(2)(b) provides that the State must adopt practical policies and measures to ensure that children have shelter, basic nutrition, health-care and social services and this is done using the available resources.

Section 21(2)(b) states that the State and all institutions and agencies of government at every level must make an effort to provide facilities, food and social care for destitute elderly persons and this must be done within the limits of the resources available. The same institutions are required to establish social organisations that will improve the quality of lives of the aged.²³

Social security for people with disabilities is provided for in section 22. The State and all institutions and agencies of Government at every level are expected to develop programmes for the wellbeing of persons with mental or physical disabilities.²⁴

Social organisations whose objective is to improve the quality of life of persons with physical or mental disabilities must be fostered.

Section 30 provides that the State must take all practical measures to make available social security and social care to those who are in need and this must be done within the limits of the resources available to the State.

The State is also required, as part of its objectives to provide for social security, to take reasonable measures to improve the quality of life of the elderly²⁵ and give free and compulsory basic education to children²⁶ and promote higher and tertiary education²⁷. The State is also obliged to take measures to ensure that the people can access basic and adequate healthcare²⁸ throughout Zimbabwe and to ensure that youths are economically empowered and protected from harmful cultural practices. These rights are discussed later on in Chapter 3.

The reasoning and intention for providing basic education is that the risk of impairment of one's capacity to earn income because they do not have an academic

²³ Section 21(2)(d)

²⁴ Section 22(3)(a)

²⁵ Section 21(2)(d)

²⁶ Section 27(1)(a)

²⁷ Section 27(1)(b)

²⁸ Section 76



qualification is averted. Healthcare helps to reduce the risk of the masses from failing to earn a living because of poor health.

Scholars argue that the objectives contained in Chapter 2 of Zimbabwe's Constitution place a minimum onus on the State.²⁹ In their view, the State is not obligated to respect and promote and protect these rights as they simply guide the State in putting in place policies and laws that enable the right to be justiciable.³⁰

The wording of section 8(1) clearly highlights that these are objectives. They are not rights and this can also be seen from the fact that provisions in chapter 4 contain the term 'right' on the heading or in the contents of the provisions themselves but none of the provisions in chapter 2 contains the term 'right' anywhere.

A scholar views this approach of having national objectives as a way to engage government and the legislature, but not the courts.³¹ The scholars aver that although Chapter 2 objectives are not justiciable, they can be enforced by interpreting widely the justiciable rights in Chapter 4 of the Constitution, for example, the right to life or the right to dignity can be used to advocate for the realisation of the right to social security.

Section 45(1) clearly stipulates that the Declaration of Rights binds the legislation, the executive and the judiciary to promote and protect human rights. Section 11 states that the state must take all practical measures to protect the fundamental rights and freedoms enshrined in Chapter 4 and to promote their full realisation and fulfilment.

Provisions for social security in chapter 4 are embedded in sections 81, 82 and 84. These declarations of rights place upon the State a responsibility to respect, promote and realize them.³²

Section 81(1)(f) enshrined in chapter 4, states that every child under the age of eighteen, has the right to parental or family care, or to suitable care when detached from the family environment.

²⁹T Chivuru "Socio-economic rights in Zimbabwe's new Constitution" (2014) 36 Strategic Review for Southern Africa 118

³⁰ As above 118.

³¹ Chivuru (n 35) 113.

³² Section 44 of the Constitution of Zimbabwe.



Social security for the elderly is provided for in Section 82(c) of the Constitution. The section provides for people over the age of seventy. In terms of this section, the elderly have the right to receive support financially by way of social security and welfare. The state bears the responsibility to achieve the aforementioned right progressively using the resources available to it.

Section 84(1)(c) of the Constitution provides for the right to social security for war veterans. It provides for suitable welfare in recognition of their contribution and sacrifice they made during the liberation struggle for Zimbabwe by those who were because of political reasons were incarcerated, detained or restricted during the struggle for liberation. They are eligible for social security benefits such as pensions and access to basic healthcare.

Some of the rights that are important for the realisation of the right to social security are the right to education and the right to health. Thus by domesticating the treaties that promote the rights to education and health, the State indirectly reinforces rights that are key to protect and promote of the right to social security.

Human rights are independent, indivisible and inter-related.³³ Other measures are therefore necessary to compliment the right to social security. There is need to adopt measures to prevent disease and improve health facilities. There is also need to provide goods and services; advice and assistance in family planning and providing special facilities for elderly persons. It must be noted however that, the adoption of measures to realise other rights does not act as a substitute for the creation of social security schemes.³⁴

The Constitution includes the right to basic State-funded education. In terms of section 75, every citizen and permanent resident of Zimbabwe has a right to a basic education that is State-funded, including adult basic education. The right to education is a tool for empowerment. When people are educated they are able to participate effectively in issues that concern them.

The Constitution also makes specific provision for the right to health care in addition to other health rights in sections 29, 48(3), 52(c), 57(c), 60(3), 73(1)(a), 76, 77, 81(f),

³³ Vienna Declaration and Programme of Action (A/CONF.157/23), adopted by the World Conference on Human Rights, held in Vienna, 14-15 June 1993.

³⁴ ICESCR General comment 19 par 5.



82(b) and 84 of the Constitution. The Constitution provides for the right of every person who suffers a continuous illness to have access to basic healthcare services for the illness. The Constitution explicitly states that no person may be denied emergency medical treatment in any healthcare institution.³⁵

If the observations are true about the persuasive or binding force of chapter 2 and 4 discussed above, then that means only the elderly above seventy; war veterans and children under the age of eighteen have a justiciable right to social assistance in terms of the Constitution of Zimbabwe since their rights are contained in chapter 4.

As a party to the ICESCR Zimbabwe must have provisions that give effect to social security provisions in the treaty. It is common cause that States are not formally obliged to incorporate provisions of the ICESCR in the Constitution and other national laws but direct incorporation is preferred as problems that might arise in the translation of the treaty obligations will be avoided. Also direct incorporation of the treaty provisions provides a basis for individuals to directly invoke their treaty rights.

Article 9 of the ICESCR provides that the State parties to the Covenant recognise the right of everyone to social security, including social insurance. The right encompasses the right to access and maintain benefits³⁶ Article 2(1) of the treaty provides that State parties to the Covenant must take suitable measures and occasionally review them when necessary within their maximum resources and the right must be recognised without discrimination. State parties also have an immediate obligation to gradually the fully realise the right to social security.

The Constitutional provisions of social security as they currently read are far from the prescriptions of the ICESCR. South Africa's provisions are perhaps even closer to the dictates of the treaty regarding social security and Zimbabwe can learn from its neighbours and improve on its Constitutional provisions for social security.

Section 27(1)(c) of the South African Constitution provides that everyone has the right to have access to social security, including, suitable social assistance if they are unable to provide for themselves and their dependants. Section 27(2)³⁷ provides that

³⁵ Section 29(2).

³⁶ CESCR, General Comment 9: The Domestic Application of the Covenant, UN Doc. E/C.12/1998/24 (3 December 1998) para. 2.

³⁷ Constitution of the Republic of South Africa Act



the State must take reasonable legislative measures and other measures, to achieve progressive realisation of these rights using the available resources.

Section 27³⁸ refers to important features of the right to social security which the Zimbabwe Constitution does not state. The first is that 'everyone has a right to have access to social security'. 'Everyone' means that there is no form of discrimination on any ground. As has been highlighted above, social security is not guaranteed for everyone in Zimbabwe. Secondly, the South African Constitution states that social security is a human right not a State objective which is the case with the Chapter 2 provisions for social security in the Zimbabwean Constitution.

There must be progressive realisation of the right. This is an important feature lacking in the provisions of social security in the Constitution of Zimbabwe. It must be a goal for State actors that at the end everyone has at least minimum enjoyment of social security.³⁹ The actors have to actively strive to achieve this goal and measures must be put in place that show that the aim is that at some point in time everyone will enjoy social security even if it is just minimum enjoyment.

Policies and programmes must not just be put in place for compliance' sake but real strides must be taken and bench-marks must be set and monitored if the State is to fulfil its mandate. The mechanisms to provide for social security and social care must be effective and not just practical or reasonable as highlighted in provisions for social security in the Constitution of Zimbabwe.

The right to social security, just like any other rights, is subject to internal limitations such as progressive realisation, reasonableness and if resources are available. The internal limitations and the section 87 general limitation of rights in the Constitution could have the potential of interfering with the protection and enforcement of the rights.⁴⁰

It might be important that the court comes up with a way to ensure that the internal and general limitations are not used as a scapegoat by the State to avoid

³⁸ As above

³⁹ CESR *General Comment 3: The Nature of State Parties' Obligations (Art 2, para 1, of the Covenant)*, 14 December 190, E/1991/23. Available at: www.refworld.org/docid/4538838e10.html.

⁴⁰ Kondo (n 43) 190-191



responsibility of providing for social security and social care to the people of Zimbabwe.⁴¹

2.3 Other legal provisions promoting and protecting social security

All the Constitutional provisions highlighted above on social security place the onus on the State to adopt policies and measures to provide social security and social care. Some of those measures include formulation of Acts of Parliament. Zimbabwe has other legal measures besides the Constitution protecting and promoting the right to social security which are discussed below.

The Social Welfare Act of 1988 regulates social welfare assistance. In terms of this Act, any destitute or indigent person may apply to the Director for social welfare assistance. Assistance includes that the beneficiaries can get occupational training, rehabilitation, pauper burials, institutional nursing and boarding, home foster care, counselling services and a supply of food and clothing. The Act also protects and promotes human rights of persons living with disabilities by having provisions in the Act specifically targeted for this group of people to receive social security.⁴²

The Zimbabwe's Old Person's Act of 2012 is the legislation that provides social assistance allowances and other welfare services to the aged. In terms of this Act, for one to qualify for social welfare assistance, one must be physically or mentally handicapped; have a chronic illness; be a dependant of a person who is needy or unable to look after him or herself. The person must be in need of social welfare assistance.

The applicant and his or her dependants, in terms of this Act, must not have any assistance whether financial or otherwise to qualify. Also, the applicants and their dependants are assessed on their suitability to be resettled or be rehabilitated. The state of health of the applicant and his or her dependants are also assessed.

There are challenges posed by this Act such as that the United Nations has pegged old age at 60 and beyond but the Old Person's Act states that the minimum

⁴¹ As above.

⁴² Section 6.



qualifying age for assistance is 65. The Act thus unfairly excludes elderly people aged between 60 and 64 in its provisions and application.⁴³

Furthermore, the Act was crafted in 2002 but took five years to be implemented (from 2012-2017 when it was enacted). After the enactment the Act took more time waiting to be aligned with the Constitution. The reason for the delays has been said to be lack of funding⁴⁴ but some scholars argue that it might be because of the lack of political will of duty bearers to provide those advanced in age with welfare allowances.⁴⁵

The Public Health Act⁴⁶ provides for the protection of public health, including prevention and suppression of infectious and sexually transmitted diseases. The Act regulates on the provision of safe water, food supplies and improved sanitation, among other things, and also states that children must be immunised against disabling diseases such as polio. The Government is also running programmes to educate the public on accident prevention (which may result in disability) in the home.

When people are healthy they can work and gather resources for any contingencies. When one is sick there is a possible risk of poverty if one's ability to access resources is inhibited by the sickness. ILO social security conventions and recommendations state that essential health-care is an integral part of social security.⁴⁷

2.4 Social assistance policies in Zimbabwe

In accordance with the Constitutional provisions that there be social care and social welfare and assistance policies and measures in place, there are many social assistance programmes that have been established in Zimbabwe.

The Basic Education Assistance Module, hereinafter referred to as BEAM, is one such mechanism. The programme assists orphans, vulnerable children and children

⁴³ J Dhemba 'Social Protection for the Elderly in Zimbabwe: Issues, Challenges and Prospects' (2013) *African Journal of Social Work*, 3(1) 9.

⁴⁴ 'Older Persons Act finally in force' News day 7 September 2017.

⁴⁵ Dhemba (n 37) 9.

⁴⁶ Chapter 15:09.

⁴⁷ Recommendation No. 202 par 4 & 5 Social protection floors recommendation, 2012.



with disabilities to access primary and secondary education. The social assistance given to the children is by form of a fee waiver.⁴⁸

Direct bank transfers are done to the school accounts. The funds are meant to finance six subjects at Ordinary Level and three subjects at Advanced Level.⁴⁹ The programme started in 2001 and is spread nationwide and the beneficiaries of the program are aged between 6 and 19 years.

The Ministry of Labour and Social Services together with the Ministry of Education, Sport and Culture are responsible for the program. The programme is meant to reduce the number of school drop-outs and assist children who have never been to school due to economic hardships to go to institutions of learning.⁵⁰

BEAM has been laced with allegations of mismanagement of funds, corruption, favouritism, undue benefitting and lack of proper record-keeping. Only a few children benefit from the programme and there have been late disbursements of funds to the schools resulting in children being sent home for non-payment of fees.⁵¹

Another social assistance program in Zimbabwe is the Assisted Medical Treatment Orders, hereinafter referred to as AMTOs. The non-contributory program is financed by the Government of Zimbabwe through the Ministry of Health and Child Welfare. The programme is meant to enhance access to healthcare among vulnerable populations and was established in 1960. Possible receivers are identified by means of referrals from the local councillors and headmen together with reports from medical social workers.⁵²

The recipients of assistance include people from very poor households; the elderly above 60 years of age who get free medical service at public hospitals; vulnerable children; severely ill people and people with disabilities. Their medical bills are

⁴⁸ H Chikova 2013 'Social protection in Zimbabwe' presented at the Social protection for those working informally; Social and Income (In) security in the informal Economy Conference, 16-17 Sept 2013 pg 2.

⁴⁹ T Masuka et al 'Preserving the Future: Social Protection Programmes for Orphans and Vulnerable Children (OVC) in Zimbabwe' (2012) 2(12) *International Journal of Humanities and Social Science* 61.

⁵⁰ G Kanyenze et al (ed) 'Beyond the Enclave: Towards a Pro-poor and Inclusive Development Strategy for Zimbabwe.' (2011) 382.

⁵¹ T Masuka 'The new Constitution of Zimbabwe and its implications for social workers' (2014) 2/1 *Journal of Social Welfare and Human Rights* 34.

⁵² TN Nhede 'The social security policy of the Government of Zimbabwe: a policy analysis overview' PhD thesis, University of Pretoria, 2016 at 213 (on file with the author).



settled from the time they enrol on the program. Direct payments to hospitals are made when claims are processed.⁵³

The programme has been abused as some people who can afford medical services have been benefiting from this program thereby depleting the resources meant for the well-deserving beneficiaries.⁵⁴

The War Victims Compensation is a social assistance program set up on the premise that-related injuries caused claimants to be incapable to earn incomes while their dependants' source of income was cut off leaving them vulnerable to social insecurity. The programme is regulated by the War Pensions Act⁵⁵ and is administered by the Ministry of Labour and Social Services.⁵⁶

Another social assistance mechanism is the Food Deficit Mitigation Strategy which is a means tested public non-contributory scheme financed by the World Food Programme as a technical partner. Qualifying households receive grain.⁵⁷

The Children Protection Services is a government and donor funded social programme. The programme is responsible for the establishment of children courts, welfare and supervision of children and juveniles, registration of the care and guardianship of the children and juveniles. The scheme provides funds for the maintenance and adoption of minors.⁵⁸

The Drought Relief Public Works Programme offers free cash-assistance to the elderly, those suffering from continuous illnesses and the disabled. Able-bodied beneficiaries get monetary benefits when they participate in temporary community projects which are labour intensive public works. During famine the programme is administered by the community leaders.⁵⁹ The Government avails food hand-outs to affected communities and in return the beneficiaries work. The work to be done involves developmental initiatives such as the maintenance of the community roads, moulding bricks, construction of schools and clinics. Beneficiaries are paid in cash or kind.

⁵³Nhede (n 2).

⁵⁴Nhede (n 2).

⁵⁵ Chapter 11:4.

⁵⁶Chikova (n 2) 2.

⁵⁷ As above 3.

⁵⁸As above 3.

⁵⁹As above 3.



There is a Public Assistance Scheme that is meant for the elderly where they get a non-contributory maintenance allowance. The scheme is managed by the Department of Social Welfare. According to the United Nations, in 2013, 6% of Zimbabwe's population consisted of elderly people.⁶⁰ Madzingira,⁶¹ avers that 78,5% of the aged in Zimbabwe are underprivileged. They have shortages of food, clothing, lack of or poor accommodation and ill health. A study done by Dhemba⁶² shows that only about 7.5% retirees are covered by social security schemes.

Recipients of the public assistance scheme collect financial benefits and are eligible to receive services such as occupational training, rehabilitation, counselling services; pauper burials. Alternative care is available for needy elderly but the option only becomes available as a last resort.⁶³

The elderly also have the right to use free healthcare services in terms of the public assistance scheme. However, the healthcare system in the country is not efficient. The elderly only have access to the general healthcare which is not adequate for their specific needs and is not readily reachable to them.⁶⁴

The programme uses the means-test to determine the applicants' eligibility and is operated from a residual approach. The approach assumes that the individual's needs should be catered for by the family or market system and that the State only steps in when these systems flop. Some elderly people are denied help because the extended family is presumed to be fending for them. However, the family and market systems are the traditional structures that have been affected by modernisation, industrialisation, urbanisation and globalisation and cannot be completely relied on.⁶⁵

⁶⁰United Nations Department of Economic and Social Affairs Population Division; 2009. Population ageing and development. Available from: www.unpopulation.org (accessed 17 July 2019); Dhemba J. 2013. Social Protection for the Elderly in Zimbabwe: Issues, challenges and Prospects. *African Journal of Social Work*, 3(1)1-22

⁶¹ N Madzingira 'Poverty and ageing in Zimbabwe' (1997) 12(2) *Journal of Social Development in Africa*. 5-19.

⁶² J Dhemba 'Retirement in Zimbabwe: An evaluation of social security provisions in meeting the needs of African retiree' BSW Dissertation, University of Zimbabwe 1990 (on file with the author).

⁶³Dhemba (n 37) 1-22.

⁶⁴ E Kaseke & V Zimunya (eds) 'Care of the Elderly in Zimbabwe. Edited Proceedings of a workshop held in Harare, Zimbabwe' (1992) *Journal of Social Development* 52.

⁶⁵ R Mupedziswa 'Social policy & administration in Zimbabwe' in N Hall & R Mupedziswa (eds) *Social welfare* (1995) 81-106.



Another problem is that payments by the department have been erratic due to underfunding of the Department of Social Services perennially. In 2012, from January till September, beneficiaries only received allowances for a month.⁶⁶

Scholars have averred that the lack of awareness about the public assistance scheme has caused many potential beneficiaries not to apply for assistance.⁶⁷

2.5 The Zimbabwe Human Rights Commission

According to the African Commission, national human rights institutions play a central role in ensuring that there is indivisibility and interdependence of all human rights. National human rights institutions complement the role of other democratic institutions in ensuring that issues of human rights continue to be the principal focus of political dialogue in every society.⁶⁸

The national human rights institution in Zimbabwe is the Zimbabwe Human Rights Commission, hereinafter referred to as ZHRC. The institution is established in terms of section 242 of the Constitution of Zimbabwe.

The functions of the Commission are provided for in section 243 of the Constitution. They include that the institution is responsible for the protection, monitoring, promoting, assessing, developing and attaining of fundamental rights and freedoms locally; publicising human rights information and providing human rights education.⁶⁹ It is also responsible for receiving grievances from the public and taking relevant action.⁷⁰

The institution is mandated also to protect the public against the exploitation of power and maladministration by officers of public institutions and the government⁷¹ by investigating itself or directing the Commissioner General of Police

⁶⁶Dhemba (n 14) 7.

⁶⁷ E Kaseke et al *Transferring resources to poor households: The case of poor households in Zimbabwe* (1998).

⁶⁸ CR Kumar 'National human rights institutions: good governance perspectives on institutionalisation of human rights' (2003) 19:2 *American University International Law Review* 278.

⁶⁹ Section 243(1)(b) Constitution of Zimbabwe.

⁷⁰ Section 243(1)(c) Constitution of Zimbabwe.

⁷¹ Section 243(1)(d) Constitution of Zimbabwe.



to investigate the conduct of any authority or person accused of violating other people's human rights and freedoms.⁷²

The institution has power to request any institution or agency, person, State or otherwise, to report to the Commission on what procedures they would have taken to fulfil and protect the rights in the Declaration of Rights. The Commission also submits reports to Parliament annually through the responsible Minister.⁷³

The success of the national human rights institution in protecting and enforcing human rights goes deeper than just it being established. For the institution to fully function there are fundamental components that must be in place. Components like independence, accountability and accessibility are fundamental if the institution is to succeed.⁷⁴

Independence allows the institution to work and make decisions autonomously and do its daily activities without outside influences.⁷⁵ Accountability and independence of the national human rights institution are crucial for its legitimacy, credibility and effectiveness.⁷⁶

The Constitution of Zimbabwe allows the institution to be independent. It states that the institution must do its work without fear, favour or prejudice.⁷⁷ To ensure that the institution is sovereign, the Constitution states that the members of the ZHRC should be non-political and that if any member is affiliated to a party they are supposed to relinquish their membership soon after their appointment.⁷⁸

Also to ensure independence, the members of ZHRC are chosen based on their integrity, understanding, knowledge and experience in the promotion of rights.⁷⁹ However, although the independence of the institution seems advanced it contains some loopholes. The President has great powers of appointment of the ZHRC Chairperson which lacks checks and balances and does not involve any

⁷²Section 243(1)(e) Constitution of Zimbabwe.

⁷³Section 244(1) Constitution of Zimbabwe.

⁷⁴L Chidzwa 'The Zimbabwe Human Rights Commission: Prospects and challenges for the protection of human rights' (2015) 19 *Law, democracy and development* 152

⁷⁵'OHCHR National human rights institutions; history, principles, roles, and responsibilities' 2010 *New York: United Nations* 41.

⁷⁶A Smith 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28 *Human Rights Quarterly* 904.

⁷⁷Section 235 Constitution of Zimbabwe.

⁷⁸Section 236(1) Constitution of Zimbabwe.

⁷⁹Section 242(4) Constitution of Zimbabwe.



consultation with NGOs or civil society. This can be used as an avenue to intrude into the independence of the ZHRC. Questions have already been asked in the media about the issue.⁸⁰

The fact that ZHRC submits its reports to Parliament only through the relevant Minister poses a possible meddling from the Minister if the report condemns and or discloses human rights abuses by the government and or its organs.⁸¹

Chiduzwa⁸² avers that the failure by the State to provide adequate funds for Commissions in Zimbabwe makes it difficult for the Commission to work optimally. Much needed resources include human resources to ensure operational efficiency of the institution.⁸³ There is need for establishment of offices in all the provinces and districts of Zimbabwe so that the victims of human rights abuse can report violations as soon as possible.

The Commission must be able to remunerate its members adequately. The institution must be financially autonomous and the funds given to the Commission for its functioning must not be under the direct control of the government. There have been reports of the Treasury failing to pay salaries on time.⁸⁴ Monetary resources are needed for the Commission to fulfil its duties.

2.6 The courts and the protection of the right to social security in Zimbabwe

Section 165(1)(c) of the Constitution of Zimbabwe states that the courts are paramount in safeguarding human rights, freedoms and the rule of law. This means that there cannot be full protection of human rights without the intervention of the courts.

Section 85(1) of the Constitution of Zimbabwe provides that an aggrieved party can bring a matter before the Court to oppose an alleged or potential violation of fundamental rights and freedoms provided for in the Declaration of Rights. The Court

⁸⁰ 'Mugabe, Tsvangirai misfire' Newsday 20 February 2013.

⁸¹ H Chitimira & P Mokone 'The Functions of Selected Human Rights Institutions and Related Role-Players in the Protection of Human Rights in Zimbabwe' (2016) 19 PER / PELJ 12.

⁸² Chiduzwa (n 23) 148.

⁸³ S B(2) of the Paris Principles.

⁸⁴ 'Human Rights Commission grounded' The Herald 23 June 2014.



may grant appropriate relief after hearing the matter. Relief may include an award of compensation or a declaration of rights.⁸⁵

In the case where legislation prohibits the full enjoyment of rights, the Court can order declaration of invalidity of the legislation. This is done in terms of Section 175(6)(b) which grants the Court the discretion to make an order that is just and equitable.

Section 85 provides a wide spectrum of who can approach the court for redress. In *Mudzuru* the court reasoned that the reason for the wide spectrum of possible applicants was to provide a wide representation and allow tangible, significant justice for all.⁸⁶

Sections 46; 326; 327(6) of the Constitution also make it clear that part of the Court's duties include interpreting the law. The right to social security is vested in the Constitution. The Constitution and other pieces of legislation are transformative documents that have to be interpreted progressively, generously and purposefully and the courts become instrumental in the development of a new clear and precise jurisprudence.

There is need for the courts to interpret the provisions of social security contained in the Constitution and other forms of legislation and it is sad that the court has only had a chance to develop the law in a few socio-economic rights cases namely the *Hopcik*⁸⁷, *Mudzuru*⁸⁸ and *Mushoriwa*⁸⁹ cases.

The Zimbabwean court's jurisprudence for social security is not yet extensive and the socio-economic rights cases' jurisprudence developed so far has to be instructive in the interim. There is need for jurisprudence that engages seriously with the content of the right to social security and the nature and scope of the obligations the right imposes on the State.

⁸⁵ Section 85(1)(e) Constitution of Zimbabwe.

⁸⁶ *Mudzuru* Judgment 14.

⁸⁷ *Hopcik Investment (Pty Ltd) v Minister of Environment, Water and Climate and City of Harare* HH 137-16& HC 1796/14.

⁸⁸ *Mudzuru & Another v Ministry of Justice, Legal and Parliamentary Affairs (NO) & Others* (Const Application 79/14) [2015] ZWCC.

⁸⁹ *Farai Mushoriwa v City of Harare* (HC 4266/13) [2014] ZWHHC 195.



*Mushoriwa*⁹⁰ is one case wherein the Court got an opportunity to interact with the nature of the obligations of the state in socio-economic rights' disputes and other cases are discussed below.

In the *Mushoriwa* case the Court clearly expressed that the State and non-actors have to abstain from negatively interfering with rights that are constitutionally protected and enforceable.⁹¹

In this case the court further proved that it will not hesitate to give appropriate relief and that it would adjudicate matters without fear, favour or prejudice.⁹² The courts showed that they are aware of supplanters who misuse their authority to violate socio-economic rights to the disadvantage of society.⁹³

Considerations for what must be considered when dealing with positive enforcement of rights still need to be laid by the Court. The Court can take a leaf from the South African case of *Grootboom*⁹⁴ which has clearly outlined considerations.⁹⁵ Having socio-economic considerations will assist the Court to have a standard enquiry when handling the positive enforcement of rights.

It is clear from the case of *Grootboom* that the judiciary is essential when it comes to the protection of social security and that socio-economic rights, including social security, should not just be left in the hands of the politicians and that judicial implementation of the rights is essential if the rights are to be realised. Section 165(1)(c) of the Constitution of Zimbabwe discussed above echoes these sentiments about the importance of the courts. *Grootboom* is an example for the Zimbabwe judiciary that the courts have the capacity to force the policy-makers to make sure that socio-economic rights are protected that they need to harness.

The Zimbabwe Judiciary has already showed that it is ready to protect socio-economic rights, which is a step in the right direction. In the *Hopcik* case, the Court ruled that there is a positive obligation on the State to allocate resources if need be, and to ensure that socio-economic rights are realised in some instances. In this

⁹⁰ As above.

⁹¹ As above.

⁹² Section 85(1)(e) Constitution of Zimbabwe.

⁹³ *Mushoriwa* Judgment 7.

⁹⁴ Government of the Republic of South Africa & Others v Grootboom Case CCT 11/00.

⁹⁵ T Kondo 'Socio-economic rights in Zimbabwe: Trends and emerging jurisprudence' (2017) 17 *African Human Rights Law Journal* 188.



instance, the right to water was considered. The Court reasoned that the right to water is a right that places a demand on the State to provide a certain amount of water that is necessary to sustain life and health.⁹⁶

Another case showing the Judiciary's commitment to protect socio-economic rights is the case of *Mudzuru*. The case shows that the Court is willing to protect any rights in the Bill of rights even if it is a public interest case. The Court, however, has not yet discussed some issues such as the separation of powers' doctrine which are essential if the courts need to force the Executive to make sure that socio-economic rights are realised and are not viewed as aspirational.⁹⁷

There is often fear that the courts will not be able to deal with socio-economic rights and it is a known fact that justiciable rights involve polycentric elements. The Court must be able to deal with competing arguments and inter-acting variables as cases differ. There is still need for the Zimbabwean courts to assert their competence if the public will be approaching the court for appropriate relief.

One might notice that the cases that have been discussed thus far are of socio-economic rights in general and regarding water and that the courts are yet to give guidance on social security cases.

2.7 Conclusion

It is evident that there are many Constitutional provisions providing for social security which is remarkable. However, the provisions do not adequately provide for the right to social security. Most of them are national objectives which do not burden the State to act. The provisions lack content that must be included in social security right provisions such as 'the progressive realisation of rights' and 'the effectiveness of measures' to be used in social security right protection whilst other legal provisions for social security discriminate against potential beneficiaries based on grounds such as age.

Although there are many social security schemes in the country, the safety nets are not viable. Some safety nets are negatively affected by means-tests, corruption and

⁹⁶ *Hopcik Judgment*.

⁹⁷ I Trispiotis 'Socio-economic rights: Legally enforceable or just aspirational' (2010) 8 *Opticon* 1826 1.



favouritism which affect the number of legitimate beneficiaries who qualify for assistance. The fact that many people are not aware of the existence of the assistance programmes has also negatively affected the number of claimants.

Those who are eligible for assistance do not always get allowances. When they do get the resources they are not adequate to cater for their needs. Weak management; lack of political will; fragile organisational structures and inadequate human resources have been detrimental to the success of the social security programmes in place.

The jurisprudence on the nature, content and scope of the obligations of the State as well as the interpretation of the provisions of the right to social security in the Constitution still need to be developed. Zimbabwe is far behind when it comes to this area when compared with South Africa which is well developed.

No cases have been brought before the Court and this is shocking given the large numbers of people that need social assistance given the turbulence in the economy. A thorough research outside the scope of this dissertation will need to be taken to find out the reasons why beneficiaries and human rights institutions have been shying away from the courts to demand action from the State and how this can be addressed.



Chapter 3: Zimbabwe's international obligations to protect and enforce the right to social security

3.1 Introduction

Section 34 of the Constitution of Zimbabwe holds the State responsible for ensuring that all the international conventions, treaties and agreements it is party to are incorporated into the State's domestic legal framework.⁹⁸

Section 46(1)(c) states that when the provisions of the Declaration of Rights are being interpreted, every court, tribunal, body or forum must consider international law and all treaties and conventions to which Zimbabwe is a party to.

Section 327(6) provides that when interpreting any legislation, every court and tribunal must use the reasonable interpretation of the legislation that is consistent with an international agreement that is binding on Zimbabwe and not another interpretation that is inconsistent with that agreement.

The above-mentioned provisions in the Constitution on international law, treaties and conventions show Zimbabwe's commitment to applying international legal standards. This is paramount for the protection of the right to social security as Zimbabwe can benefit from the provisions, cases, reports and interpretation from general international law and also from the international treaties and conventions promoting cultural, socio and economic rights that it is a party to.

The aforementioned Constitutional provisions on international law, treaties and conventions also highlight that Zimbabwe is taking strides to fulfil her obligations integrate the international treaties she has ratified into domestic law.

3.2 Importance of international treaties for rights' protection and enforcement in Zimbabwe

Being a party to international treaties is of great advantage to a willing State. Having international human rights treaties expands the scope of human rights that can be invoked. The courts have the liberty to adopt good practices from other influences to ensure that domestically-protected rights are fully protected and enjoyed.

⁹⁸Constitution of Zimbabwe 2013.



One such good practice from foreign influences Zimbabwe could make use of is having minimum core obligations in its framework of social security protection and enforcement measures, which is an exercise that is supported by the United Nations Committee on Economic, Social and Cultural Rights.⁹⁹

Having minimum core obligations ensures that even though resources are inadequate or scarce, the right to social security is safeguarded and imposed. The State is not given an option other than that it honours its obligations.¹⁰⁰ Bilchitz¹⁰¹ observes that the minimum core obligations' approach is meant to ensure that regardless of the scarce or limited resources, people have access to basic needs required for survival.

The minimum core doctrine provides a direction for development policy-makers to establish priority needs in resource-constrained contexts such as in the protection and promotion of the right to social security and it helps put some limits on the use of excessive employment of progressive realisation to excuse poor performance on rights realisation.¹⁰²

Minimum core obligations also help to limit the defences put up of why inadequate or inappropriate resource allocation is done by development policy practitioners. Having minimum core obligations helps to reinforce and bring to remembrance the significance of social security as a human right on the same level with civil, political, economic, social and cultural rights.

By ratifying and implementing international human rights treaties, Zimbabwe demonstrates its intention to comply with international norms and standards. The State buttresses its commitment to improve the lives of its people and advance implementation of human rights.¹⁰³

⁹⁹ Art 8(4) of the Optional Protocol to the ICESCR.

¹⁰⁰ L Chenwi 'Monitoring the progressive realisation of socio-economic rights' Research paper written for studies in poverty and inequality Institute, 2010 pg 29.

¹⁰¹ Bilchitz D 'Towards a Reasonable Approach to the Minimum Core: Laying the Foundations for Future Socio-economic Rights Jurisprudence' (2003) 19 *South African Journal on Human Rights* 1-26'

¹⁰² Shields K 'The minimum core obligations of economic, social and cultural rights: The rights to health and education research summary' October 2017, The Nordic Trust Fund, The World Bank.

¹⁰³ Statement of UN Resident Coordinator in Zimbabwe Sensitisation Workshop to Head of Government Ministries 31 July 2017, Harare, Zimbabwe pg 4.



Zimbabwe is fairly new to having socio-economic rights as justiciable rights in her Constitution. International laws and agreements protecting socio-economic rights will be a useful guide when the courts interpret these rights in Zimbabwe.

Where local legal proceedings fail to address human rights violations, procedures and mechanisms are made available through the availability of these international treaties, regionally and internationally, to ensure that human rights are respected, implemented and enforced.¹⁰⁴

A case in point will be the case between Zimbabwe and the white farmers on the infamous land question in the country. Domestic courts refused to give legal relief to the white farmers and the latter only received aid from international forums and the SADC Tribunal.¹⁰⁵ International forums helped by interfering in domestic politics and protected citizens from rights' infringement by their government.

Including international agreements provisions in domestic legislation might provide Zimbabwe with a framework within which domestically-protected rights can be assessed and understood. The courts can use the decisions of tribunals, cases and reports of comparable human international treaties to obtain guidance on the interpretation of provisions of domestically-protected rights.¹⁰⁶

International treaties require State parties to submit reports from time to time to their treaty monitoring bodies. When Zimbabwe prepares its reports it is forced to examine the level of implementation of its obligations. This gives the State an opportunity to assess and debate human rights issues in the country and identify areas that require attention.

3.3 Procedure for treaty domestication in Zimbabwe

One must bear in mind that Zimbabwe has a dualistic approach to treaties, an approach which Zimbabwe inherited from its colonial masters, which views domestic and international law as being substantively different.¹⁰⁷ The proponents of this approach aver that domestic and international law distinction is so radical that the

¹⁰⁴<https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx&ved=2ahUKEwiBlfo>. Accessed 30 July 2019.

¹⁰⁵ *Campbell and Others v Republic of Zimbabwe* SADC (T) Case NO. 2/2007.

¹⁰⁶ *S v Makwanyane* 1995 (3) SA 391 (CC) par 35.

¹⁰⁷ Dugard J *International law: A South African Perspective* 4 ed (2011) Juta, 1.



only way to domesticate international law is to have the express or implied consent of the State involved.¹⁰⁸ The rationale for this approach is to prevent the Executive from creating law without an Act of Parliament.

Due to the abovementioned dualistic method, international treaties only bind Zimbabwe when they have been passed into law by Parliament, with the President's permission.¹⁰⁹ Section 327(2)¹¹⁰ provides that an international treaty ratified or acceded to by Zimbabwe does not bind the State except it has been enacted into law through an Act of Parliament. Until the treaty is domesticated it does not form part of the law if it has not been assimilated into the law through an Act of Parliament as aforementioned.¹¹¹ When assimilated into law the treaty becomes part of domestic law and has equal standing as domestic legislation.¹¹²

A case of violation of any international convention, treaty or agreement will only be successful if the treaty, convention or agreement has been incorporated into Zimbabwe's domestic law.¹¹³

The provisions of section 327(2) created problems for the domestic lawyers who argued based on international treaties and conventions in the past. The Judiciary used to dismiss cases due to the Government historically refusing to be bound by international laws as they do not form part of the domestic laws.¹¹⁴

In terms of international human rights treaties, there is no specific Act of Parliament in Zimbabwe that has been enacted to domesticate treaties. The provisions of human rights treaties are integrated into domestic law by means of a fragmented approach that involves placing the treaty provisions under the State's Constitution, various Acts of Parliament, subsidiary legislation and policies.¹¹⁵

¹⁰⁸As above.

¹⁰⁹http://www.academia.edu/4690926/The_Application_of_International_Law_in_Zimbabwe_in_light_of_the_New_Constitution_and_the_Doctrine_of_National_Sovereignty (accessed 29 March 2017).

¹¹⁰Constitution of Zimbabwe.

¹¹¹http://www.academia.edu/4690926/The_Application_of_International_Law_in_Zimbabwe_in_light_of_the_New_Constitution_and_the_Doctrine_of_National_Sovereignty (accessed 29 March 2017).

¹¹²A Cassese *International Law* 2nd edition (2005) 222.

¹¹³ T Kondo 'Socio economic rights in Zimbabwe: Trends and emerging jurisprudence' (2017) 17 *African Human Rights Law Journal* 174.

¹¹⁴Otto Saki and Tatenda Chiware 'The Law in Zimbabwe' (2007) *Global Lex*.

¹¹⁵Ratification and implementation of the SADC Protocol on Gender and Development by Mary Gurure Attorney General's office.pg 4.



It is worth noting that a Bill has been tabled to provide an expedient process for the incorporation of international treaties into the laws of Zimbabwe. The short title of the Bill is the International Treaties Act, 2016. The Bill aims to provide a uniform procedure for the consideration, approval, ratification and publication of international treaties. If the Bill passes there will be an Act of parliament that will regulate the process of domesticating treaties.

The area of assimilating international treaties into domestic law is specialised and needs people with the necessary knowledge and expertise. Inter-ministerial Committees have been appointed to deal with capacity issues that come with the domestication of treaties. The Inter-ministerial Committees established by the State advise Government on its obligations and coordinate Ministries in the ratification and domestication of treaties as well as compile reports on the progress made as well as provide expert support.

3.4 Progress made so far- domestication of international treaties ratified by Zimbabwe

Zimbabwe has come a long way in domesticating standards and principles from the treaties it has ratified which support the protection and enforcement of socio-economic rights and, particularly social security which is the right under examination in this study. This study will only make mention of the steps that have been taken and the provisions of treaties that have been domesticated to ensure that effect is given to the right to social security and related issues.

Zimbabwe has ratified the International Labour Organisation's Conventions, hereinafter referred to as ILO Conventions. ILO Convention 102 compels members to establish minimum social security standards. In light of the provisions of the aforementioned Convention, the National Social Security Authority, hereafter referred to as NSSA, has established two main schemes. The schemes put in place are the Accident-prevention and Worker's Compensation Scheme, Pension and Other Benefits Scheme. Employers and employees contribute towards the schemes.

The Government has also ratified the ILO Convention 100 which guarantees maternity protection. A government-initiated maternity-benefit scheme is in the



pipeline in support of the Convention and the aim is for the Government to assume the burden carried by employers paying their employees' maternity salaries. The scheme is targeted at providing childcare at the place of work and enabling mothers to breastfeed during the day.¹¹⁶

Another treaty providing for the protection and enforcement of social security that Zimbabwe has ratified is the United Nations Convention on the Elimination of All Forms of Discrimination against Women, hereafter referred to as CEDAW. The treaty was ratified in 1997.

In an aim to domesticate some of the dictates of CEDAW, the Government has developed a policy enabling women with unregistered marriages to gain access to State pensions upon the demise of one's spouse. This protects the rights of the surviving spouse to have access to their departed spouse's pension contribution pay-out.

The Children's Act Chapter 5:06 was adopted to domesticate the various international standards provided for by the United Nations Convention on the Rights of the Child, hereinafter referred to as the UNCRC, and the African Charter on the Rights and Welfare of the Child, hereafter referred to as the ACRWC.¹¹⁷

The Children's Act provides for the care and protection of all children in Zimbabwe and establishes the Children's Court and registers institutions for reception and custody of children. It thus fulfils the aspirations of the UNCRC which was adopted in 1990. The ACRWC was born out of concern by African states who felt that the UNCRC missed important socio-cultural and economic realities of Africa.¹¹⁸ Zimbabwe signed the charter in 1992.

Zimbabwe ratified the Convention on the Rights of Persons with Disabilities, hereafter referred to as CRPD, on 13 September 2013. The CRPD is the main international instrument that deals with the rights of people living with disabilities. It provides for social security in the context of disability. The State is mandated by the

¹¹⁶ Combined Report of Republic of Zimbabwe in terms of the Convention on the Elimination of All forms of Discrimination Against Women pg 37.

¹¹⁷ B Bhaiseni 'Zimbabwe's Children's Act Alignment with Instruments: unravelling the gaps Africa (2016) *Journal of Social Work* 6(1) at 2.

¹¹⁸Mbagua, J.W (2012). Promoting children's rights. Nairobi: Pelastakaa.



treaty to consider the protection and promotion of human rights of persons with disabilities in all its policies and Zimbabwe has been incorporating this in its policies.

3.5 Challenges- Some international treaties are ratified but not domesticated and others are partially domesticated or not compliant with international treaties

Most African States applying a 'dualist' approach to international treaties have not explicitly and fully incorporated the ICESCR so as to ensure the applicability of all Covenant Rights in domestic courts.¹¹⁹ Zimbabwe is no exception.

The African Charter on Human and Peoples' Rights, hereafter referred to as the ACHPR, was adopted in 1981 by the Assembly of Heads of State of the Organisation of African Unity and Zimbabwe ratified the ACHPR on May 30, 1986. Zimbabwe has not domesticated the Charter and has not adopted the Protocol to the Charter. This means that regionally Zimbabweans will not be able to get protection of their rights. They do not have access to an external forum to get assistance from when their rights are infringed on.

Article 22 of the ACHPR recognises the people's right to economic, social and cultural development and associate rights which include the rights to work, healthcare, education and culture.¹²⁰ The Charter does not directly provide for the right to social security but does provide for other rights that help realise the right to social security such as the right to work, health and education as was explained in Chapter 2.

Thus, although domesticating the ACHPR does not directly help with the protection or enforcement of social security, the domestication of the Charter will ensure the realisation of the other rights that indirectly guarantee that the right to social security is enforced.

Zimbabwe has also accepted its obligation to respect, protect and fulfil economic, social and cultural rights by acceding, without reservations, to the ICESCR. This was

¹¹⁹ CESCR Concluding Observations: Uganda, UN Doc. E/C.12/UGA/CO/1 (24 June 2015) paras 4-5; CESCR Concluding Observations: Kenya, UN Doc. E/C.12/KEN/CO/2-5 (4 March 2016) paras 5-6.

¹²⁰ ACHPR arts 15, 17 and 22.



done on 13th May 1991. The Convention recognises the right to work, clothing, social security, food, housing, education, health and culture.¹²¹

The right to social security is provided for in Article 9 of the ICESCR. Article 10(2) recognises the right for working mothers to have sufficient social security benefits and Article 10(3) requires State parties to put in place special measures to protect and assist children and the young people.

Benefits of domesticating the ICESCR include that the treaty can be used as a source when Court judgments are interpreted; the treaty can influence the content of the economic, social and cultural rights in national constitutions and it can be used as a source of law. The State will also get assistance from international organisations concerned with social security such as ILO, the World Health Organisation) and the United Nations Food and Agriculture Organisation (FAO).¹²²

However, Zimbabwe has not domesticated the treaty therefore, like in the case with the non-domestication of the ACHPR, Zimbabweans will not benefit from the provisions of social security in the ICESCR and do not have access to international forums for relief or assistance after exhausting local remedies as no declaration has been made under article 34(6) to the African Court Protocol.

Since Zimbabwe did not sign the Optional Protocol to the ICESCR, which is an international treaty which allows victims of violations of economic, social and cultural rights to present complaints at an international level,¹²³ this also restricts the claimants of rights' opportunities to have access to non-domestic forums where they can seek and find recourse when their rights are violated.

Many excuses have been forwarded for the non-domestication of the treaties. One of the reasons is that, due to the many pieces of legislation awaiting review, the process in Zimbabwe of domestication tends to drag and take time to complete. In the past, competing priorities such as the Constitution making process and alignment

¹²¹ ICESCR arts 6, 9, 11, 13 and 15.

¹²² General comment 19 of Article 9 of the ICESCR par 82.

¹²³ Kondo (n 43) 190-191.



of laws have been forwarded as part of the reasons why some treaties were taking long to be ratified.¹²⁴

During a discussion forum held on 29th November 2013 to mark the centenary of the Court and to scrutinize the application of international law in Zimbabwe, Justice Moses Chinhengo, a former High Court Judge, attributed some delays of domestication of treaties to the burdensome task of changing policies and the conflict between international conventions and parts of the customary law of Zimbabwe.¹²⁵

Mrs Msika, standing in for the Permanent Secretary in the Ministry of Justice, Legal and Parliamentary Affairs, in the abovementioned forum, blamed the lack of capacity in Government as one of the reasons for the delay in treaty and convention domestication.¹²⁶ She reasoned that the responsibility of ratifying and domesticating treaties was fragmented amongst the different Ministries and that in those Ministries there were no people who had the capacity or were aware of the need for ratification and domestication of treaties.

Zimbabwe has problems with having some laws that are not compliant with the Conventions or treaties they are hewn from. The Committee on the Rights of the Child gave its comments on the periodic report submitted by Zimbabwe in 2016. The Committee noted in its feedback report that although there was a harmonisation process going on to ensure that existing laws, programmes and administrative practices include provisions promoting and protecting children's rights, certain laws still did not comply with the Convention.¹²⁷

An example highlighting the above assertion is the Social Welfare Assistance Act that was enacted by the State to ensure social security for among other beneficiaries, people living with disability, still has an out-dated social model on the concept of disability and treats people with disabilities as objects of charity. Some scholars note that the Act contains a mistaken belief that disability is linked to

¹²⁴ 2016 Human Rights Council National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 III. A. par 18.

¹²⁵ Zimbabwe's slow domestication of international treaties criticized 3 December 2013 Issue 243 A Crisis in Zimbabwe Coalition Publication pg 2.

¹²⁶As above.

¹²⁷Committee on the rights of the child.Concluding observations on the second periodic report of Zimbabwe par 6.



poverty. It is a well-known fact that in some cases the people with disabilities live better lives than their non-impaired counterparts.¹²⁸

Another challenge apart from the challenges highlighted above, is the partial domestication of treaties. The UNCRC and ACRWC have been domesticated to some extent thus the State cannot fully benefit from their incorporation into domestic law. An example of this is that, Zimbabwe in its protection of the right to social security could use the wisdom of establishing programmes such as the Child Protection Committees which are provided for by the UNCRC and ACRWC. Under these committees, programmes are established that cater for the identification, referral, treatment, mobilisation of resources and follow up of child maltreatment.¹²⁹

3.6 Conclusion

Zimbabwe clearly shows its dedication to ensure that the right to social security is enforced and protected. The provisions in the Constitution supporting international treaties and standards and the strides it has taken to ratify and in some instances domesticate international treaties supporting social security is noted.

However, any of the international treaties that could assist in effectively protecting and enforcing social security, such as the ICESCR, have not yet been domesticated and thus cannot be implemented by individuals seeking redress. Some of the international treaty provisions that have been domesticated do not carry the spirit or ethos behind the treaty they are hewn from.

Protocols that give access to individuals seeking assistance after exhausting local remedies have not yet been adopted. Justice is thus limited to the local courts.

¹²⁸Ministry of Public Service, Labour and Social Welfare Draft Discussion Paper on Aligning the Disabled Persons Act Chapter [17:01] to the Constitution of Zimbabwe pg 38.

¹²⁹Bhaiseni (n 116) 4.



Chapter 4: The social security spending and budgeting behaviour in Zimbabwe

4.1 Introduction

Budget analysis can be done for different reasons such as ascertaining how the expenditure framework impacts rights; they can be used to assess the levels of transparency, participation and accountability in public-spending and also identify progress and gaps.¹³⁰

For States like Zimbabwe, that is party to the ICESCR, a budget analysis is essential in the monitoring of economic and social rights, as the treaty requires an assessment of whether a State has made attempts to realise the rights overtime using the resources available to it.

A Government's budget is a reflection of a country's priorities.¹³¹ Budgets are an image of the Government's values.¹³² This chapter will focus on examining the budget allocations and spending patterns for social security protection interventions in Zimbabwe in order to determine Zimbabwe's attitude towards the right to social security. The net will not be widely spread as it will only focus on State-funded and initiated social security drives.

4.2 Importance of budget analysis in social security rights' protection in Zimbabwe

Section 30 places an onus on the State to use all practical measures and commit resources available to it to provide social security and social care to those that are in need.

The State actors are burdened with the responsibility of providing the resources to ensure the provision of social security and social care to the needy. Thus, if social schemes and programmes are to be successful, there is need for the initiatives to be

¹³⁰ Save the children Advocacy and Campaigning 12 Budget analysis and tracking pg 17.

¹³¹ Centre for Economic and Social Rights and Asia Pacific Forum, *Defending Dignity: A Manual for National Human Rights Institutions on Monitoring Economic, Social and Cultural Rights* (Jan. 2015). 93. Available at www.cesr.org/downloads/Defending_Dignity_ESCR_Manual_for_NHRIS.pdf

¹³²Hofbauer and Blyberg, *Article 2 and Governments' Budgets, Retrogression due to tax reforms reducing funds for the realisation Article 2*. Available at www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets-pdf.



financially capacitated in order to improve their scale, coverage and execution. If there are low public investments and weak budget implementation then social protection interventions might not be sustainable and will cover only a small population of the needy in a State.¹³³

Governments often argue that they do not have adequate resources to meet their obligations and some then refrain from trying to provide social security even if it is for a few destitute individuals. The Addis Ababa Action Agenda, distributed by the United Nations, showed that some of the millions of dollars that the 'arguing Governments' could have used to protect and provide socio-economic rights have been lost to corrupt practices and tax evasion by some individuals.

It is through budgets that policies and strategies are executed and services to the beneficiaries are delivered. Budgets are the most important economic policy instruments at the Government's disposal that influence and facilitate social inclusion and poverty reduction.¹³⁴ Policies and programs to implement the right to social security will remain wishful gestures unless Governments allocate adequate resources.

Budget analysis can help ensure that policies do not only protect and advance the interests of the people who already enjoy socio-economic rights but it can also ensure that public funds are used to the maximum for the enjoyment of everyone.¹³⁵

An analysis of national budgets and what governments prioritise will help in the interrogation of the excuses made by the Government for failure to meet their obligations and Governments can be held accountable using concrete evidence.

4.3 Framework for public finance management in Zimbabwe

The Budgetary Committee is made up of Ministries, Departments and Agencies and Constitutional offices funded by the Government budget and subject to financial management rules and regulations of the Government finances. Ministries are

¹³³ UNICEF 2018 Social Protection Budget Brief pg 3

¹³⁴ UNICEF 2018 National Budget Brief: An overview analysis pg 3.

¹³⁵ Thandiwe Matthews and Daniel McLaren Studies in poverty and inequality institute Budget Analysis for advancing socio-economic rights November 2016 pg 22.



responsible for policy-formulation and monitoring the progress of implementation of the various programs.

The Ministry of Labour and Social Services, hereinafter referred to as MoLSS, is the agency responsible for social transfers and social care services. Separately the Ministry of Primary and Secondary Education, hereinafter referred to as MPSE, and the Ministry of Agriculture, Mechanisation and Irrigation Development, hereafter referred to as MAMID, implement their own social safety net programs.¹³⁶

The National budget is produced by the Minister of Finance in terms of Section 305 of the Constitution and Section 28(1). It is read together with the Public Funds Management Act 2009, hereafter referred to as the PFM Act, which provides for the management of public finances.¹³⁷

The PFM Act provides guidelines for the reporting and monitoring and provides sanctions for non-compliance with requirements of the PFM Act among other guidelines that enable management of public finances. The PFM Act provides for the national budget through expenditure estimates.

To enhance Zimbabwe's budget and financial oversight function, the Auditor-General is mandated by the Constitution to ensure that all money appropriated by Parliament is disbursed according to the purposes it was meant for and that the expenditure conforms to the authority that governs it and that public funds are safeguarded.¹³⁸

Parliament also established the Parliamentary Budget Office which became operational in 2016. The Budget Office is established in terms of Section 154(4) of the Constitution which provides that the Committee on Standing Rules and Orders must appoint other staff of Parliament that it considers necessary.

Having the budget office can enable the legislature to engage in the budget process in a more objective, effective and responsible manner and strengthens the Parliament to hold State institutions to account on public finances. Members of Parliament can now interrogate the national budget and advance informed, objective and well-balanced proposals for consideration by the Executive. The media, public

¹³⁶ Zimbabwe Public Expenditure Review 2016 Vol 5: Social Protection pg 23.

¹³⁷ Citizen's budget: A citizen's guide to the 2019 National Budget pg 5.

¹³⁸As above 31.

and any other interested party are now able to access documents on the interrogations of the budget.

4.4 Budget allocation analysis

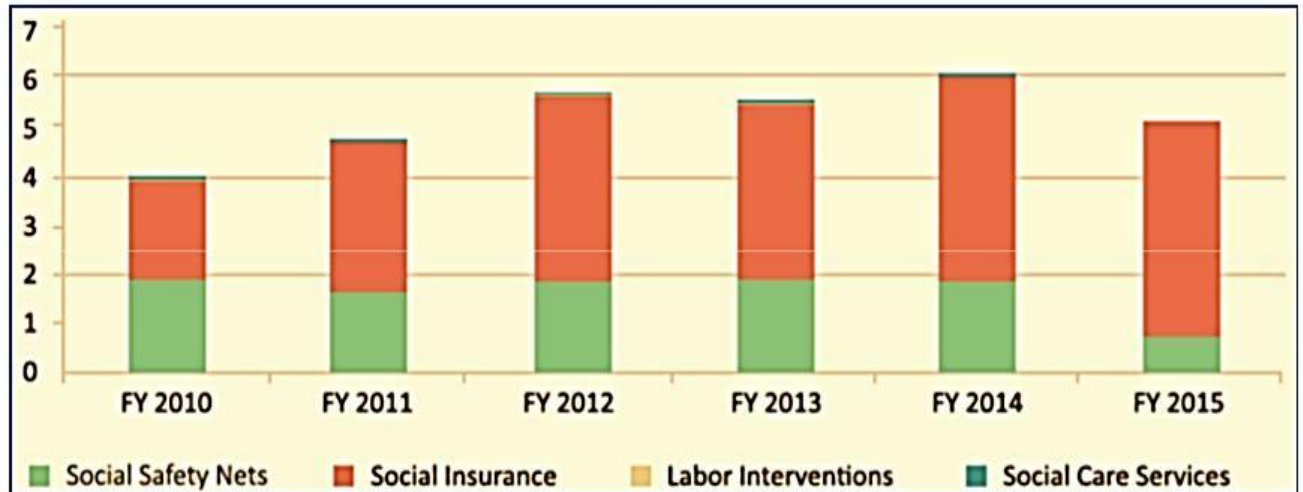


Figure 1: Diagram showing expenditure on social protection programmes from 2010-2015 (Source: Zimbabwe PER 2016, Volume 5: Social Protection)

Figure 1 shows graphically the social protection program allocation from 2010 till 2015. The portion for social safety nets decreased from 2013 to 2015. On average, the provision on social safety nets was at a steady 1,9% of the (Gross Domestic Product) GDP but dropped to 0.7% of the GDP in 2015.

In 2017, social protection programmes were allocated US\$21,4 million from an operations budget of US\$27,8 million. In 2017, the MoLSS was ranked 8th on the hierarchy of the national budget but was moved to the 9th place in 2018.¹³⁹ This was an improvement by 9.1% of the budget for 2016.

Basic Education Assistance Module, hereinafter referred to as BEAM, is one of the social security programs that received a large percentage of resources and exceeded the other social assistance programs. Its allocation in 2017 was US\$10

¹³⁹ 2017 National Budget Statement presented to the parliament of Zimbabwe presented on the 8th December, 2016 by Hon P.A Chinamasa MP 'Pushing production frontiers across all sectors of the economy' pg 91.

million. Child support services were US\$1,4million; drought mitigation US\$1.1 million and health assistance US\$1 million. Social cash transfers were US\$7 million.

In 2018 there was a notable increase in budget allocation. BEAM received US\$20 million which is a notable increase from US\$10 million in 2017. Child-support services increased to US\$3.5 million; drought mitigation allocation for 2018 was US\$2.0 million and healthcare assistance improved to US\$2.5 million. Social cash transfers have also increased to US\$11 million from the US\$7 million in 2017.¹⁴⁰

The social protection programs are significantly underfunded often at times. The Harmonised Social Cash Transfers hereinafter referred to as HSCT, and BEAM account for about 60.9% of the social services programmes budget in Zimbabwe.¹⁴¹

In 2015 the HSCT, for example, only covered 10 districts from the 19 districts in the country. The Basic Education Assistance Module covered only 16% of the disadvantaged children in 2015.

4.5 Sources of funding

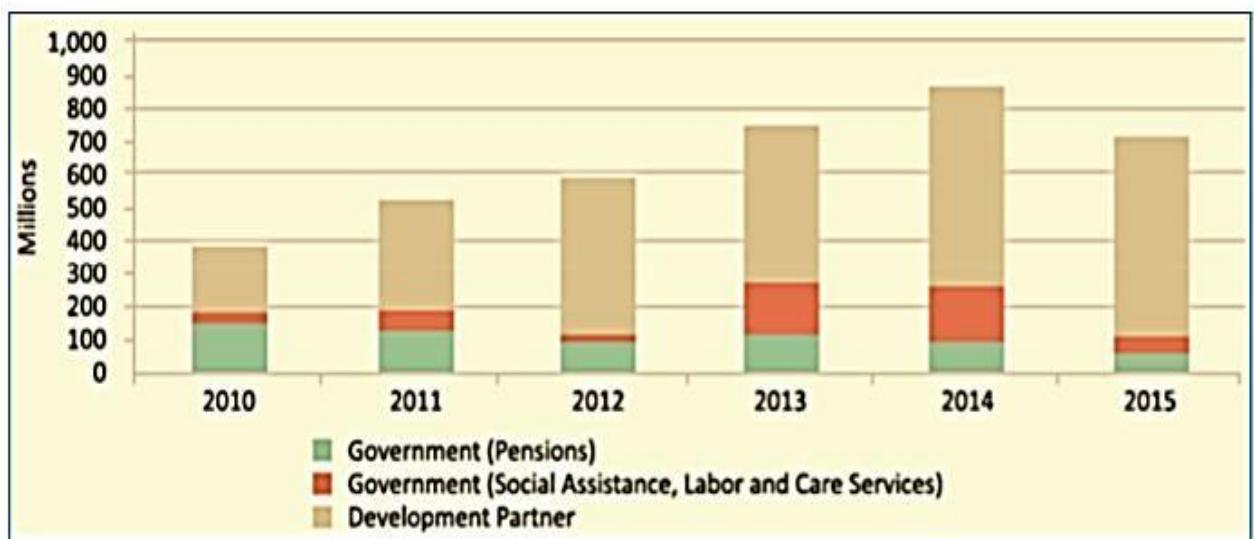


Figure 2: Diagram showing sources of funding for social protection programmes (Source: Zimbabwe PER 2016, Volume 5: Social Protection)

¹⁴⁰MoFED Development Aid Statistics, 2017.

¹⁴¹UNICEF 2017 Zimbabwe Social Protection National Budget Brief: An overview analysis pg 4.



Figure 2 above displays that a sizeable share of the budget for social safety nets has been from developmental partners. The aid from developmental partners, however, decreased significantly and from 2010 to 2015 it diminished by about 59 per cent.¹⁴² Most developmental partners shifted to humanitarian aid from social nets. The Government of Zimbabwe has, from 2012, contributed more for the financing of social safety nets than in years past. One must note that the contribution decreased in 2015.

In 2015, some developmental partners withdrew their backing of some Government programs due to their lack of trust in Government public finance management systems.¹⁴³ The partners preferred to support programs precluding formal government systems.¹⁴⁴ Due to the withdrawal by the developmental partners, the budget allocation for social services was negatively affected.

As a result of the declining developmental partner commitments and a shift in resources towards emergency assistance mentioned above,¹⁴⁵ the spending on social safety nets was on a downward trajectory in 2015 and ranked at 0.72 per cent GDP while other African countries spent 1,1 per cent on average.¹⁴⁶ The 0.72 per cent was a drop from the 1.9 per cent average maintained from 2010-2014.

The withdrawal of funds from development partners and the financial constraints of the government led to the number of beneficiaries for programmes such as the HSCT declining from 55 000 households to 23 000 households.¹⁴⁷

4.6 Challenges for Zimbabwe in the budget allocation process

One of the major problems that Zimbabwe has in its budget process is that the procedure is not well-defined. Sector Ministers are given very short time to prepare

¹⁴² UNICEF Zimbabwe 2018 Social Protection National Budget Brief: An overview analysis pg 9.

¹⁴³ UNICEF Social Protection 2018 Budget Brief pg 9.

¹⁴⁴ As above.

¹⁴⁵ As above ix.

¹⁴⁶ As above viii.

¹⁴⁷ UNICEF 2017 Zimbabwe Social Protection National Budget Brief: An overview analysis pg 6.



their detailed proposals and submissions to Parliament are only done for 4-6 weeks for analysis, debate, negotiations and approval.¹⁴⁸

Another challenge the State faces is that the economy is marred by continuous exchange rate depreciation and this has increased the chances of spending pressures. PFM controls are difficult to enforce given the financial situation and as a result there has been a lot of unbudgeted expenditure.¹⁴⁹

4.7 Spending patterns analysis

The government of Zimbabwe operates and spends on a diversified package of social safety nets. The resources supplied by the State comprise of fee waivers, in-kind transfers, mixed cash and food transfers, food transfers, public works schemes, pure cash transfers, input support systems and public works schemes.¹⁵⁰

In-kind agricultural benefits have held the record of having the largest share of social safety nets. Zimbabwe emphasises on agricultural inputs and not cash and food transfers and public works. The programme aims to provide seeds and fertilizer to small-holder farmers. The expenditure on this program has fallen over the years. In 2014 things got really bad that only vulnerable households without other agricultural inputs were supported.

Disbursement of resources has been slow. One instance demonstrating this problem was in 2017 when by September only 57% of the budget had been spent for the implementation of social welfare programmes. BEAM and HSCT programs with some of the major investments requirements had implementation rates below 30%.

The low disbursement rates of funds meant for the implementation of programs was attributed to capacity constraints and lack of political will among other reasons.¹⁵¹ In some cases the disbursements are not late but rather some payments are not made

¹⁴⁸ Report on the evaluation of the Public Financial Management System of Zimbabwe, Public Expenditure and Financial Accountability (PEFA) Assessment 2017 pg 72.

¹⁴⁹International Monetary Fund Washington, D.C Press Release No. 19/189 May 31, 2019 pg 16.

¹⁵⁰ Zimbabwe Public Expenditure Review 2016 Vol 5: Social Protection pg 9.

¹⁵¹ UNICEF 2018 Social Protection National Budget Brief: An overview analysis pg 8.



at all like in the year 2017 when beneficiaries of the HSCT program only received a single payment.¹⁵²

It must be noted however, that the drought mitigation programme has been over-performing and a record 211.1% was once documented. The over-performance has been attributed to great political will as it is viewed as giving greater visibility to politicians.¹⁵³

Social spending has been undermined by the government's budget deficit, international isolation, hyper-inflation and militarisation.¹⁵⁴ The lack of well-thought-out and implemented social policies on land restructuring, indigenisation, education reform and employment creation have weakened the sustainability of programs.¹⁵⁵

The programs funded by the Zimbabwe social protection system tend to incur high administration costs, for example, 77.4% of the budget for social security is dedicated to employment costs. Zimbabwe's employment cost was at 17% of the GDP as of 2018, which is 10 percentage points higher than regional and sustainable thresholds.¹⁵⁶

A public expenditure review by the World Bank in 2016 showed that 67% of social protection expenditure was devoted to civil service pensions and the beneficiaries only make up 1.3% of Zimbabwe's population. Thus, most of the intervention programs are not directed towards the poor.¹⁵⁷

The government has arrears accumulated over a long period which need to be paid. What is left over after the payment of the debt is usually not sufficient to fend for the needy. In 2018 concerns were raised that about 50% of the vulnerable children would not be covered. Figure 3 below shows graphically that most of the Government funding is swallowed by debt repayments and not much is left for the beneficiaries after the deductions have been made.

¹⁵²As above.

¹⁵³As above.

¹⁵⁴Bland G, 2011. 'Overcoming a decade of crisis: Zimbabwe's Local Authorities in Transition' *Public Administration and Development* 31: 340-350.

¹⁵⁵ UNRISD Working paper 2018-8 Social policy and social spending in Zimbabwe:1980 to 2015 Rekopantswe Mate pg 30.

¹⁵⁶ UNICEF 2018 National Budget Brief: An overview analysis pg 10.

¹⁵⁷ UNICEF 2018 Social Protection National Budget Brief: An overview analysis pg 8.

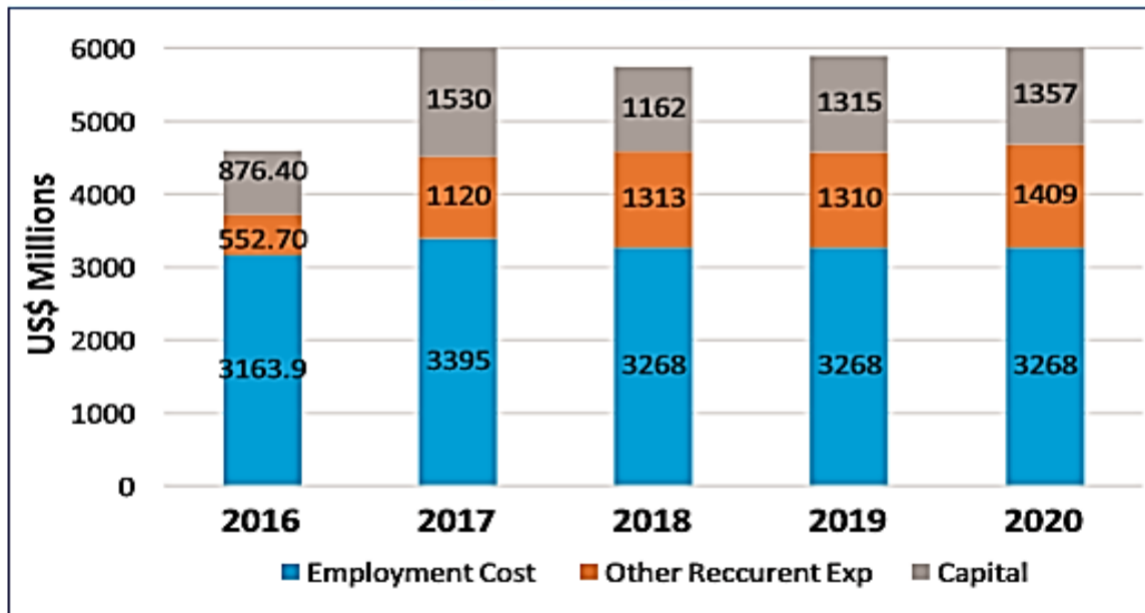


Figure 3: Diagram showing the composition of government expenditure (Source: 2018 National Budget Statement)

Although Zimbabwe’s social protection expenditure does not benefit the deserving poor it must be noted that it rates far ahead of other high spenders. Zimbabwe’s 4 per cent Gross Domestic Product (GDP) expenditure ranks above South Africa’s 2.1 per cent but is lower than Botswana’s 17 per cent.¹⁵⁸

There was talk of the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIM-ASSET 2013-2018) which was a plan with among other strategies, reform measures that included the resolve to boost the efficient use of government resources by improving timely reporting and strengthening public finance management systems. It is unclear if this plan is still in the pipeline.¹⁵⁹

4.8 Challenges in the spending patterns

The lack of coordination and fragmentation of social protection efforts have been advanced as reasons that have undermined public spending and potential social gains. Multiple Ministries have been recorded as supporting uncoordinated and

¹⁵⁸ Zimbabwe Public Expenditure Review 2016 Vol 5: Social Protection viii.

¹⁵⁹ Report on the evaluation of the Public Financial Management System of Zimbabwe, Public Expenditure and Financial Accountability (PEFA) Assessment 2017 Pg13.



sometimes duplicative social safety nets. Many programs are said to have large and costly structures but little coverage.¹⁶⁰

Despite the huge drop in revenue and the GDP, the same social safety net programs are being maintained even though there is indication that the programs are not responsive enough to the crises the vulnerable face.

4.9 Conclusion

Zimbabwe has shown commitment to its obligations and has provided social safety nets even with the dire situation it finds itself in. Expenditure cuts are unavoidable in such circumstances but Zimbabwe has tried by all means possible to distribute some resources in the face of the economic hardships.

Due to financial constraints in the country, safety nets cover a small per cent of the poor and the benefits are unpredictable and exclusionary. The limited funding disbursed to Ministries and is shared by other vast programs that have to be implemented.

¹⁶⁰As above ix.

Chapter 5: Conclusion and recommendations

5.1 Introduction

Zimbabwe has been going through economic turmoil. It is now, more than ever, when there are numerous problems caused by the economic distress, that the provision of social security would be helping many to stay afloat. The temptation is very high for the State to reduce funding for the realisation of the right to social security given the challenges being faced.

This study answers the question whether Zimbabwe views social security as a right. Countries, due to economic hardships, are tempted to side-line social security rights by viewing them as luxuries. This is because providing socio-economic rights is generally resource demanding and no revenue comes from it.

The study revealed that Zimbabwe does view social security as a right although there are many inadequacies in its rights' protection system for the right to social security. The study revealed that there are institutions, mechanisms and provisions for social security in place as highlighted in Chapter 2. There are many social security schemes in the country and the systems have been running for decades as discussed in Chapter 1 when looking at the long history of Zimbabwe with regards to protection of the right to social security.

In Chapter 3, it was revealed that Zimbabwe clearly is dedicated to ensuring that the right to social security is enforced and protected. The provisions in the Constitution supporting international treaties and standards, and the strides Zimbabwe has taken to ratify, and in some instances domesticate international treaties supporting the right to social security, is proof of this dedication.

Chapter 4 showed that Zimbabwe is committed to its obligations to realise the right to social security and has provided social safety nets even when it has been navigating through the prevailing difficult economic situation. Although expenditure cuts are inevitable in such circumstances, Zimbabwe always has provided for social security in the national budget annually.

5.2 Summary and conclusions

Chapter One focused on setting the objectives of this study which are to examine the structures, policies and institutions put in place to promote and protect the right to social security in Zimbabwe; the resource allocation and spending patterns for the enforcement, promotion and protection of the right to social security and the international treaties domesticated in Zimbabwe to help give effect to the right to social security. The chapter also introduced and displayed the significance of the study and briefly examined the existing literature on social security in Zimbabwe in order to put this study into context.

Chapter Two evaluated the structures and policies for the promotion and protection of the right to social security. The chapter looked at different programs promoting social security; the importance of the national human rights institution for rights' protection; the operations of the Zimbabwe Human Rights Commission and the Court's jurisprudence on social security in Zimbabwe. The chapter also considered the provisions for social security in the Constitution of Zimbabwe *vis a vis* those provided for in the Constitution of South Africa and the ICESCR and also examined other domestic legislation.

Chapter Two revealed a number of issues that need to be addressed if the right to social security is to be adequately protected and provided. The first is that the provisions for the right to social security have to be aligned with the wording of instruments such as the ICESCR. The wording of the provisions lacks certain averments that could prejudice claimants and beneficiaries of the right.

The study also showed that there are social safety nets that are negatively affected by some discriminatory factors such as the means-tests. One of the nets affected by the means-test is the old-age grant. Some of the elderly people are exempted from benefitting from the grant on grounds that they have children who can assist them and provide for their needs. This assistance was available to the aged perhaps a few years back but due to many factors including neglect and adoption of the western culture of individualism, the elderly are left stranded and without anything to eat even though their children are prosperous.



There are a few people who qualify for assistance because of the means-test and these recipients of aid do not always get allowances. When they do receive assistance, at most times, it is not adequate to meet their needs.

The next problem is that there are structures and institutions that have been established for the enforcement of the right to social security but they are ineffective due to insufficient funds; interference from high offices; fragile organisational structures and inadequate human resources and this has been detrimental to the success of the social security programmes. Key structures, for the protection, promotion, development and attainment of rights and freedoms, such as the Zimbabwe Human Rights Commission, lack adequate funding to carry out their duties.

One issue that stands out and which ought to be addressed is that of lack of awareness by the public of their rights. It could explain why there are no cases on demand for the provision of social protection and assistance in courts by claimants seeking redress for their social woes.

Another challenge is that, the jurisprudence for the right to social security is not developed. The courts have only advanced law for other socio-economic rights such as water although the law is not fully developed. One may argue that this might be because not many or even one social security grievance has come before the Court for it to ponder and give its wisdom.

The study also exposed that many people are not benefitting from the existing social security programmes. In some cases, some people are benefitting but the resources available are inadequate to meet their needs. There are reported cases of beneficiaries receiving benefits only once per year. All these are genuine cases that could come before the Court given that social security.

Chapter Three looked at the importance of international treaties in rights' protection. The chapter also examined the procedure for domestication of treaties in Zimbabwe and revealed the reasons why some treaties that could lead to better protection and promotion of the right to social security have not been domesticated and yet they have been ratified for a very long time. The chapter also examined the effects of the



delay in domestication on the protection of the right to social security and upon the beneficiaries of the right.

This chapter highlighted that the international treaties that could assist in effectively protecting and enforcing social security have not yet been domesticated and thus cannot be implemented by individuals seeking redress. Some of the international treaty provisions that have been domesticated do not carry the spirit or ethos behind the treaty they are hewn from.

The chapter also highlighted that there are no measures in place to monitor progress of the domestication of international treaties and that although some treaties and conventions have been domesticated, the process has been done partially and the disadvantages suffered are discussed in the chapter.

This study also shows that protocols that give access to individuals seeking assistance after exhausting local remedies have not yet been adopted. Justice is thus limited to the local courts, which at times is not prudent as demonstrated in the case of the white farmers versus the Government which was discussed in chapter 3.

Chapter Four analysed the national budget for social security. The Constitution of Zimbabwe states that the State has the burden to provide social security and social care to the needy and thus a State budget analysis for social security becomes imperative.

The chapter examined the budget allocation and spending patterns for social security protection and promotion in the country. The chapter examined the actual amounts or resources allocated to the safety nets from 2013 till 2018; the sources of funding and the challenges the State faced in its budget allocation process and distribution of resources.

Chapter Four exposed the fact that due to financial constraints in the country, safety nets cover a small percentage of the poor and the benefits are unpredictable and exclusionary. The limited funding disbursed to Ministries has to be shared by the vast programmes.

Despite the huge drop in revenue and the GDP, the same social safety net programmes are being maintained even though there is indication that the programmes may not be responsive to the crises the vulnerable face.



The study reviewed that the budget process is not ascribed adequate time for deliberation and scrutiny as normally only about four weeks are apportioned for this exercise. High administration costs and Government debts were uncovered as the highest consumers of the resources allocated for social security. The poor only benefit from the scraps gathered after debts and administration costs are paid which defeats the purpose of allocating the resources in the first place.

5.3 Recommendations

5.3.1 Reinforcing the legal provisions, structures and institutions promoting and protecting the right to social security

The wording for social security provisions in the Constitution of Zimbabwe needs to be clear and show that social security is a constitutionally protected human right which everyone can exercise without discrimination. It must be clear from the wording that the State is willing to take effective and not just practical measures to fully realise the right.

It is imperative that government policies be periodically reviewed in order to establish their relevance in the prevailing environment at the given time. When there is need, strategies that are redundant ought to be removed and new policies which are appropriate implemented. It must be borne in mind that social challenges change from time to time and social security provisions must be changed to respond to the emerging social changes.¹⁶¹

There also is need for Zimbabwe to prioritise the appropriation of funds for the Zimbabwe Human Rights Commission given its importance in the promotion and protection of rights discussed in chapter 2 of this study. In the Constitution of Zimbabwe there is a provision in terms of section 322 which states that Parliament must ensure that adequate funds are made available for Commissions to discharge their duties. The Parliamentary Budget Office must ensure, as part of its duties, that this Commission has an allocation from the State coffers. The Commission must

¹⁶¹NT Nhede 'Prospects, challenges and constraints of social security: The public administration quagmire for selected African countries' (2014) 7(4) *African Journal of Public Affairs* 117.



remain autonomous and have control of the funds independent of government influence.¹⁶²

On the other hand, the Commission must consider linking with other human rights community groups and non-governmental groups. Links with other human rights organisations can form relations between the national human rights institutions and individuals or groups that are disregarded.¹⁶³

The Commission must also work on its publicity strategies and ensure that the public receives information about the national institution and this information must be made available in print and audio media in all the Zimbabwean languages.¹⁶⁴

The programmes in Zimbabwe may need to be revamped. In their current form they have separate applications, targeting, payment and information systems and this weakens transparency and oversight. The ineffective coordination of social protection programs can result in duplication and overlaps.

5.3.2 The need for judicial intervention

From the findings highlighted above, it seems there is an urgent need to find out the reasons why beneficiaries and or concerned parties have not been approaching the Court for redress, given the obvious difficulties many face because of the social protection programmes in place.

Without adjudication mechanisms, social security remains a hollow mirage for communities in need of social protection.¹⁶⁵ There must be courts and tribunals responsible for the adjudication of social assistance cases both locally and beyond. Access to courts outside Zimbabwe is only possible if the relevant international treaties are domesticated. Thus, the State needs to take the issue of the domestication of treaties seriously and expedite the process.

Many have been denied assistance arbitrarily because of the 'means-test' as highlighted by this study in Chapter 2. There is need for the Court to give definition

¹⁶² 'International Council on Human Rights Assessing the effectiveness of national human rights institutions' 2005 *Switzerland: International Council of Human Rights Policy* 6.

¹⁶³As above 8.

¹⁶⁴As above 16.

¹⁶⁵Nhede (n1 above) 118.



for the 'means test' and a set of what constitutes the test. The court needs to deliberate on other polycentric issues affecting the enforcement of the right to social security which may lead to discrimination or exclusion or inactivity by the State as the court develops its jurisprudence on the right to social security.

5.3.3 Engaging international law and treaties

It must be noted that the challenges that Zimbabwe faces in its attempt to resolve social security provision issues have been experienced and resolved elsewhere in the world. With the availability of comparative literature, Zimbabwe can be informed about the prospects, challenges and constraints of social security and this can be a foundation for improvement for the State.¹⁶⁶ There might be no need to reinvent the wheel.

Zimbabwe is already on the right path as it has the Inter-Ministerial Committee resident in the Ministry of Justice, Legal and Parliamentary Affairs and the Bill to expedite the domestication of treaties is being worked on. What is crucial now is making the Bill to become law and the Committee must in the following years give reports on success stories of amendments made to arbitrary laws; alignment of Acts to international treaties and enactment of laws providing for international treaty provisions.

5.3.4 Funding for social safety nets

The monitoring and reporting system of public funds expenditure needs to be reinforced. Organs like the parliamentary budget office can add to their mandates a function of monitoring and reporting on potential unfunded mandates arising out of legislative, policy or budgetary proposals. This could go a long way in ensuring that the lack of funding for some legislative and policy initiatives can be noticed. Socio-economic policies often fall into this bracket of unfunded mandates as will be highlighted in the discussion below.

¹⁶⁶Nhede (n1 above) 113.



Zimbabwe faces a challenge of not having formal resources that can adequately provide social protection for the people. It might be more prudent to have specific support services targeting grassroots self-help based organisations. Local communities can be organised and involved in providing social protection for their people. Informal social security arrangements can then complement formal social security programmes through legislation.¹⁶⁷ The problem of social exclusion can be addressed when the government adopts a multi-sectorial approach to realising the right to social security.

Informal programmes such as burial societies which assist members by releasing some of the funds they collect for burial expenses can be assimilated into social assistance programmes. The programmes can be tailor-made for different other purposes such as collecting contributions for groceries, healthcare, school fees and any other social assistance. These types of institutions can be developed so that they can play a social security role and even expand.¹⁶⁸

Some of the sources of poverty, such as unemployment, need to be addressed first. When people have sources of income they can provide their own reserves for times of economic distress. Job-creation and skills-training must be prioritised. Government and the private sector can create such opportunities. Governmental social programmes ought to be equipping rather than creating a dependency syndrome.

¹⁶⁷Nhede (n1 above) 113.

¹⁶⁸ L Mukuka *et al* 'Social security systems in Zambia: Phase I Overview of social security in Zambia' (2002) 17(2) *Journal of Social Development* 65-96.



Bibliography

Cases

Campbell and Others v Republic of Zimbabwe SADC (T) Case NO. 2/2007.

FaraiMushoriwa v City of Harare (HC 4266/13 [2014] ZWHCC 195.

Hopcik Investment (Pty Ltd) v Minister of Environment Water and Climate and another (HC 1796/14) [2014] ZWHCC

Law Society of Zimbabwe v Minister of Justice, Legal and Parliamentary Affairs Mudzuru and Another v The Minister of Justice, Legal and Parliamentary Affairs and 2 others CCZ 12/2015.

S v Makwanyane 1995 (3) SA 391 (CC) par 35.

Legislation

Constitution of Zimbabwe Amendment Act of 1981

Constitution of Zimbabwe Amendment Act of 2013

Constitution of South Africa

National Social Security Authority (NSSA) Act of 1989

Social Welfare Assistance Act of 1988

Children's Act Chapter 5:06

Journals

Baumol, WJ and Blinder, AS (2011) *Economics; Principles and policy* 506

Bhaiseni B 'Zimbabwe's Children's Act Alignment with Instruments: unravelling the gaps' *African Journal of Social Work* 6(1), June 2016 Pg 2.

Bilchitz, D 'Towards a Reasonable Approach to the Minimum Core: Laying the Foundations for Future Socio-economic Rights Jurisprudence' (2003) 19 *South African Journal on Human Rights* 1-26'

Bland G, 2011. 'Overcoming a decade of crisis: Zimbabwe's Local Authorities in Transition' *Public Administration and Development* 31: 340-350.

Chivuru, T "Socio-economic rights in Zimbabwe's new Constitution" *Strategic Review for Southern Africa* 36 (2014) 118



Chiduzza L 'The Zimbabwe Human Rights Commission: Prospects and challenges for the protection of human rights' (2015) 19 *Law, democracy and development* 152

Chitimira H & Mokone P 'The Functions of Selected Human Rights Institutions and Related Role-Players in the Protection of Human Rights in Zimbabwe' (2016) 19 *PER / PELJ* 12.

Dhemba J 'Social Protection for the Elderly in Zimbabwe: Issues, Challenges and Prospects' (2013) *African Journal of Social Work*, 3(1)9.

Hall A & Midgely J *Social policy for development, London: Sage* (2004) *Journal of Social Policy* 312-313.

Kaseke, E 'Social Security in Zimbabwe' (1988) 3 *Journal of Social Development in Africa* 1

Kaseke, E 'Social exclusion and social security: the case of Zimbabwe' (2003) 18 *Journal of Social Development in Africa* 1

Kaseke E & Zimunya V (eds) 'Care of the Elderly in Zimbabwe. Edited Proceedings of a workshop held in Harare, Zimbabwe' (1992) *Journal of Social Development* 52.

Kondo, T 'Socio-economic rights in Zimbabwe: Trends and emerging jurisprudence' (2017) 17 *African Human Rights Law Journal* 188

Kumar CR 'National human rights institutions: good governance perspectives on institutionalisation of human rights' (2003) 19:2 *American University International Law Review* 278.

Madzingira N 'Poverty and ageing in Zimbabwe' (1997) 12(2) *Journal of Social Development in Africa*. 5-19.

Masuka, T 'The new Constitution of Zimbabwe and its implications for social workers' (2014) 2 *Journal of Social Welfare and Human Rights* 29

Mtapuri, O 'A review of social protection programmes in Zimbabwe: Lessons learnt' (2012) 24(3) *The Social work practitioner- Researcher* 2.

Masuka, T Banda, RG Mabvurira, V and Frank, R 'Preserving the future: social protection programmes for orphans and vulnerable children (OVC) In Zimbabwe' (2012) 2 *International Journal of humanities and social science* 12:59-66.

Mukuka L *et al* 'Social security systems in Zambia: Phase I Overview of social security in Zambia' (2002) 17(2) *Journal of Social Development* 65-96.



Mushunje M 'Child protection in Zimbabwe: past, present and future' (2006) *Journal of Social Development in Africa*, 21.1:12-34.

Mushunje M 'Interrogating the relevance of the extended family as a social safety net for vulnerable children in Zimbabwe' (2014) *African Journal of Social Work* 4(2).

Nhede NT 'Prospects, challenges and constraints of social security: The public administration quagmire for selected African countries' (2014) 7(4) *African Journal of Public Affairs* 117.

Saki O and Chiware T 'The Law in Zimbabwe' (2007) *Global Lex*.

Sloth-Nielsen J & Hove K '*Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others: A review*' (2015) *African Human Rights Law Journal*

Smith A 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28 *Human Rights Quarterly* 904.

Trispiotis I 'Socio -economic rights: Legally enforceable or just aspirational' (2010) 8 *Opticon* 1826 1.

Reports

Citizen's budget: A citizen's guide to the 2019 National Budget pg 5.

Combined Report of Republic of Zimbabwe in terms of the Convention on the Elimination of All forms of Discrimination Against Women pg 37.

Committee on the rights of the child. Concluding observations on the second periodic report of Zimbabwe par 6.

Mutangadura, G. and Makaudze, E. (2000). Urban Vulnerability to Income Shocks and Effectiveness of Current Social Protection Mechanisms: The Case of Zimbabwe Consultancy Report prepared for the Ministry of Public Service, Labour and Social Welfare, funded by the World Bank, Harare, (Unpublished).

Gandure S, "Baseline Study of Social Protection in Zimbabwe." (2009) A Report Prepared for the Social Protection Technical Review Group (SPTRG) of the Multi-Donor Trust Fund

International Monetary Fund Washington, D.C Press Release No.19/189 May 31, 2019 pg 16.



International Council on Human Rights Assessing the effectiveness of national human rights institutions' 2005 *Switzerland: International Council of Human Rights Policy* 16

Mid-term Progress Report on the Implementation of the Review Recommendations Accepted by Zimbabwe in March 2012. Submitted by the Government of the Republic of Zimbabwe, June 2014.

MoFED Development Aid Statistics, 2017.

Mutangadura G and Makaudze E 'Urban Vulnerability to Income Shocks and Effectiveness of Current Social Protection Mechanisms: The Case of Zimbabwe' (2000) Consultancy Report prepared for the Ministry of Public Service, Labour and Social Welfare, funded by the World Bank, Harare.

OHCHR National human rights institutions; history, principles, roles, and responsibilities' 2010 *New York: United Nations* 41.

Report of the Registrar of Pensions, 1984

Report on the evaluation of the Public Financial Management System of Zimbabwe, Public Expenditure and Financial Accountability (PEFA) Assessment 2017 Pg13.

Save the children Advocacy and Campaigning 12 Budget analysis and tracking pg 17.

Schubert 'Manual of operations for the Zimbabwe harmonised social cash transfer programme.' 2011 *Ministry of Labour and Social service supported by UNICEF*.

Shields K 'The minimum core obligations of economic, social and cultural rights: The rights to health and education research summary' October 2017, The Nordic Trust Fund, The World Bank.

Thandiwe Matthews and Daniel McLaren Studies in poverty and inequality institute Budget Analysis for advancing socio-economic rights November 2016 pg 22.

Statement of UN Resident Coordinator in Zimbabwe Sensitisation Workshop to Head of Government Ministries 31 July 2017, Harare, Zimbabwe pg 4.

UNICEF 2018 National Budget Brief: An overview analysis pg 10.

UNICEF 2018 Social Protection National Budget Brief: An overview analysis pg 8.

Zimbabwe Public Expenditure Review 2016 Vol 5: Social Protection viii.



2017 National Budget Statement presented to the parliament of Zimbabwe presented on the 8th December, 2016 by Hon P.A Chinamasa MP 'Pushing production frontiers across all sectors of the economy' pg 91.

2016 Human Rights Council National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 III. A. par 18.

Academic papers

Chenwi L 'Monitoring the progressive realisation of socio-economic rights' Research paper written for studies in poverty and inequality Institute, 2010 pg 29.

Chikova, H 'Social protection in Zimbabwe' presented at the Social protection for those working informally; Social and Income (In) security in the informal Economy Conference, 16-17 Sept 2013 pg 2.

Mate, R 'UNRISD Working paper 2018-8 Social policy and social spending in Zimbabwe:1980 to 2015' pg 30.

Michael, C and Krzystof, H 'Social security for all investing in Global and Economic Development.' *2006 Consultation, Issues in Social Protection Series. Discussion Paper 16, ILO Social Security Department, Geneva*

Ministry of Public Service, Labour and Social Welfare Draft Discussion Paper on Aligning the Disabled Persons Act Chapter [17:01] to the Constitution of Zimbabwe pg 38.

Munro, LT 'Social Safety Net for the Chronically Poor? Zimbabwe's Public Assistance in the 1990's' *2003 Paper presented on the International Conference on Staying Poor. Chronic Poverty and Development Policy. Chronic Poverty Research Centre, Institute for Development*

Smith WJ 'Spending on safety nets for the poor. How much for How many?' *2001 The case of Malawi Africa Region Working paper series No. 11, Washington DC: The World Bank.*

Zimbabwe's slow domestication of international treaties criticized 3 December 2013 Issue 243 A Crisis in Zimbabwe Coalition Publication pg 2.

Books

Brooks E & Nyirenda E 'Social welfare in Zambia in Dixon, J (ed) *Social welfare in Africa*' (1987) Beckenham: Croom Helm Ltd.

Cassese A *International Law* 2nd edition (2005) 222.



Dugard J International law: A South African Perspective 4 ed (2011) Juta, 1.

Hall, A & Midgely, J *Social policy for development* (London: Sage Publications Ltd 2004)

Kanyenze G et al (ed) 'Beyond the Enclave: Towards a Pro-poor and Inclusive Development Strategy for Zimbabwe.' (2011) 382.

Kaseke E et al *Transferring resources to poor households: The case of poor social safety nets in Zimbabwe School of Social Work* (1998) at 1-87.

Midgely J 'Social security and economy: Key perspectives' in J Midgely & K Tang (eds) *Social security, the economy and development* (New York: Palgrave Macmillan 2008).

Mupedziswa R 'Social policy & administration in Zimbabwe' in N Hall & R Mupedziswa (eds) *Social welfare* (1995) 81-106.

Newspaper Articles

'Human Rights Commission grounded' The Herald 23 June 2014.

Mugabe, Tsvangirai misfire' Newsday 20 February 2013.

Older Persons Act finally in force' News day 7 September 2017.

The Herald Newspaper pg 27, 30 April 1982

Websites

http://www.academia.edu/4690926/The_Application_of_International_Law_in_Zimbabwe_in_light_of_the_New_Constitution_and_the_Doctrine_of_National_Sovereignty (accessed 29 March 2017).

Centre for Economic and Social Rights and Asia Pacific Forum, *Defending Dignity: A Manual for National Human Rights Institutions on Monitoring Economic, Social and Cultural Rights* (Jan. 2015). 93. Available at

www.cesr.org/downloads/Defending_Dignity_ESCR_Manual_for_NHRIS.pdf

Hofbauer and Blyberg, Article 2 and Governments' Budgets, Retrogression due to tax reforms reducing funds for the realisation Article 2. Available at

www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets-pdf.



'Designing and implementing social transfer programmes' *2006 Economic Policy Research Institute* accessed on 18 April 2019 Available at <http://www.prpzim.info/resources/socialtransfersguide.pdf>.

United Nations Department of Economic and Social Affairs Population Division; 2009. Population ageing and development. Available from: www.unpopulation.org (accessed 17 July 2019)

International Treaties

African Charter on Human and Peoples' Rights

African Charter on the Rights and Welfare of the Child

Convention on the Rights of Persons with Disabilities

International Covenant on Economic Social and Cultural Rights

International Labour Organisation's Conventions

Social Welfare Act of 1988

Vienna Declaration and Programme of Action

Universal Declaration of Human Rights

United Nations Convention on the Elimination of All Forms of Discrimination against Women

Zimbabwe's Old Person's Act of 2012

Theses

Munro LT 'Poverty and social safety nets in Zimbabwe 1990-99' PhD thesis, University of Manchester, 2001 (on file with the author).

Nhede TN 'The social security policy of the Government of Zimbabwe: a policy analysis overview' PhD thesis, University of Pretoria, 2016 at 213 (on file with the author).

Dhemba J 'Retirement in Zimbabwe: An evaluation of social security provisions in meeting the needs of African retiree' BSW Dissertation, University of Zimbabwe 1990 (on file with the author).